SEC. 9. SAFEGUARD PROVISIONS AND OTHER REQUIREMENTS APPLICABLE IN THE CASE OF BANK HOLDING COMPANIES WITH SECURITIES SUBSIDIARIES.

(a) CERTAIN FINANCIAL TRANSACTIONS INVOLVING BANKS, ETC., AND SECURITIES AFFILIATES PROHIBITED.—In the case of a bank holding company which controls a securities subsidiary, no bank or insured institution subsidiary of such bank holding company, and no subsidiary of any such bank or insured institution, may engage, directly or indirectly, in any of the following transactions involving any securities subsidiary which is an affiliate of such bank, insured institution, or subsidiary:

(1) Except as provided in subsection (j) of this section, extend credit in any manner to the securities subsidiary.

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

(3) Purchase for the bank or insured institution's own account, or the account of any subsidiary of the bank or insured institution, any asset of the securities subsidiary.

(4) Purchase for the bank or insured institution's own account, or the account of any subsidiary of the bank or insured institution, any security of which the securities subsidiary is an underwriter or a member of the selling group during the underwriting period and for 30 days after the end of such period.

(5) Purchase, in the bank's, insured institution's, or subsidiary's capacity as trustee, executor, administrator, custodian, managing agent, or guardian of estates with respect to the account of a customer, any security of which the securities subsidiary is an underwriter or a member of the selling group during the underwriting period and for 30 days after the end of such period, except at the express request of the customer.

(6) Purchase, in the bank, insured institution, or subsidiary's capacity as trustee, executor, administrator, custodian, managing agent, or guardian of estates, any security—

(A) which is issued by an investment company for which such bank, insured institution, or subsidiary acts as investment adviser, or

(B) which is issued by an investment company and which is distributed by such bank, insured institution, or affiliate,

except that the Securities and Exchange Commission may, by rule or order, grant such exemptions from this paragraph as it considers necessary or appropriate in the public interest or for the protection of investors.

(7) Extend credit in any manner to any investment company—

(A) for which the securities subsidiary, bank, insured institution, or subsidiary of the bank or insured institution acts as investment adviser; or

(B) whose securities are distributed by the securities subsidiary, bank, insured institution, or subsidiary of the bank or insured institution;

except as permitted pursuant to section 18(f)(3) of the Investment Company Act of 1940.

(8) Except as provided in subsection (h) of this section, sell any asset of the bank, insured institution, or subsidiary to the

securities subsidiary or to any investment company for which the securities subsidiary acts as investment adviser.

(9) Extend credit to an issuer of securities of which the securities subsidiary is an underwriter—

(A) for the purpose of paying, in whole or in part, the principal of, or any interest or dividends on, those securities; or

(B) providing terms, conditions, or maturities that are substantially similar to those of the underwritten securities.

(10) Extend credit, arrange for the extension of credit, or issue or enter into a standby letter of credit, asset purchase agreement, indemnity, guarnatee, insurance, or other instrument or facility, for the purpose of enhancing the marketability of, or in connection with, the issuance of any security of which the securities subsidiary is an underwriter or member of a selling group.

(11) Accept, as collateral for any extension of credit to any person, securities issued by the securities subsidiary or by an investment company for which the securities subsidiary acts as investment adviser.

(b) CERTAIN FINANCIAL TRANSACTIONS DURING DISTRIBUTION PERIOD FOR CERTAIN NEW ISSUES PROHIBITED.—No bank holding company and no subsidiary of any bank holding company (other than a securities subsidiary) may, directly or indirectly, knowingly extend credit or arrange for the extension of credit, to any person, which is secured by or which is extended for the purpose of purchasing any security during the period, and for 30 days after the end of the period, in which such security is the subject of a distribution in which a securities subsidiary of such bank holding company participates as an underwriter or a member of a selling group.

(c) ARMS-LENGTH TRANSACTIONS BETWEEN BANKS, ETC., AND CUSTOMERS OF SECURITIES AFFILIATE REQUIRED.—

(1) IN GENERAL.—A bank or insured institution subsidiary of a bank holding company, and any subsidiary of any such bank or insured institution, may provide products or services to any customer or a securities subsidiary of such bank holding company only if such products or services are provided on terms and under circumstances (including credit and similar standards) which meet the following requirements:

(A) The products or services are provided to customers of the securities subsidiary on terms and under circumstances (including credit and similar standards) which are substantially the same as, or at least as favorable to such bank, insured institution, or subsidiary as, the terms on which and the circumstances (including credit and similar standards) under which such products and services are provided to customers of such bank, insured institution, or subsidiary who are not customers of the securities subsidiary.

(B) If such bank, insured institution, or subsidiary does not provide such products or services to any person other than customers of the securities subsidiary, the products or services are provided on terms and under circumstances (including credit and similar standards) that in good faith

would be offered to, or would apply to transactions with, persons who are not customers of the securities subsidiary.

(2) CUSTOMER.—Any person who obtains any product or service from any company shall be treated as a customer of such company, for purposes of paragraph (1), during any 12-month period beginning on any date such person pays or becomes obligated to pay compensation to such company for such product or service.

(d) DISCLOSURES OF CONFIDENTIAL CUSTOMER INFORMATION BY BANKS, ETC., TO SECURITIES AFFILIATES PROHIBITED.—

(1) IN GENERAL.—No bank or insured institution subsidiary of any bank holding company which controls a securities subsidiary, and no subsidiary of any such bank or insured institution, may disclose, directly or indirectly, any confidential customer information to any securities subsidiary of such holding company without the express written consent of that customer to the disclosure of the specific information concerned for a particular purpose.

(2) CONFIDENTIAL CUSTOMER INFORMATION DEFINED.—For purposes of paragraph (1) of this subsection, the term "confidential customer information" means information, including any evaluation of creditworthiness—

(A) concerning or acquired from a customer of a bank or insured institution, or any subsidiary of the bank or insured institution, by reason of a business relationship with the customer of a type which would not, in the ordinary course of business, be divulged to a company engaged in securities and securities-related activities of which such bank, insured institution, or subsidiary is not an affiliate without the consent of the customer; or

(B) obtained through access to the payment system.

(e) PROHIBITION ON SHARED NAME, PREMISES, AND ADVERTISING.—

(1) NAMES.—The corporate name and logo of any bank or insured institution subsidiary of a bank holding company which controls a securities subsidiary, or any subsidiary of any such bank or insured institution, may not contain any word or design which—

(A) is the same as or similar to a word in, or a design connected with, the name or logo of such securities subsidiary; and

(B) would cause a reasonable person to believe that such bank or insured institution, or any subsidiary of such bank or insured institution, is an affiliate of such securities subsidiary.

(2) PREMISES.—No bank or insured institution subsidiary which is an affiliate of a securities subsidiary, and no subsidiary of any such bank or insured institution, may permit any use by such securities subsidiary of—

(A) any part of any office of such bank or insured institution, or such subsidiary of such bank or insured institution, which is commonly accessible to the general public for the purpose of conducting any depository, lending, or securities

business with such bank, insured institution, or subsidiary; or

(B) any part of any office of such bank, insured institution, or subsidiary which is not described in subparagraph (A) except to the extent permitted under regulations prescribed by the Board.

(3) JOINT ADVERTISING.—No bank or insured institution which is an affiliate of a securities subsidiary, and no subsidiary of any such bank or insured institution, may post, publish, or broadcast any advertisement relating to the bank or insured institution, or any subsidiary of such bank ro insured institution, which contains, appears with, or is prepared for broadcast in conjunction with, any advertisement relating to such securities subsidiary.

(4) REGULATIONS.—The Board, with the approval of the Securities and Exchange Commission, shall prescribe such regulations as may be necessary to enforce the requirements of this subsection.

(f) PROHIBITION ON RECIPROCAL ARRANGEMENTS.—

(1) IN GENERAL.—No bank holding company and no subsidiary of a bank holding company may, directly or indirectly, enter into any reciprocal arrangement.

(2) RECIPROCAL ARRANGEMENT DEFINED.—For purposes of this subsection, the term "reciprocal arrangement" means any agreement, understanding, or other arrangement under which—

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

(B) the agreement of the second bank holding company referred to in subparagraph (A) of this paragraph, or any subsidiary of such company, to engage in a transaction with, or on behalf of, the first bank holding company referred to in such subparagraph, or any subsidiary of such company,

for the purpose of evading any requirement or prohibition on transactions between, or for the benefit of, affiliates of bank holding companies established under or pursuant to any Federal banking law or regulation.

(3) REGULATIONS.—The Board, with the approval of the Securities and Exchange Commission, shall prescribe such regulations as may be necessary to enforce the requirements of this subsection.

(g) PROTECTION OF BANK, ETC. SUBSIDIARY THROUGH PROHIBITION ON INTERLOCKING DIRECTORS, OFFICERS, OR EMPLOYEES.—

(1) IN GENERAL.—No bank holding company may allow any director, officer, or employee of any securities subsidiary of such bank holding company to serve at the same time as a director, officer, or employee of any bank or insured institution subsidiary of such bank holding company or any subsidiary of any such bank or insured institution.

(2) BOARD AUTHORITY TO PREEMPT PARAGRAPH (1).—

(A) IN GENERAL.—The Board may, by order or regulation with the approval of the Securities and Exchange Commis-

sion, grant exemptions from paragraph (1) of this subsection.

(B) FACTORS TO BE CONSIDERED.—In determining whether to grant an exemption under subparagraph (A), the Board shall consider—

(i) the size of the bank holding companies involved and the size of the bank subsidiaries and securities subsidiaries involved;

(ii) any burdens imposed by the application of paragraph (1);

(iii) the safety and soundness of the bank subsidiaries and the securities subsidiaries of such bank holding companies; and

(iv) other appropriate factors, including unfair competition in securities activities and the improper exchange of confidential customer information.

(3) EXCEPTION FOR CERTAIN BACK OFFICE OPERATIONS.—Paragraph (1) shall not apply to any employee, other than an officer or director, employed by the bank holding company or any subsidiary of such company to perform clerical, accounting, bookkeeping, statistical, or similar functions, including the receipt or transmittal of electronic transfers, if such functions are performed—

(A) in an office or other facility which is separate from any part of any office of any bank or insured institution subsidiary and any qualified securities subsidiary of such bank holding company; and

(B) in a manner which is consistent with the requirements of this section as determined by the Board with the approval of the Securities and Exchange Commission.

(h) ASSET SALES TO SECURITIES SUBSIDIARY.—

(1) IN GENERAL.—A bank or insured institution subsidiary of a bank holding company, and any subsidiary of such bank or insured institution, may, notwithstanding subsection (a)(8) of this section but subject to section 23B of the Federal Reserve Act, sell any asset of such bank, insured institution, or subsidiary to any securities subsidiary of such holding company for the purpose of including such asset in a pool of assets which is held by the securities subsidiary in connection with the issuance of asset-backed securities if—

(A) the sale of such asset to the securities subsidiary is without recourse;

(B) the asset-backed securities which represent interests in, or obligations backed by, the pool of assets of which such asset is a part—

(i) are rated as investment grade by at least one independent and nationally recognized statistical rating organization; or

(ii) are issued or guaranteed by, or represent an interest in securities issued or guaranteed by—

(I) the Federal Home Loan Mortgage Corporation;

(II) the Federal National Mortgage Association; or

(III) the Government National Mortgage Association; and

(C) the price at which an equity security or the yield at which a debt security is to be distributed to the public is established at a price no higher, or yield no lower, than that recommended by a qualified independent underwriter which has also participated in the preparation of the registration statement and the prospectus, offering circular, or similar document.

(2) REGULATIONS.—The Board, with the approval of the Securities and Exchange Commission, shall prescribe such regulations as may be necessary to ensure that transactions described in paragraph (1) comply with the requirements of this subsection and section 23B(a)(1) of the Federal Reserve Act.

(3) ASSET DEFINED.—For purposes of this subsection, the term "asset" means any note, draft, acceptance, loan, lease, receivable, other obligation, or pools of any such obligations.

(4) QUALIFIED INDEPENDENT UNDERWRITER.—For purposes of this subsection, the term "qualified independent underwriter" shall be defined by rule or regulation prescribed by the Securities and Exchange Commission.

(i) SHAREHOLDERS IN BANKERS' BANK HOLDING COMPANY, ETC., TREATED AS AFFILIATES OF SECURITIES SUBSIDIARY.—

(1) IN GENERAL.—In the case of any bank holding company which controls a depository institution described in section 19(b)(1)(A)(vii) of the Federal Reserve Act and a qualified securities subsidairy, any company which owns any interest in or participates in the activities of such bank holding company or depository institution, and any subsidiary of any such company, shall be treated as a bank or insured institution subsidiary of such bank holding company for purposes of this section (and any provision of section 14, 15, or 16 which is applicable to any proceeding relating to the enforcement of this section).

(2) EXCEPTION.—Paragraph (1) shall not apply with respect to any bank, and any affiliate of such bank, if the aggregate amount of the interests held by such bank and all affiliates of such bank in a bank holding company or depository institution described in such paragraph do not exceed 5 percent of all interests in such bank holding company or depository institution.

(j) EXCEPTION FOR INTRA-DAY EXTENSIONS OF CREDIT IN CONNECTION WITH CLEARING GOVERNMENT SECURITIES.—Subsection (a)(1) of this section shall not apply with respect to any extension of credit by any bank or insured institution subsidiary of a bank holding company, or any subsidiary of any such bank or insured institution, made for the purchase or sale of any securities of the United States or any agency of the United States or any securities on which the principal and interest are fully guaranteed by the United States or such agencies if—

(1) the extension of credit is to be repaid on the same calendar day;

(2) the extension of credit is incidental to the clearing of transactions in those securities through such bank, insured institution, or subsidiary; and

(3) both the principal of and the interest on the extension of credit are fully secured by securities of the United States or any agency of the United States or securities on which the principal and interest are fully guaranteed by the United States or any such agency.

(k) DISCRIMINATORY TREATMENT OF SECURITIES FIRMS THAT ARE NOT AFFILIATED WITH BANKING ORGANIZATIONS PROHIBITED.—No bank or insured institution shall, directly or indirectly, acting alone or with others—

(1) extend or deny credit or services (including clearing services) or vary the terms or conditions thereof, if the effect of such action would be to treat securities firms not affiliated with a bank or an insured institution less favorably than any securities subsidiary of a bank holding company, unless the bank or insured institution demonstrates that the extension or denial is based on objective criteria and is consistent with sound business practices; or

(2) extend or deny credit or services or vary the terms or conditions thereof with the intent of creating a competitive advantage for a securities subsidiary of a bank holding company.

(l) INDEPENDENT ANNUAL AUDITS OF BANK HOLDING COMPANIES AND THEIR BANK OF OTHER INSURED INSTITUTION AND SECURITIES SUBSIDIARIES.—

(1) ANNUAL INDEPENDENT AUDITS OF FINANCIAL STATEMENTS.—Each bank holding company which controls a securities subsidiary, and each bank or other insured institution subsidiary of such bank holding company, shall have an annual audit made of its consolidated financial statements by an independent public accountant in accordance with generally accepted auditing standards. The Board may, by order or regulation, grant exemptions from the requirements of this subsection to any bank holding company with respect to any bank or other insured institution subsidary in accordance with criteria in paragraph (2) of this subsection.

(2) FACTORS TO BE CONSIDERED BY BOARD IN EXERCISE OF EXEMPTION AUTHORITY.—In making a determination to grant an exemption with respect to a bank or other insured institution subsidiary pursuant to paragraph (1) of this subsection, the Board shall consider—

(A) the size of the securities subsidiary and bank or other insured institution subsidiary involved;

(B) the cost of complying with the audit and reporting requirements of this section;

(C) the safety and soundness of the bank or insured institution subsidiary; and

(D) other appropriate factors, including the number of securities transactions, the dollar volumes of such transactions, and the extent to which a bank or other insured institution subsidiary's financial results are evaluated as part of an audit of a bank holding company under this section.

(3) FILING OF AUDIT REPORT.—Each bank holding company, bank, or other insured institution which is subject to the audit requirements of this subsection shall file with the appropriate

Federal depository institutions regulatory agency an annual report containing the financial statements audited in accordance with paragraph (1) of this subsection.

(4) MANAGEMENT STATEMENT REQUIRED.—Such annual report shall also include a statement, in such form as the Board shall prescribe by rule or regulation, concerning—

(A) management's responsibilities for the preparation of the financial statements of the bank holding company, bank, or insured institution; and

(B) management's responsibilities for establishing and maintaining an adequate system of internal controls relating to the financial statements and to controls directly related to, and designed to provide reasonable assurances as to compliance with, the preceding subsections of this section.

[AMENDMENTS TO INTERNAL REVENUE CODE OF 1954

[SEC. 10. (a) Subchapter O of chapter 1 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new part:

[PART VIII—DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT OF 1956

[SEC. 1101. DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT OF 1956.

[(a) DISTRIBUTIONS OF CERTAIN NON-BANKING PROPERTY.—

[(1) DISTRIBUTIONS OF PROHIBITED PROPERTY.—If—

[(A) a qualified bank holding corporation distributes prohibited property (other than stock received in an exchange to which subsection (c)(2) applies)—

[(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

[(ii) to a shareholder, in exchange for its preferred stock; or

[(iii) to a security holder, in exchange for its securities; and

[(B) the Board has, before the distribution, certified that the distribution of such prohibited property is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

[(2) DISTRIBUTIONS OF STOCK AND SECURITIES RECEIVED IN AN EXCHANGE TO WHICH SUBSECTION (c) (2) APPLIES.—If—

[(A) a qualified bank holding corporation distributes—

[(i) common stock received in an exchange to which subsection (c)(2) applies to a shareholder (with respect to its stock held by such shareholder), without the sur-

render by such shareholder of stock in such corporation; or

[(ii) common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its common stock; or

[(iii) preferred stock or common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its preferred stock; or

[(iv) securities or preferred or common stock received in an exchange to which subsection (c)(2) applies to a security holder, in exchange for its securities; and

[(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

[(3) NON PRO RATA DISTRIBUTION.—Paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.

[(4) EXCEPTION.—This subsection shall not apply to any distribution by a corporation which has made any distribution pursuant to subsection (b).

[(5) DISTRIBUTIONS INVOLVING GIFT OR COMPENSATION.—In the case of a distribution to which paragraph (1) or (2) applies, but which—

[(A) results in a gift, see section 2501, and following, or

[(B) has the effect of the payment of compensation, see section 61 (a) (1).

[(b) CORPORATION CEASING TO BE A BANK HOLDING COMPANY.—

[(1) DISTRIBUTIONS OF PROPERTY WHICH CAUSE A CORPORATION TO BE A BANK HOLDING COMPANY.—If—

[(A) a qualified bank holding corporation distributes property (other than stock received in an exchange to which subsection (c) (3) applies)—

[(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

[(ii) to a shareholder, in exchange for its preferred stock; or

[(iii) to a security holder, in exchange for its securities; and

[(B) the Board has, before the distribution, certified that—

[(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2 (a) of the Bank Holding Company Act of 1956) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was

distributed under this subsection or exchanged under subsection (c)(3); and

[(ii) the distribution is necessary or appropriate to effectuate the policies of such Act, then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

[(2) DISTRIBUTIONS OF STOCK AND SECURITIES RECEIVED IN AN EXCHANGE TO WHICH SUBSECTION (c) (3) APPLIES.—If—

[(A) a qualified bank holding corporation distributes—

[(i) common stock received in an exchange to which subsection (c)(3) apples to a shareholder (with respect to its stock held by shareholder), without the surrender by such shareholder of stock in such corporation; or

[(ii) common stock received in an exchange to which subsection (c)(3) applies to a shareholder, in exchange for its common stock; or

[(iii) preferred stock or common stock received in an exchange to which subsection (c)(3) applies to a shareholder, in exchange for its preferred stock; or

[(iv) securities or preferred or common stock received in an exchange to which subsection (c)(3) applies to a security holder; in exchange for its securities; and

[(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged.

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

[(3) NON PRO RATA DISTRIBUTIONS.—Paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.

[(4) EXCEPTION.—This subsection shall not apply to any distribution by a corporation which has made any distribution pursuant to subsection (a).

[(5) DISTRIBUTIONS INVOLVING GIFT OR COMPENSATION.—In the case of a distribution to which paragraph (a) or (2) applies, but which—

[(A) results in a gift, see section 2501, and following, or

[(B) has the effect of the payment of compensation, see section 61 (a) (1).

[(c) PROPERTY ACQUIRED AFTER MAY 15, 1955.—

[(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), subsection (a) or (b) shall not apply to—

[(A) any property acquired by the distributing corporation after May 15, 1955, unless (i) gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b), or (ii) such property was received by it in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) such property was acquired by the distributing corporation in a

transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 with respect to a reorganization described in section 368(a)(1) (E) or (F), or

[(B) any property which was acquired by the distributing corporation in a distribution with respect to stock acquired by such corporation after May 15, 1955, unless such stock was acquired by such corporation (i) in a distribution (with respect to stock held by it on May 15, 1955, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b), or (ii) in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 with respect to a reorganization described in section 368(a)(1) (E) or (F), or

[(C) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 332, unless such property was acquired from a corporation which, if it had been a qualified bank holding corporation, could have distributed such property under subsection (a)(1) or (b)(1).

[(2) EXCHANGES INVOLVING PROHIBITED PROPERTY.—If—

[(A) Any qualified bank holding corporation exchanges (i) property, which, under subsection (a)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except property described in subsection (b)(1) (B)(i)), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property;

[(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (a)(2)(A); and

[(C) before such exchange, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (a)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that the exchange and distribution are necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956,

then paragraph (1) shall not apply with respect to such distribution.

[(3) EXCHANGES INVOLVING INTERESTS IN BANKS.—If—

[(A) any qualified bank holding corporation exchanges (i) property which, under subsection (b)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except prohibited property), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property;

[(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (b)(2)(A); and

[(C) before such exchange, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (b)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that—

[(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2(a) of the Bank Holding Company Act of 1956) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under subsection (b)(1) or exchanged under this paragraph; and

[(ii) the exchange and distribution are necessary or appropriate to effectuate the policies of such Act,

then paragraph (1) shall not apply with respect to such distribution.

[(d) DISTRIBUTIONS TO AVOID FEDERAL INCOME TAX.—

[(1) PROHIBITED PROPERTY.—Subsection (a) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after May 15, 1955, to any corporation, property (other than prohibited property) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

[(2) BANKING PROPERTY.—Subsection (b) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after May 15, 1955, to any corporation, property (other than property described in subsection (b)(1)(B)(i)) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

[(3) CERTAIN CONTRIBUTIONS TO CAPITAL.—In the case of a distribution a portion of which is attributable to a transfer which is a contribution to the capital of a corporation, made after May 15, 1955, and prior to the date of the enactment of this part, if subsection (a) or (b) would apply to such distribution but for the fact that, under paragraph (1) or (2) (as the case may be) of this subsection, such contribution to capital is part of a plan one of the principal purposes of which is to distribute the earnings and profits of any corporation, then, notwithstanding paragraph (1) or (2), subsection (a) or (b) (as the case may be) shall apply to that portion of such distribution not attributable to such contribution to capital, and shall not apply to that portion of such distribution attributable to such contribution to capital.

[(e) FINAL CERTIFICATION.—

[(1) FOR SUBSECTION (a).—Subsection (a) shall not apply with respect to any distribution by a corporation unless the Board certifies that, before the expiration of the period permitted under section 4(a) of the Bank Holding Company Act of 1956

(including any extensions thereof granted to such corporation under such section 4(a)), the corporation has disposed of all the property the disposition of which is necessary or appropriate to effectuate section 4 of such Act (or would have been so necessary or appropriate if the corporation had continued to be a bank holding company).

[(2) FOR SUBSECTION (b).—

[(A) Subsection (b) shall not apply with respect to any distribution by any corporation unless the Board certifies that, before the expiration of the period specified in subparagraph (B), the corporation has ceased to be a bank holding company.

[(B) The period referred to in subparagraph (A) is the period which expires 2 years after the date of the enactment of this part or 2 years after the date on which the corporation becomes a bank holding company, whichever date is later. The Board is authorized, on application by any corporation, to extend such period from time to time with respect to such corporation for not more than one year at a time if, in its judgment, such an extension would not be detrimental to the public interest; except that such period may not in any case be extended beyond the date 5 years after the date of the enactment of this part or 5 years after the date on which the corporation becomes a bank holding company, whichever date is later.

[(f) CERTAIN EXCHANGES OF SECURITIES.—In the case of an exchange described in subsection (a)(2)(A)(iv) or subsection (b)(2)(A)(iv), subsection (a) or subsection (b) (as the case may be) shall apply only to the extent that the principal amount of the securities received does not exceed the principal amount of the securities exchanged.

[SEC. 1102. SPECIAL RULES.

[(a) BASIS OF PROPERTY ACQUIRED IN DISTRIBUTIONS.—If, by reason of section 1101, gain is not recognized with respect to the receipt of any property, then, under regulations prescribed by the Secretary or his delegate—

[(1) if the property is received by a shareholder with respect to stock, without the surrender by such shareholder of stock, the basis of the property received and of the stock with respect to which it is distributed shall, in the distributee's hands, be determined by allocating between such property and such stock the adjusted basis of such stock; or

[(2) if the property is received by a shareholder in exchange for stock or by a security holder in exchange for securities, the basis of the property received shall, in the distributee's hands, be the same as the adjusted basis of the stock or securities exchanged, increased by—

[(A) the amount of the property received which was treated as a dividend, and

[(B) the amount of gain to the taxpayer recognized on the property received (not including any portion of such gain which was treated as a dividend).

[(b) PERIODS OF LIMITATION.—The periods of limitation provided in section 6501 (relating to limitations on assessment and collec-

tion) shall not expire, with respect to any deficiency (including interest and additions to the tax) resulting solely from the receipt of property by shareholders in a distribution which is certified by the Board under subsection (a), (b), or (c) of section 1101, until five years after the distributing corporation notifies the Secretary or his delegate (in such manner and with such accompanying information as the Secretary of his delegate may by regulations prescribe) that the period (including extensions thereof) prescribed in section 4(a) of the Bank Holding Company Act of 1956, or section 1101(e)(2)(B), whichever is applicable, has expired; and such assessment may be made notwithstanding any provision of law or rule of law which would otherwise prevent such assessment.

[(c) ALLOCATION OF EARNINGS AND PROFITS.—

[(1) DISTRIBUTION OF STOCK IN A CONTROLLED CORPORATION.—In the case of a distribution by a qualified bank holding corporation under section 1101 (a) or (b)(1) of stock in a controlled corporation, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation shall be made under regulations prescribed by the Secretary or his delegate.

[(2) Exchanges described in section 1101(c) (2) or (3).—In the case of any exchange described in section 1101(c) (2) or (3), proper allocation with respect to the earnings and profits of the corporation transferring the property and the corporation receiving such property shall be made under regulations prescribed by the Secretary or his delegate.

[(3) DEFINITION OF CONTROLLED CORPORATION.—For purposes of paragraph (1), the term "controlled corporation means a corporation with respect to which at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock is owned by the distributing qualified bankholding corporation.

[(d) ITEMIZATION OF PROPERTY.—In any certification under this part, the board shall make such specification and itemization of property as may be necessary to carry out the provisions of this part.

[SEC. 1103. DEFINITIONS.

[(a) BANK HOLDING COMPANY.—For purposes of this part, the term "bank holding company" has the meaning assigned to such term by section 2 of the Bank Holding Company Act of 1956.

[(b) QUALIFIED BANK HOLDING CORPORATION.—

[(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of this part the term "qualified bank holding corporation" means any corporation (as defined in section 7701(a)(3)) which is a bank holding company and which holds prohibited property acquired by it—

[(A) on or before May 15, 1955,

[(B) in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, or

[(C) in exchange for all of its stock in an exchange described in section 1101(c)(2) or (c)(3).

[(2) LIMITATIONS.—

[(A) A bank holding company shall not be a qualified bank holding corporation, unless it would have been a bank holding company on May 15, 1955, if the Bank Holding Company Act of 1956 had been in effect on such date, or unless it is a bank holding company determined solely by reference to—

[(i) property acquired by it on or before May 15, 1955,

[(ii) property acquired by it in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, and

[(iii) property acquired by it in exchange for all of its stock in an exchange described in section 1101(c) (2) or (3).

[(B) A bank holding company shall not be a qualified bank holding corporation by reason of property described in subparagraph (B) of paragraph (1) or clause (ii) of subparagraph (A) of this paragraph, unless such property was acquired in a distribution with respect to stock, which stock was acquired by such bank holding company—

[(i) on or before May 15, 1955,

[(ii) in a distribution (with respect to stock held by it on May 15, 1955, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b) of section 1101, or

[(iii) in exchange for all of its stock in an exchange described in section 1101(c) (2) or (3).

[(C) A corporation shall be treated as a qualified bank holding corporation only if the Board certifies that it satisfies the foregoing requirements of this subsection.

[(c) PROHIBITED PROPERTY.—For purposes of this part, the term "prohibited property" means, in the case of any bank holding company, property (other than nonexempt property) the disposition of which would be necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956 if such company continued to be a bank holding company beyond the period (including any extensions thereof) specified in subsection (a) of such section or in section 1101(e)(2)(B) of this part, as the case may be. The term "prohibited property" does not include shares of any company held by a bank holding company to the extent that the prohibitions of section 4 of the Bank Holding Company Act of 1956 do not apply to the ownership by such bank holding company of such property by reason of subsection (c)(5) of such section.

[(d) NONEXEMPT PROPERTY.—For purposes of this part, the term "nonexempt property" means—

[(1) obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace;

[(2) securities issued by or guaranteed as to principal or interest by a government or subdivision thereof or by any instrumentality of a government or subdivision; or

[(3) money, and the right to receive money not evidenced by a security or obligation (other than a security or obligation described in paragraph (1) or (2)).

[(e) BOARD.—For purposes of this part, the term "Board" means the Board of Governors of the Federal Reserve System.

[(b) The table of parts for subchapter O of chapter 1 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following:

[Part VIII. Distributions pursuant to Bank Holding Company Act of 1956.

[(c) The amendments made by this section shall apply with respect to taxable years ending after the date of the enactment of this Act.]

SEC. 10. CONSUMER DISCLOSURE REQUIREMENTS.

(a) IN GENERAL.—No bank or insured institution subsidiary of a bank holding company, and no subsidiary of such bank or insured institution, shall provide an opinion to any customer on the value of, or the advisability of purchasing or selling, securities of which a securities subsidiary or other nonbank affiliate of such bank holding company is an underwriter or which such securities subsidiary or affiliate sells, or offers for sale, to the customer unless such bank, insured institution, or subsidiary discloses to the customer that—

(1) the securities subsidiary or affiliate is an affiliate of such bank, insured institution, or subsidiary;

(2) the securities subsidiary or affiliate—

(A) is not a bank or insured institution; and

(B) is a separate corporate entity with respect to any bank or insured institution (or any subsidiary of such bank or insured institution) which is an affiliate of such securities subsidiary or affiliate; and

(3) the securities underwritten, sold, offered, or recommended by the securities subsidiary or affiliate—

(A) are not deposit instruments which are federally insured;

(B) are not instruments which are guaranteed either as to principal or interest by a bank or insured institution affiliate of such subsidiary; and

(C) are not otherwise obligations of any bank or insured institution.

(b) LIMITATION.—Nothing in this section shall be construed to permit a bank or insured institution to engage in securities activities prohibited by section 5 of this Act.

SEC. 11. COMMUNITY BENEFITS REQUIREMENTS.

(a) MINIMUM COMMUNITY REINVESTMENT RATING REQUIRED FOR CERTAIN APPROVALS.—

(1) GENERAL.—Unless the requirements of paragraph (2) are met, the Board shall not approve any of the following applications (for which the Board's approval is required) and shall disapprove any notice of any company's intention to engage in any

of the following transactions or activities (for which the Board's approval is not required):

(A) Any application under section 3(a) by—

(i) any bank holding company to acquire control of another bank (other than a bank described in clause (i), (ii), (iii), or (iv) of subsection (f)(4)(A)) or bank holding company; or

(ii) any bank (other than a bank described in any clause of subsection (f)(5)(A)) to acquire control of another bank (other than a bank described in clause (i), (ii), (iii), or (iv) of subsection (f)(4)(A)) or any bank holding company.

(B) Any application by a bank holding company to engage in, or any notice by a bank holding company of such company's intention to engage in, (as the case may be) any activity (or to acquire the shares of any company engaged in any activity) described in any paragraph of section 4(c).

(2) MINIMUM COMMUNITY REINVESTMENT RATING REQUIREMENTS.—The requirements of this paragraph are met if—

(A) in the case of an application or notice described in subparagraph (A)(i) or (B) of paragraph (1), the applying bank holding company has an imputed community reinvestment rating of 2 or better (as determined in accordance with subsection (f)); and

(B) in the case of an application described in paragraph (1)(A)(ii), the applying bank has an community reinvestment rating of 2 or better (as determined under section 810 of the Community Reinvestment Act of 1977).

(3) SPECIAL RULES FOR BANKS AND BHCS WITH ABOVE AVERAGE COMMUNITY REINVESTMENT RATINGS.—

(A) EXCEPTION FOR CERTAIN APPLICATIONS.—Notwithstanding paragraph (1)(B), this section shall not apply with respect to any notice by a bank holding company described in paragraph (2)(A) of such company's intention to engage in any activity described in subsection (a) or (b) of § 225.22 of title 12 of the Code of Federal Regulations (as in effect on the date of the enactment of the Depository Institutions Act of 1988).

(B) WRITTEN FINDINGS WITHIN 60 DAYS IF NO HEARING IS HELD.—In the case of an application or notice described in subparagraph (A)(i) or (B) of paragraph (1) by a bank holding company described in paragraph (2)(A) or an application described in paragraph (1)(A)(ii) by a bank described in paragraph (2)(B), if—

(i) no comments are received under subsection (h)(1); or

(ii) with respect to comments received, the Board determines that no substantial issue referred to in subsection (h)(2)(A) has been raised,

the Board shall issue a written finding which meets the requirement of subsection (h)(3) before he end of the 60-day period beginning on the later of the dates described in subparagraphs (A) and (B) of subsection (h)(1).

(C) WRITTEN FINDINGS WITHIN 90 DAYS IF A HEARING IS HELD.—If a hearing is conducted under subsection (h)(2) in connection with an application or notice described in subparagraph (A)(i) or (B) of paragraph (1) by a bank holding company described in paragraph (2)(A) or an application described in paragraph (1)(A)(ii) by a bank described in paragraph (2)(B), the Board shall issue a written finding which meets the requirement of subsection (h)(3) before the end of the 90-day period beginning on the later of the dates described in subparagraphs (A) and (B) of subsection (h)(1).

(b) PRELIMINARY APPROVAL WITH REVIEW PERIOD IN CERTAIN OTHER CASES.—

(1) PRELIMINARY APPROVAL.—Notwithstanding subsection (a), the Board may preliminarily approve an application described in such subsection if—

(A) in the case of an application by—

(i) a bank holding company, such bank holding company has an imputed community reinvestment rating of 3; or

(ii) a bank, such bank has a community reinvestment rating of 3; and

(B) the bank holding company or bank enters into such commitments as the Board may require, taking into account any public comments or testimony received under subsection (h), to take actions that will enable the bank holding company, including the resulting bank holding company in the case of an application by a bank, to receive the imputed community reinvestment rating described in subsection (a)(2)(A) before the end of the 2-year period beginning on the date of the preliminary approval of such application.

(2) SPECIAL RULE IN CASE OF NOTICES.—In the case of a notice described in subsection (a)(1)(B) which is submitted by a bank holding company described in paragraph (1)(A) of this subsection, the Board may, notwithstanding subsection (a)(1), preliminarily approve the commencement of the activity or the acquisition (with respect to which such notice is submitted) if the bank holding company meets the requirements of paragraph (1)(B) of this subsection.

(3) REVIEW.—At the end of the 180-day period beginning on the date the Board preliminarily approved—

(A) an application described in subsection (a) pursuant to paragraph (1) of this subsection; or

(B) a notice described in subsection (a)(1)(B) pursuant to paragraph (2) of this subsection,

the Board shall review the policies and programs adopted by the applying or the notifying bank holding company to implement the commitments described in paragraph (1)(B) of this subsection.

(4) EXPIRATION OF PRELIMINARY APPROVAL; FINAL APPROVAL.—No preliminary approval by the Board under paragraph (1) or (2) of this subsection of an application or notice described in subsection (a) shall be effective after the end of the 30-day period beginning at the end of the 180-day period described in

paragraph (3) of this subsection unless the Board approves such application of notice in a final written approval issued before the end of such 30-day period.

(5) CONDITION ON FINAL APPROVAL.—The Board may not approve an application or notice in a final written approval under paragraph (4) unless the Board determines, pursuant to the review under paragraph (3), that the policies and programs adopted by the applying or the notifying bank holding company to implement the commitments described in paragraph (1)(B) have a substantial likelihood of resulting in the fulfillment of such commitments.

(6) PUBLIC HEARING.—At the end of the 2-year period described in paragraph (1), the Board shall hold a public hearing with respect to any bank holding company or bank which receives final approval under paragraph (5) at which interested community and consumer groups shall be given opportunty to testify concerning the bank holding company or bank's performance in fulfilling the commitments described in paragraph (1)(B).

(7) APPROVAL ALLOWED FOR CERTAIN ACQUISITIONS INVOLVING BANKS WITH RATING OF LESS THAN 3.—Notwithstanding subsection (a) and subject to all the requirements of paragraphs (3) through (6) of this subsection, the Board may preliminarily approve, under paragraph (1) of this subsection, as application under section 3(a) of this Act (to which section 3(d) does not apply) by—

(A) any bank with a community reinvestment rating of less than 3 for the acquisition of control of another bank; or

(B) any bank holding company for the acquisition of control of any bank with a community reinvestment rating of less than 3,

if the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) approves such acquisition and the acquiring bank or bank holding company enters into commitments described in paragraph (1)(B) of this subsection.

(8) PRELIMINARY APPROVAL TREATED AS FINAL APPROVAL FOR CERTAIN PURPOSES.—A preliminary approval by the Board under paragraph (1) or (2) of this subsection of any application or notice shall be treated as—

(A) a final order with respect to such application or notice for purposes of section 15 of this Act; and

(B) a final approval with respect to such application or notice for purposes of section 16(b) of this Act.

(c) BOARD DISAPPROVAL REQUIRED IF APPLICANT EXHIBITS CERTAIN PATTERNS OF ACTIVITY.—

(1) IN GENERAL.—The Board shall not approve an application described in subsection (a)(1) and shall disapprove any notice described in wuch subsection if the applying or notifying bank holding company, or any bank or insured institution subsidiary of such company, or the applying bank has established a pattern of—

(A) acquiring or chartering federally insured depository institutions in a manner that tends to exclude low- and moderate-income neighborhoods or equivalent areas; or

(B) opening or closing deposit facilities within the service area of any bank or insured institution subsidiary, in the case of an applying or notifying bank holding company, or of the applying bank in a manner that tends to exclude low- and moderate-income neighborhoods or equivalent areas, except that the closing of any deposit facility which the Board determines was occasioned by considerations relating to the safety and soundness of a depository institution shall not be taken into account for purposes of this paragraph.

(2) RECONSIDERATION.—The Board may reconsider any application or notice described in paragraph (1) during the 90-day period following disapproval of such application or notice if the applying or notifying bank holding company, or the applying bank, submits a plan that the Board determines would reasonably be expected to improve services for low- and moderate-income persons and neighborhoods.

(d) ADDITIONAL REQUIREMENT RELATING TO SECURITIES ACTIVITIES.—The Board shall not approve—

(1) any application by a bank holding company to establish a qualified securities subsidiary;

(2) any application under section 3(a) by any company which, at the time of application, is not a bank or bank holding company to acquire control of any bank;

(3) any application under section 3(a) by a bank holding company with a securities subsidiary to acquire an additional bank,

unless the applicant company enters into such commitments as the Board may require, taking into account any public comments or testimony received under subsection (h), to provide reasonable assurance that the proposed combination of banking and securities activities (if any) within the bank holding company structure following the approval of such application will not diminish the availability of credit and deposit services for low- and moderate-income persons or small businesses or within low- and moderate-income neighborhoods or equivalent areas.

(e) ADDITIONAL REQUIREMENTS RELATING TO APPLICATIONS BY COMPANIES WHICH ARE NOT BANKS OR BHCS.—The Board may not approve an application under section 3(a) by any company which, at the time of application, is not a bank or bank holding company to—

(1) acquire a bank with a community reinvestment rating less favorable than 2 unless the company enters into such commitments as the Board may require, taking into account any public comments or testimony received under subsection (h), to take actions that will enable the bank to achieve a community reinvestment rating of 2 or better before the end of the 2-year period beginning on the date of the approval of such application; or

(2) acquire a bank with a community reinvestment rating of 1 or 2 unless the company enters into such commitments as the Board may require, taking into account any public comments or testimony received under subsection (h), to take actions that

will enable the bank to maintain or improve such bank's community reinvestment rating.

(f) IMPUTED COMMUNITY REINVESTMENT RATING.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the imputed community reinvestment rating for any bank holding company (for purposes of this section) is the community reinvestment rating assigned to the bank or insured institution subsidiary of such company with the least favorable community reinvestment rating.

(2) SPECIAL RULE IN THE CASE OF A COMPANY WITH 5 OR MORE DEPOSITORY INSTITUTION SUBSIDIARIES IN 1 STATE.—In the case of any bank holding company which controls 5 or more bank or insured institution subsidiaries in 1 State, the imputed community reinvestment rating for such bank holding company (for purposes of this section) shall be 1 grade higher than the community reinvestment rating of the bank or insure institution subsidiary of such company with the least favorable community reinvestment rating if—

(A) the community reinvestment ratings of not less than 80 percent of all bank or insured institution subsidiaries of such company are equal to or greater than such imputed reinvestment rating; and

(B) the community reinvestment rating of the largest bank or insured institution subsidiary of such company is equal to or greater than such imputed reinvestment rating.

(3) SPECIAL RULE IN THE CASE OF A COMPANY WITH 5 OR MORE DEPOSITORY INSTITUTION SUBSIDIARIES IN MORE THAN 1 STATE.—In the case of any bank holding company which controls 5 or more bank or insured institution subsidiaries in more than 1 State, the imputed community reinvestment rating for such bank holding company (for purposes of this section) shall be 1 grade higher than the community reinvestment rating of the bank or insured institution subsidiary of such company with the least favorable community reinvestment rating if the total assets of such bank or insured institution, and the total assets of all other banks and insured institution subsidiaries of such bank holding company whose community reinvestment ratings are the same as such bank or insured institution subsidiary, do not exceed, in the aggregate, 7.5 percent of the consolidated total assets of such bank holding company.

(4) EXCLUSION OF CERTAIN DEPOSITORY INSTITUTIONS.—

(A) IN GENERAL.—Subject to subparagraph (B), the community reinvestment ratings of the following depository institutions shall not be taken into account for purposes of determining the imputed community reinvestment rating for any bank holding company under paragraph (1):

(i) Any institution described in any subparagraph of section 2(c)(2) of this Act.

(ii) Any institution which—

(I) serves solely as a correspondent bank, transfer agent, trust company, or clearing agent; and

(II) does not extend credit to the public.

(iii) Any bank or insured institution which was acquired by such bank holding company in an acquisi-

tion under section 13(f) of the Federal Deposit Insurance Act or section 408(m) of the National Housing Act, during the 2-year period beginning on the date such acquisition is made.

(iv) Any bank or insured institution with a CAMEL composite rating of 4 or less under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable system), or a similarly weakened bank or insured institution, which is acquired by such bank holding company, during the 2-year period beginning on the date such acquisition is made.

(v) Any bank or insured institution which commences operations de novo, during the 2-year period beginning on the date such operations commence.

(B) PLAN.—Clauses (iii), (iv), and (v) of subparagraph (A) shall apply with respect to any bank holding company only if, within the 90-day period beginning on the date a depository institution described in any such clause is acquired or commences operations, such bank holding company submits a plan that the Board determines would reasonably be expected to enable such depository institution to receive a community reinvestment rating of 1 or 2 (as determined under section 810 of the Community Reinvestment Act of 1977).

(C) TRANSITION RULE FOR CERTAIN ACQUISITIONS.—In the case of any depository institution described in clause (iii) or (iv) of subparagraph (A) which was acquired by any bank holding company after December 31, 1985, and before the date of the enactment of the Depository Institutions Act of 1988, the community reinvestment ratings of such depository institution shall not be taken into account for purposes of determining the imputed community reinvestment rating for such bank holding company under paragraph (1) during the 2-year period beginning on the date of the enactment of such Act if such bank holding company submits a plan described in subparagraph (B) before the end of the 90-day period beginning on the date of the enactment of such Act.

(5) EXCLUSION OF CERTAIN AGRICULTURAL BANKS AND BANKS WITH ASSETS OF NOT MORE THAN $25,000,000.—

(A) IN GENERAL.—The community reinvestment ratings of the following depository institutions shall not be taken into account for purposes of determining the imputed community reinvestment rating for any bank holding company under paragraph (1):

(i) Any agricultural bank with assets of $50,000,000 or less.

(ii) Any bank with assets of $25,000,000 or less.

(B) AGRICULTURAL BANK DEFINED.—For purposes of subparagraph (A), the term "agricultural bank" means any bank which has 25 percent or more of its loan assets in agricultural loans or real estate loans made by such institution to customers located in the market area served by such bank.

(C) AGRICULTURAL LOAN DEFINED.—For purposes of subparagraph (A), the term "agricultural loan" means—

(i) any loan made to finance the production of agricultural products or livestock in the United States;

(ii) any loan secured by farmland or farm machinery in the United States; and

(iii) any other category of loans which the Board determines have been made for agricultural purposes.

(g) NOTICE REQUIRED.—

(1) NOTICE.—Any bank holding company, bank, or other company which submits an application or notice described in subsection (a)(1) or (e) to the Board shall publish notice of the submission of the application or notice, together with information concerning the proposed action, by publication in the manner prescribed in regulations prescribed by the Board as in effect on June 5, 1985.

(2) BULLETINS REQUIRED.—The Board shall—

(A) prepare a weekly bulletin listing the bank holding companies, banks, and other companies which have submitted applications or notices described in subsection (a)(1) since the last bulletin was prepared; and

(B) shall mail such bulletin without charge to any person upon request.

(h) COMMENTS REQUIRED TO BE ACCEPTED AND CONSIDERED; WRITTEN FINDINGS.—

(1) OPPORTUNITY FOR COMMENT.—Before approving any application described in subsection (a)(1) or (e) or allowing any period for disapproval of a notice described in subsection (a)(1)(B) to expire without disapproval, the Board shall accept public comments on the application or notice during a period of not less than 45 days beginning on the later of—

(A) the date of the notice required pursuant to subsection (g)(1); or

(B) the date on which the Board published the weekly bulletin required under subsection (g)(2) which contains the notice of such application or notice.

(2) HEARING.—The Board may hold an informal hearing relating to any application or notice described in subsection (a)(1) or (e) at the request of any person who submitted comments under paragraph (1) with respect to such application or notice which, in the judgment of the Board, raises a substantial issue with respect to—

(A) the performance of—

(i) the applying or notifying bank holding company, or any bank or insured institution subsidiary of such holding company, or the applying bank; or

(ii) in the case of an application described in subsection (e) by any company described in such subsection, the bank which such company proposes to acquire,

in serving local community credit needs; or

(B) the adequacy of any commitment made by the applicant pursuant to subsection (b)(1)(B), (d), or (e).

(3) WRITTEN FINDINGS.—Before approving any application described in subsection (a)(1) or (e) or allowing any period (which

for purposes of this section may be extended in the manner provided in section 4(i)(5) for periods to which section applies) for disapproval of a notice described in subsection (a)(1)(B) to expire without disapproval, the Board shall prepare and make public a written finding with respect to each factor the Board is required to take into account in considering such application or notice, or in making any determination with respect to such application or notice, under this section.

(i) PUBLIC AVAILABILITY OF COMMITMENTS.—Any commitment proposed or agreed to under subsection (b)(1)(B) or (e) by any bank holding company, bank, or other company in connection with an application or notice described in subsection (a)(1) or (e) shall be available to the public.

(j) CONTINUING ENFORCEMENT.—If—

(1) at any time after any bank holding company receives final approval of an application under subsection (a), (b)(4), or (e) (including any bank or other company which becomes a bank holding company by reason of such approval) or any bank holding company commences any activity or acquisition the notice with respect to which was not disapproved by the Board pursuant to subsection (a)—

(A) such bank holding company receives an imputed community reinvestment rating of 4 or 5; or

(B) such bank holding company violates the terms of any commitment made by such company under subsection (b)(1), (d), or (e); and

(2) before the end of the 18-month period beginning on the date such company received the community reinvestment rating described in paragraph (1)(A) or committed the violation described in paragraph (1)(B), such company has not—

(A) received an imputed community reinvestment rating of 3 or better; or

(B) come into compliance with the terms of such company's commitments,

the failure of such bank holding company to maintain an imputed community reinvestment rating of 3 or better or to remain in compliance with the terms of such company's commitments shall be treated as a violation of this Act by such company for purposes of section 14(b) of this Act.

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

(1) COMMUNITY REINVESTMENT RATING.—The term community reinvestment rating means, with regard to a bank, the numerical rating assigned to such bank pursuant to section 810 of the Community Reinvestment Act of 1977 or subsection (f)(3) of this section.

(2) LOW- AND MODERATE-INCOME NEIGHBORHOOD.—The term "low- and moderate-income neighborhood" means a neighborhood described in section 17(c)(2)(B) of the Housing Act of 1937.

(3) LOW- AND MODERATE-INCOME PERSONS.—The term "low- and moderate-income persons" has the meaning given to such term in section 102(a)(20) of the Housing and Community Development Act of 1974.

ADMINISTRATION

SEC. [5.] *12.* (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.

* * * * * * *

(e)(1) * * *

(2) The Board may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the holding 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, but except as provided in [section 9] *section 15* of this Act, 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.

* * * * * * *

(g) MONITORING AND SUPERVISION OF FOREIGN CURRENCY OPERATIONS WITHIN BANK HOLDING COMPANIES.—

(1) MONITORING REQUIRED.—

(A) IN GENERAL.—The Board shall monitor and, as appropriate, supervise on an ongoing basis the foreign currency exchange operations, including currency swap transactions, of bank holding companies and nonbank, bank, and insured institution subsidiaries of bank holding companies, including subsidiaries of such subsidiaries.

(B) REPORTS AND EXAMINATIONS AUTHORIZED.—The Board may require such reports to be made by, and such examinations to be conducted of, bank holding companies and subsidiaries of bank holding companies as the Board may determine to be appropriate to carry out the purposes of this subsection.

(C) CERTAIN FACTORS TO BE CONSIDERED.—In carrying out this subsection, the Board shall consider the following factors:

(i) The extent of the exposure to risks associated with foreign currency operations.

(ii) The extent to which the exposure to such risks is minimized through risk diversification.

(iii) Operational capabilities.

(iv) Managerial expertise.

(2) PROTECTION OF SAFETY AND SOUNDNESS OF BANKS AND INSURED INSTITUTIONS.—The Board may, after consultation with the Securities and Exchange Commission, limit the extent to

which any bank holding company may, directly or indirectly, engage in foreign currency exchange operations, including currency swaps, whenever such limitations are appropriate to protect the safety and soundness of any bank or insured institution subsidiary of a bank holding company from the risks associated with such operations.

(3) PROMOTION OF SOUND FOREIGN CURRENCY EXCHANGE OPERATIONS.—The Board, after consultation with the Comptroller of the Currency and the Securities and Exchange Commission, may require such changes in the manner in which any foreign currency exchange operations are conducted by any bank holding company or by any subsidiary of any bank holding company as may be necessary to—

(A) limit exposure to risks associated with foreign currency operations;

(B) achieve further risk diversification;

(C) increase operational capabilities; or

(D) improve the managerial expertise involved in conducting such operations.

(h) SPECIAL RULE FOR DIVESTITURE OF BANK SUBSIDIARIES FOR CONTINUING COURSE OF MISCONDUCT WITH SECURITIES SUBSIDIARY.—

(1) NOTICE OF PRELIMINARY DETERMINATION.—

(A) PRELIMINARY FINDING.—In addition to any other regulatory and supervisory authority of the Board, if the Board has reason to believe that a bank holding company which controls a qualified securities subsidiary, or any subsidiary of such bank holding company, has engaged in a continuing course of conduct involving a violation of section 5 or 9, or regulations prescribed by the Board pursuant to any such section, the Board may make an initial determination that the bank holding company shall be required to terminate such company's control of any bank or insured institution or any subsidiary of such bank or insured institution.

(B) NOTICE.—The Board shall notify any bank holding company with respect to which a preliminary determination is made under subparagraph (A) of such determination before the end of the 3-day period beginning on the date on which the determination is made.

(C) CONTENTS OF NOTICE.—Any notice under subparagraph (B) shall contain a statement of the basis for the Board's determination.

(2) HEARING AND FINAL ORDER.—

(A) REQUEST FOR HEARING.—Any bank holding company which receives a notice under paragraph (1)(B) of this subsection may request, at any time before the end of the 30-day period beginning on the date of the receipt of such notice, a hearing before the Board.

(B) ADJUDICATORY PROCEDURAL AND FINAL ORDERS.—Any proceeding under this paragraph shall be conducted in accordance with section 554 of title 5, United States Code, and all other provisions of subchapter II of chapter 5 of such title which are applicable with respect to any adjudi-

cation required to be determined on a record after opportunity for agency hearing.

(3) FAILURE TO REQUEST REVIEW.—If any bank holding company which receives a notice under paragraph (1)(B) of this subsection fails to request an agency hearing under paragraph (2)(A) of this subsection, such bank holding company shall be deemed to have consented to the issuance of a final order affirming the initial finding without the necessity of the hearing provided for in this subsection.

(4) DIVESTMENT WITHIN TIME SPECIFIED IN ORDER.—If any order issued by the Board under this subsection becomes final and the order affirms the initial finding, the bank holding company shall terminate such company's control of the bank or insured institution, or the subsidiary of such bank or insured institution, specified in such order by the end of the period specified in the order.

RESERVATION OF RIGHTS TO STATES

[SEC. 7. No provision of this Act] *SEC. 13. (a) IN GENERAL.—No provision of this Act* shall be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to companies, banks, bank holding companies, and subsidiaries thereof.

(b) EXCEPTION ALLOWING STATE BANK AFFILIATION WITH SECURITIES SUBSIDIARIES.—No State may prohibit the affiliation of a bank or prohibit the affiliation of a bank holding company with a qualified securities subsidiary solely because the securities subsidiary is engaged in activities described in section 5(a) of this Act.

PENALTIES

SEC. [8.] *14.* (a) Any company which willfully violates any provision of this Act, or any regulation or order issued by the Board pursuant thereto, shall upon conviction be fined not more than $1,000 for each day during which the violation continues. Any individual who willfully participates in a violation of any provision of this Act shall upon conviction be fined not more than $10,000 or imprisoned not more than one year, or both. Every officer, director, agent, and employee of a bank holding company shall be subject to the same penalties for false entries in any book, report, or statement of such bank holding company as are applicable to officers, directors, agents, and employees of member banks for false entries in any books, reports, or statements of member banks under section 1005 of title 18, United States Code.

(b)(1) Any company which violates or any individual who participates in a violation of any provision of this Act, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than [$1,000] *$2,500* per day for each day during which such violation continues: *Provided,* That the Board may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Board by written notice. As used in the section, the term "violates" includes without any limitation any action (alone or

with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

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(3) The company or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in [section 9] *section 15.* If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

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(c) CRIMINAL PENALTIES FOR VIOLATION OF SAFEGUARD PROVISIONS.—

(1) IN GENERAL.—Whoever knowingly violates any provision of section 6(c)(5) or 9, or any regulation prescribed or order issued pursuant to any such provision, shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

(2) ALTERNATIVE TERM OF IMPRISONMENT FOR INTENTIONAL VIOLATIONS.—If the defendant intentionally committed the offense under paragraph (1), a term of imprisonment shall be imposed for such offense and such term shall be not less than 2 years nor more than 20 years.

(3) ALTERNATIVE FINE.—In lieu of the amount determined under title 18, United States Code, for an offense under paragraph (1)—

(A) an individual may be fined an amount not to exceed 2 times the annual compensation of such individual at the time of the offense; and

(B) a person other than an individual may be fined an amount not to exceed .01 percent of the minimum required capital of such person.

(d) CIVIL MONEY PENALTIES FOR VIOLATION OF SAFEGUARD PROVISIONS.—

(1) PENALTY ESTABLISHED FOR VIOLATIONS BY INSTITUTIONS.—Any bank holding company or any subsidiary of a bank holding company which violates any provision of section 6(c)(5) or 9, or any regulated prescribed or order issued pursuant to any such provision, shall forfeit and pay a civil penalty of not more than—

(A) $100,000 for each such violation; and

(B) an additional $10,000 for each day the violation continues, except that in no case shall any such amount for any violation or related series of violations exceed 1 percent of the minimum required capital of the bank holding company or subsidiary involved.

(2) PENALTY ESTABLISHED FOR VIOLATIONS BY INDIVIDUAL.—Any officer, director, employee, or other person participating in the conduct of the affairs of any bank holding company or any subsidiary of a bank holding company who violates any provision of section 6(c)(5) or 9, or any regulation prescribed or order

issued pursuant to any such provision, shall forfeit and pay a civil penalty of not more than $10,000 for each day such violation continues.

(3) PROCEDURE.—Any penalty imposed under paragraph (1) or (2) shall be assessed by the appropriate Federal depository institutions regulatory agency in the same manner as provided in subsection (b) for civil penalties imposed under such subsection and shall be determined, reviewed, and collected in the manner provided in such subsection.

(e) APPROPRIATE FEDERAL DEPOSITORY INSTITUTIONS REGULATORY AGENCY DEFINED.—For purposes of this section and sections 9, 10, and 15 of this Act, the term "appropriate Federal depository institutions regulatory agency" means—

(1) the Comptroller of the Currency, in the case of any national bank, any District bank, or any Federal branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978);

(2) the Board, in the case of—

(A) any bank holding company;

(B) any branch or agency of a foreign bank, other than a Federal branch or agency (as such terms are defined in section 1(b) of the International Banking Act of 1978);

(C) any State member bank (as defined in section 3(b) of the Federal Deposit Insurance Act); and

(D) any other subsidiary of a bank holding company;

(3) the Board of Directors of the Federal Deposit Insurance Corporation, in the case of insured banks that are not members of the Federal Reserve System (except a District bank);

(4) the Federal Home Loan Bank Board, in the case of any association (as defined in section 2(d) of the Home Owners' Loan Act of 1933); and

(5) the Federal Savings and Loan Insurance Corporation, in the case of any insured institution (other than a Federal association).

(f) PENALTY FOR FAILURE TO MAKE REPORTS.—

(1) PENALTY IMPOSED.—Any company which—

(A) fails to make, submit, or publish such reports or information as may be required under this Act or regulations prescribed by the Board pursuant to this Act within the period of time specified by the Board; or

(B) submits or publishes any false or misleading report or information,

shall be subject to a penalty of not more than $1,000 for each day during which such failure continues or such false or misleading report or information is not corrected.

(2) ASSESSMENT.—Any penalty imposed under the preceding sentence shall be assessed and collected by the Board in the manner provided in subsection (b) (for penalties imposed under such subsection) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

JUDICIAL REVIEW

SEC. [9.] *15.* Any party aggrieved by an order of the Board under this Act *or any appropriate Federal depository institutions regulatory agency under section 9, 10, or 14 of this Act* may obtain a review of such order in the United States Court of Appeals within any circuit wherein such party has its principal place of business, or in the Court of Appeals in the District of Columbia, by filing in the court, within thirty days after the entry of the [Board's] *Board or such agency's* order, a petition praying that the order of the [Board be set aside] *Board or such agency be set aside.* A copy of such petition shall be forthwith transmitted to the Board *or any other appropriate Federal depository institutions regulatory agency* by the clerk of the court, and thereupon the Board *or any other appropriate Federal depository institutions regulatory agency* shall file in the court the record made before the Board *or any other appropriate Federal depository institutions regulatory agency,* as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm, set aside, or modify the order of the Board *or any other appropriate Federal depository institutions regulatory agency* and to require the Board *or any other appropriate Federal depository institutions regulatory agency* to take such action with regard to the matter under review as the court deems proper. The findings of the Board *or any other appropriate Federal depository institutions regulatory agency* as to the facts, if supported by substantial evidence, shall be conclusive.

SAVING PROVISION

SEC. [11.] *16.* (a) Nothing herein contained 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 prohibited antitrust or monopolistic act, action, or conduct, except as specifically provided in this section.

SEPARABILITY OF PROVISIONS

SEC. [12.] *17.* If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

SECTION 20 OF THE 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).

Notwithstanding any other provision of this section, a member bank may be an affiliate (as defined in section 2(k) of the Bank Holding Company Act of 1956) of a qualified securities subsidiary (as defined in section 2(n)(1) of such Act.)

REVISED STATUTES

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[SEC. 5136. 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.

[Second. To have succession from the date of the approval of this Act, or from the date of its organization if organized after such date of approval until such time as it be dissolved by the act of its shareholders owning two-thirds of its stock, or until its franchise becomes forfeited by reason of violation of law, or until terminated by either a general or a special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him.

[Third. To make contracts.

[Fourth. To sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons.

[Fifth. To elect or appoint directors, and by its board of directors to appoint a president, vice-president, cashier, and other officers, define their duties, require bonds of them and fix the penalty thereof, dismiss such officers or any of them at pleasure, and appoint others to fill their places.

[Sixth. To prescribe, by its board of directors, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers appoint-

ed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

[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 percentum 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 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 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, in

which the local public agency agrees to borrow from said Secretary, and said Secretary agrees to lend to said local public agency, 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 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 Public Housing Administration if such contract shall contain the covenant by the Public Housing Administration which is authorized by section 6(g) 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 section 6(g) 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 of 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 Inter-American Development bank, the Asian Development Bank, the African Development Bank or the Inter-American Investment 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 and such bank or company and all subsidiaries thereof are engaged exclusively in providing services for other depository institutions and their officers, directors, and employees, 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 association's 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 se-

curities 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)); or (B) 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))), 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.

[Eighth. To contribute to community funds, or to charitable, philanthropic, or benevolent instrumentalities conducive to public welfare, such sums as its board of directors may deem expedient and in the interests of the association, if it is located in a State the laws of which do not expressly prohibit State banking institutions from contributing to such funds or instrumentalities.

[Ninth. To issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act.

[Tenth. To invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for lease financing transactions on a net lease basis, but such investment may not exceed 10 percent of the assets of the association.]

SEC. 5136. CORPORATE POWERS OF NATIONAL BANKS.

(a) GENERAL POWERS.—Upon filing articles of association and an organization certificate, a national bank shall become, as of the date of the execution of such organization certificate, a corporation which shall have, in the name designated in such certificate, the following powers:

(1) To adopt and use a corporate seal.

(2) To have succession from February 25, 1927, or from the date of the execution of such organization certificate (if such date is later than February 25, 1927) until—

(A) such time as the bank is dissolved by the act of shareholders owning not less than ⅔ of the stock of such bank;

(B) the franchise is forfeited by reason of violation of law;

(C) the franchise is forfeited by a general or special Act of Congress; or

(D) the affairs of the bank are placed in the control of the Federal Deposit Insurance Corporation, as receiver, and finally wound up by such Corporation.

(3) To enter into contracts.

(4) To sue and be sued in its corporate capacity, and to complain and defend in any action brought against the national bank in any court of competent jurisdiction.

(5) To elect or appoint directors to the board of directors of the bank and, by such board of directors, to—

(A) appoint a president, vice president, cashier, and other officers;

(B) define the duties of officers;

(C) require bonds of such officers and fix the penalty of such bonds; and

(D) dismiss any officer at the pleasure of the directors and appoint another to fill the position.

(6) To prescribe, by the board of directors, bylaws not inconsistent with law regulating the manner in which—

(A) stock of the bank may be transferred;

(B) the directors of the bank are appointed or elected;

(C) the officers of the bank may be appointed;

(D) the property of the bank may be transferred;

(E) the general business of the bank may be conducted; and

(F) the privileges granted to the bank by law may be exercised and enjoyed.

(7) To exercise, by the board of directors or officers or agents authorized by such board and subject to any other provision of law, all such incidental powers as shall be necessary to carry on the business of banking, including, but not limited to—

(A) discounting and negotiating promissory notes, drafts, bills of exchange, and other evidence of debt;

(B) receiving deposits;

(C) buing and selling exchange, coin, and bullion;

(D) loaning money on personal security; and

(E) obtaining, issuing, and circulating notes according to the provisions of this title.

(8) To contribute to community funds or charitable, philanthropic, or benevolent instrumentalities conducive to the public welfare, such sums as the board of directors may determine to be expedient and in the interests of the national bank if such bank is not located in a State the laws of which expressly prohibit State banks from contributing to such funds or instrumentalities.

(9) To invest in tagible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for lease financing transactions on a net lease basis, but such investment may not exceed 10 percent of the assets of the national bank.

(b) POWERS RELATING TO SECURITIES ACTIVITIES AND COMMERCIAL PAPER.—

(1) SECURITIES UNDERWRITING PROHIBITED.—Except as otherwise provided in this subsection or any other provision of law, no national bank may underwrite any issue of securities including asset-backed securities (as defined in section 2(o)(1) of the Bank Holding Company Act of 1956).

(2) BUYING AND SELLING SECURITIES PROHIBITED EXCEPT AS AGENT FOR CUSTOMER.—Except as otherwise provided in this subsection or any other provision of law, no national bank may buy or sell any security unless the purchase or sale is made—

(A) for the account of a customer;

(B) for the bank—

(i) upon the order of the customer; or

(ii) in the bank's capacity as trustee, executor, administrator, custodian, or guardian of estates with respect to the account of the customer; and

(C) without recourse.

(3) ISSUANCE AND SALE OF CERTAIN GNMA GUARANTEED SECURITIES.—Notwithstanding paragraph (2) or any other provision of this section, a national bank may issue and sell securities which are guaranteed by the Government National Mortgage Association under section 306(g) of the National Housing Act.

(4) EXCEPTION FOR BANK-ELIGIBLE SECURITIES.—Paragraphs (1) and (2) shall not apply with respect to any bank-eligible security, except that subsection (c)(3)(B) shall apply with respect to the aggregate amount of bank-eligible securities described in subparagraph (N), (O), (P), or (Q) of paragraph (6) which may be held by any national bank at any time.

(5) EXCEPTION FOR CERTAIN BANK SECURITIES AND BANK INVESTMENTS FOR THE BANK'S OWN ACCOUNT.—Paragraph (2) shall not apply to the purchase or sale by a national bank of—

(A) any security of which the national bank is the issuer; or

(B) any investment security or other security which the bank is purchasing or has purchased for the bank's own account for investment in accordance with subsection (c).

(6) BANK-ELIGIBLE SECURITY DEFINED.—For purposes of this section, the term "bank-eligible security" means any of the following investment securities:

(A) Obligations of the United States.

(B) General obligations of any State or any political subdivision of any State.

(C) 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.

(D) Obligations issued—

(i) under authority of the Federal Farm Loan Act; or

(ii) by the thirteen banks for cooperatives, any bank for cooperatives, or the Federal Home Loan Banks.

(E) Obligations insured by the Secretary of Housing and Urban Development under title XI of the National Housing Act.

(F) Obligations insured by the Secretary of Housing and Urban Development 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.

(G) Obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association.

(H) 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.

(I) Obligations of the Federal Financing Bank.

(J) Obligations of the Environmental Financing Authority.

(K) Obligations or other instruments or securities of the Student Loan Marketing Association.

(L) 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 of Housing and Urban Development in which the local public agency agrees to borrow from the Secretary, and the Secretary agrees to lend to such local public agency, moneys in an aggregate amount which (together with any other moneys 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 moneys under the terms of said agreement are required to be used for such payments.

(M) Such obligations of a public housing agency (as defined in the United States Housing Act of 1937) as are secured—

(i) by an agreement between such agency and the Secretary of Housing and Urban Development in which the agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the agency, prior to the maturity of such obligations, moneys in an amount which (together with any other moneys 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 moneys 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;

(ii) by a pledge of annual contributions under an annual contributions contract between such agency and the Secretary of Housing and Urban Development if such contract contains the covenant by the Secretary which is authorized by section 6(g) of the United States Housing act of 1937, and if the maximum sum and the maximum period specified in such contract pursuant to such section 6(g), 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

(iii) by a pledge of both annual contributions under an annual contributions contract containing the covenant by the Secretary of Housing and Urban Development which is authorized by section 6(g) of the United States Housing Act of 1937, and a loan under an agreement between such agency and the Secretary in which the agency agrees to borrow from the Secretary and the Secretary agrees to lend to the agency, prior to the maturity of the obligations involved, moneys in an amounts 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.

(N) Obligations issued by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, or the Inter-American Investment Corporation.

(O) 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.

(P) Obligations issued by the Tennessee Valley Authority.

(Q) Obligations issued by the United States Postal Service.

(R) Shares issued by and securities guaranteed by the Federal Agricultural Mortgage Corporation.

(S) Obligations of the Financing Corporation.

(7) BUYING AND SELLING COMMERCIAL PAPER ALLOWED.—Any national bank may buy and sell commercial paper, as such term is defined in section 2(o)(2) of the Bank Holding Company Act of 1956.

(8) CERTAIN INFORMATION PROCESSING AND CLEARING FUNCTIONS.—No provision of this subsection shall be construed as prohibiting a national bank from performing the functions described in the second sentence of paragraph (22)(A) or paragraph (23)(B)(iii) of section 3(a) of the Securities Exchange Act of 1934 to the extent allowed under any such paragraph.

(9) FEDERAL RESERVE BOARD AUTHORITY TO PROHIBIT SECURITIES ACTIVITIES OF NATIONAL BANKS.—Notwithstanding any other provision of this section or any other law, the Board of Governors of the Federal Reserve System may—.

(A) prohibit any activity of a national bank which would be a securities activity if engaged in by any person other than a bank; and

(B) prescribe such regulations as the Board determines to be necessary or appropriate to prevent any evasion of the requirements of this subsection, the 20th paragraph of section 9 of the Federal Reserve Act, and section 21 of the Banking Act of 1933.

(c) PURCHASE OF INVESTMENT SECURITIES FOR THE BANK'S OWN ACCOUNT.—

(1) Limited authority to buy for bank's own account for investment.—The authority of any national bank under this section to buy investment securities or other securities for the bank's own account shall be subject to the following limitations:

(A) CORPORATE STOCK.—Except as provided in any other provision of law, the bank may not buy, for the bank's own account, any share of stock of any corporation (other than shares of a corporation described in any other paragraph of this subsection).

(B) MAXIMUM INVESTMENT AMOUNT FOR SECURITIES ISSUED BY ANY SINGLE ISSUER.—The total amount of investment securities held by the bank (for the bank's own account) which were issued by any 1 person, or for which such person is the obligor, may not exceed at any time the amount which is equal to the sum of—

(i) 10 percent of the capital stock of the bank which is actually paid in and unimpaired; and

(ii) 10 percent of the bank's unimpaired surplus fund,

except that this subparagraph shall not require any bank to dispose of investment securities lawfully held by the bank on August 23, 1935.

(2) BANK'S BANKS.—

(A) ACQUISITION OF SHARES ALLOWED.—Paragraph (1) shall not apply to the purchase by a national bank, for the bank's own account, of shares of an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act) or a bank holding company (as defined in section 2(a) of the Bank Holding Company Act of 1956), if—

(i) the outstanding shares of such bank or company are owned exclusively (except to the extent of directors' qualifying shares required by law or capital investments are permitted under section 5169(b)(3)(A) of chapter 2 of this title): by depository institutions (as defined in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act) or depository institution holding companies; and

(ii) such bank or company, and all subsidiaries of such bank or company, are engaged exclusively in providing services for other depository institutions or depository institution holding companies and officers, directors, and employees of depository institutions or depository institution holding companies.

(B) MAXIMUM INVESTMENT AMOUNT.—The total amount of stock held by any national bank in any bank or holding company referred to in subparagraph (A)—

(i) may not exceed, at any time, 10 percent of the national bank's capital stock and paid in and unimpaired surplus; and

(ii) may not include more than 5 percent of any class of voting securities of such bank or company.

(3) BANK-ELIGIBLE SECURITIES.—

(A) IN GENERAL.—Paragraph (1) shall not apply to the purchase by a national bank, for the bank's own account, of bank-eligible securities.

(B) MAXIMUM INVESTMENT AMOUNT IN THE CASE OF CERTAIN SECURITIES.—The total amount of bank-eligible securities described in subparagraph (N), (O), (P), or (Q) of subsection (b)(6) which may be held by any national bank at any time—

(i) in connection with being an underwriter of such securities or buying and selling, as principal, such securities under subsection (b); or

(ii) for the bank's own account, shall not exceed an amount equal to the sum of 10 percent of the capital stock of the national bank actually paid in and unimpaired and 10 percent of the bank's unimpaired surplus fund.

(C) SPECIAL RULE FOR CERTAIN COMMITMENTS.—For purposes of subparagraph (B), and bank-eligible securities referred to in such subparagraph as to which any national bank is under a commitment shall be deemed to be held by such national bank.

(4) MORTGAGE RELATED SECURITIES.—

(A) PARAGRAPH (1) DOES NOT APPLY.—Paragraph (1) shall not apply to the purchase by a national bank, for the bank's own account, of any of the following securities:

(i) Securities offered and sold pursuant to section 4(5) of the Securities Act of 1933.

(ii) Mortgage related securities (as defined in section 3(a)(41) of the Securities Exchange Act of 1934).

(B) REGULATIONS.—Any purchase by a national bank of securities described in subparagraph (A) shall be subject to such limitations and restrictions as the Comptroller of the Currency may prescribe by regulation, including regulations prescribing—

(i) the minimum size of the issue (at the time of initial distribution) with respect to any such security; and

(ii) minimum aggregate sales prices with respect to any such security,

which must be met or exceeded in order for a national bank to be eligible to purchase such securities without limitation pursuant to subparagraph (A).

(5) SAFE-DEPOSIT BUSINESS.—

(A) ACQUISITION OF SHARES ALLOWED.—Paragraph (1) shall not apply to the purchase by a national bank, in connection with the bank's carrying on the business commonly known as the safe-deposit business, of capital stock of a corporation organized under the law of any State to conduct a safe-deposit business.

(B) MAXIMUM INVESTMENT AMOUNT.—The total amount of stock held by any national bank in any corporation referred to in subparagraph (A) shall not exceed an amount equal to the sum of—

(i) 15 percent of the capital stock of the national bank actually paid in and unimpaired; and

(ii) 15 percent of the bank's unimpaired surplus fund.

(6) ACQUISITION OF SHARES OF NATIONAL HOUSING CORPORATIONS ALLOWED; ETC.—Paragraph (1) shall not apply with respect to the following:

(A) The purchase by a national bank, for the bank's own account, shares of stock issued by a corporation authorized to be created pursuant to title IX of the Houseing and Urban Development Act of 1968.

(B) Investments by a national bank in a partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of such Act.

(7) STATE HOUSING CORPORATIONS.—

(A) ACQUISITION OF SHARES AND OTHER INVESTMENTS ALLOWED.—Paragraph (1) shall not apply with respect to the following:

(i) The purchase by a national bank, for the bank's own account, shares of stock issued by any State housing corporation incorporated in the State in which the national bank is located.

(ii) Investments by a national bank in loans and commitments for loans to any such corporation.

(B) MAXIMUM INVESTMENT AMOUNT.—The total amount of stock held by a national bank in any corporation referred to in subparagraph (A) and the amount of investments in loans and commitments for loans to such corporation by the bank shall not exceed an amount equal to the sum of—

(i) 5 percent of the national bank's capital stock actually paid in and unimpaired; and

(ii) 5 percent of the bank's unimpaired surplus fund.

(8) AGRICULTURAL CREDIT CORPORATIONS.—

(A) ACQUISITION OF SHARES AND OTHER INVESTMENTS ALLOWED.—Paragraph (1) shall not apply to the purchase by a national bank, for the bank's own account, of 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.

(B) MAXIMUM INVESTMENT AMOUNT.—Unless the national bank owns at least 80 percent of the stock of an agricultural credit corporation described in subparagraph (A) the total amount of stock held by the national bank in any such corporation shall not exceed an amount equal to 20 percent of the unimpaired capital and surplus of the national bank.

(9) ADDITIONAL LIMITATIONS PRESCRIBED IN REGULATIONS.—The authority of any national bank under this section to buy investment securities for the bank's own account shall be subject to such additional limitations and restrictions as the Comptroller of the Currency may prescribe by regulation.

(10) INVESTMENT SECURITIES DEFINED.—For purposes of this section, the term "investment securities" means 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.

(d) MUNICIPAL SECURITIES AND MUTUAL FUND POWERS FOR BANKS WITH ASSETS OF NOT MORE THAN $500,000,000.—

(1) MUNICIPAL SECURITIES.—Notwithstanding any provision of subsection (b), a national bank which—

(A) is not controlled by a bank holding company (as defined in section 2(a) of the Bank Holding Company Act of 1956); and

(B) has total banking assets of not more than $500,000,000,

may buy and sell, as principal or agent, and underwrite qualified municipal securities (as defined in section 2(o)(6) of the Bank Holding Company Act of 1956).

(2) MUTUAL FUNDS.—Notwithstanding subsection (b), a national bank that has total banking assets of not more than $500,000,000 may distribute securities of an investment company—

(A) that is registered pursuant to section 8 of the Investment Company Act of 1940;

(B) that is not organized, sponsored, managed, or controlled by the bank or any affiliate of the bank; and

(C) for which neither the bank or any affiliate of the bank acts as investment adviser.

(e) RISK-BASED CAPITAL REQUIREMENTS.—No national bank may engage in any activity after the date of the enactment of the Depository Institutions Act of 1988 in which such bank could not engage before such date if such bank fails to meet the risk-based capital guidelines established by the Bank for International Settlements with respect to both tier 1 and tier 2 capital as such guidelines apply after 1992.

(f) LIMITATIONS ON BANK ACTIVITIES RELATING TO OPEN-END INVESTMENT COMPANIES.—Notwithstanding any other provision of law, no national bank may act as promoter or sponsor of, or underwrtier to, any open-end investment company registered or required to register under the Investment Company Act of 1940, other than a common trust fund or common investment fund which—

(1) is registered under the Investment Company Act of 1940;

(2) is used solely for the investment of individual retirement account assets; and

(3) is maintained in accordance with the requirements of section 408 of the Internal Revenue Code of 1986.

(g) INSURANCE ACTIVITIES.—

(1) IN GENERAL.—Except to the extent provided in any other paragraph of this subsection, no national bank and no subsidiary of a national bank may engage in insurance activities in the United States.

(2) EXCEPTION FOR CREDIT LIFE INSURANCE, ETC.—Paragraph (1) shall not apply with respect to insurance issued or otherwise provided by a national bank, or subsidiary of a national bank, to any individual which is limited to assuring the repayment of the outstanding balance of any specific extension of credit to such individual by such national bank, or any subsidiary of such national bank, in the event of the death, disability, or involuntary unemployment of such individual.

(3) EXCEPTION FOR CERTAIN TITLE INSURANCE ACTIVITIES.—Paragraph (1) shall not prohibit any company lawfully engaged in title insurance activities as of March 2, 1988, from continuing to engage in such activities, to the extent that—

(A) such activities are limited to the State in which the bank is located; and

(B) such bank is not acquired after March 2, 1988, by a bank holding company the principal banking operations of which are conducted in another State (as determined under section 3(d) of the Bank Holding Company Act of 1956).

(4) EXCEPTION FOR NATIONAL BANKS LOCATED IN SMALL TOWNS.—Notwithstanding paragraph (1), if the principal place of banking business of any national bank is located in any place which has a population not exceeding 5,000 (as shown by the most recent decennial census) and such place is within the State in which such bank is chartered, such national bank, and any subsidiary of such national bank, may act as agent or broker for an insurance company if—

(A) the insurance activities of such bank or subsidiary are authorized by the appropriate authorities of such State;

(B) the insurance company for which such bank or subsidiary acts as agent or broker is authorized to do business in such State by the appropriate authorities of the State; and

(C) such bank or subsidiary acts as an agent or broker for an insurance company only with respect to insurance policies issued by such insurance company to—

(i) any individual who is a resident of or is employed in any place in such State which has a population not exceeding 5,000 (as determined by the most recent decennial census);

(ii) any person, including an individual—

(I) who is engaged in business in any place described in clause (i) of this subparagraph and has a permanent business office located in any such place; or

(II) whose principal headquarters is located in any such place,

except that insurance may be provided pursuant to this clause only with respect to employees (including such individual) who reside in or who are principally employed in such place, real property located in such place, personal property which is principally used in such place, or services provided by persons located in such place; and

(iii) any other person if the insurance policy is issued with respect to—

(I) real property located in any place described in cluase (i) of this subparagraph; or

(II) personal property which is principally used in any such place.

(5) CERTAIN ACTIVITIES PROHIBITED IN CONNECTION WITH INSURANCE ACTIVITIES.—No national bank, or subsidiary of a national bank, which sells insurance pursuant to paragraph (4) may—

(A) assume or guarantee the payment of any premium on insurance policies issued through the agency of such bank or subsidiary by the insurance company for which such

bank or subsidiary is acting as agent pursuant to paragraph (4); or

(B) guarantee the truth of any statement made by an insurance cutstomer in filing such customer's application for insurance.

(6) EXCEPT FOR CERTAIN ACTIVITIES.—Notwithstanding paragraphs (1) and (4)—

(A) a national bank, or a subsidiary thereof, located in the State of Oregon or Washington, may continue to engage in insurance activities in which such bank or subsidiary was lawfully engaged as of March 2, 1988, with the State in which the main office of such national bank is located; and

(B) a national bank chartered in 1882 (or any subsidiary of such bank) may continue to engage in insurance activities in which such bank or subsidiary was lawfully engaged as of March 2, 1988, within 30 miles of such bank's main office is such main office is not within 30 miles of any city that had a population exceeding 150,000 under the 1980 census.

(7) EXCEPTION FOR UNDERSERVED AREAS.—Notwithstanding paragraph (1) and subject to regulations prescribed by the Board of Governors of the Federal Reserve System pursuant to section 302(e) of the Depository Institutions Act of 1988, any national bank, and any subsidary of such national bank, may act as agent or broker for an insurance company in any place which—

(A) is within the State in which such bank is chartered; and

(B) has inadequate insurance agency facilities, as demonstrated by the bank to the Board, after notice and opportunity for a hearing.

(8) ACTIVITIES AUTHORIZED FOR STATE BANKS.—Notwithstanding paragraph (a) and subject to paragraph (5), a national bank and any subsidiary of such national bank may act as agent or broker for an insurance company if—

(A) such bank or subsidiary is located in the State of Oklahoma;

(B) the insurance activities engaged in by the bank or subsidiary are authorized by the law of the State of Oklahoma for State banks, and subsidiaries of State banks, which are chartered in such State; and

(C) such national bank or subsidiary acts as agent or broker for an insurance company only with respect to insurance policies by such insurance company to—

(i) any individual who—

(I) is a resident of the State in which such State bank is chartered; or

(II) is employed in such State;

(ii) any person, including an individual—

(I) who is engaged in business in such State and has a permanent business office located in such State; or

(II) whose principal headquarters is located in such State;

except that insurance may be provided pursuant to this clause only with respect to employees (including such individual) who reside in or who are principally employed in such State, real property located in such State, personal property which is principally used in such State, or services provided by persons located in such State; and

(iii) any other person if the insurance policy is issued with respect to—

(I) real property located in such State; or

(II) personal property which is principally used in such State.

(9) DEFINITIONS.—For purposes of this subsection—

(A) INSURANCE ACTIVITIES.—The term "insurance activities" has the meaning given to such term in section 2(q)(1) of the Bank Holding Company Act of 1956.

(B) RESIDENTS.—The term "residents", when used in connection with a reference to a State, includes—

(i) individuals who are residents of the State; and

(ii) companies which—

(I) are incorporated in or organized under the laws of the State;

(II) are licensed to do business in the State; or

(III) have an office in the State.

(C) SUBSIDIARY.—The term "subsidiary" has the meaning given to such term in section 2(d) of the Bank Holding Company Act of 1956.

(h) REAL ESTATE ACTIVITIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), no national bank may engage in any real estate activity in the United States during the 2-year period beginning on the date of the enactment of the Depository Institutions Act of 1988.

(2) EXCEPTION.—Paragraph (1) shall not apply with respect to any real estate activity in which a national bank was engaged on or before July 27, 1988.

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SEC. 5155. The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

(a) * * *

* * * * * * *

(i) BRANCH CLOSING..—No branch of a national banking association may be closed unless notice of such closing has been provided to the Comptroller of the Currency and to customers of such branch in accordance with section 232 of the Bank and Thrift Branch Closure Act of 1988.

* * * * * * *

SEC. 5169. (a) * * *

(b)(1) The Comptroller of the Currency may also issue a certificate of authority to commence the business of banking pursuant to

this section to a national banking association which is owned , *directly or through a holding company* exclusively (except to the extent directors' qualifying shares are required by law) by other depository institutions *or depository institution holding companies* and is organized to engage exclusively in providing services for other depository institutions *or depository institution holding companies* and their officers, directors, and employees.

(2) Any national banking association chartered pursuant to paragraph (1) shall be subject to such rules, regulations, and orders as the Comptroller deems appropriate, and, except as otherwise specifically provided in such rules, regulations, or orders, shall be vested with or subject to the same rights, privileges, duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the national banking laws to a national bank.

(3) BANKERS BANKS SERVING MINORITY BANKS.—

(A) IN GENERAL.—Notwithstanding the limitation contained in paragraph (1) with respect to ownership, a bank organized under such paragraph to serve the needs of minority banks or bank holding companies which control minority banks, and any holding company which controls a bank organized under such paragraph, may accept capital investments in such bank or holding company by companies which are not depository institutions or depository institution holding companies if such investment does not give such company the right to vote or exercise control, directly or indirectly, over such bank or holding company.

(B) MINORITY BANK.—The term "minority bank" means any depository institution described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act—

(i) more than 50 percent of the ownership or control of which is held by minority individuals; and

(ii) more than 50 percent of the net profit or loss of which acrues to minority individuals.

(C) MINORITY.—The term "minority" means any Black American, Native American, Hispanic American, or Asian American.

* * * * * * *

SEC. 5211. (a) Every association shall make reports of condition to the Comptroller of the Currency in accordance with the Federal Deposit Insurance Act. The Comptroller of the Currency may call for additional reports of condition, in such form and containing such information as he may prescribe, on dates to be fixed by him, and may call for special reports from any particular association whenever in his judgment the same are necessary for his use in the performance of his supervisory duties. Each report of condition shall contain a declaration by the president, a vice president, the cashier, or by any other officer designated by the board of directors of the bank to make such declaration, that the report is true and correct to the best of his knowledge and belief. The correctness of the report of condition shall be attested by the signatures of at least three of the directors of the bank other than the officer making such declaration, with the declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct. Each report shall exhibit in detail and

under appropriate heads the resources and liabilities of the association at the close of business on any past day specified by the Comptroller, and shall be transmitted to the Comptroller [within ten days after the receipt of a request therefor from him] *within the period of time specified by the Comptroller;* and the statement of resources and liabilities in the same form in which it is made to the Comptroller shall be published in a newspaper published in the place where such association is established, or if there is not newspaper in the place, then in the one published nearest thereto in the same county, at the expense of the association, and such proof of publication shall be furnished as may be required by the Comptroller. Special reports called for by the Comptroller need contain only such information as is specified by the Comptroller in his request therefor, and publication of such reports need be made only if directed by the Comptroller.

* * * * * * *

(c) Each national banking association shall obtain from each of its affiliates other than member banks and furnish to the Comptroller of the Currency not less than four reports during each year, in such form as the Comptroller may prescribe, verified by the oath or affirmation of the president or such other officer as may be designated by the board of directors of such affiliate to verify such reports, disclosing the information hereinafter provided for as of dates identical with those for which the Comptroller shall during such year require the reports of the condition of the association. Each such report of an affiliate shall be transmitted to the Comptroller at the same time as the corresponding report of the association, except that the Comptroller may, in his discretion, extend such time for good cause shown. Each such report shall contain such information as in the judgment of the Comptroller of the Currency shall be necessary to disclose fully the relations between such affiliate and such bank and to enable the Comptroller to inform himself as to the effect of such relations upon the affairs of such bank. The reports of such affiliates shall be published by the association under the same conditions as govern its own condition reports. The Comptroller shall also have power to call for additional reports with respect to any such affiliate whenever in his judgment the same are necessary in order to obtain a full and complete knowledge of the conditions of the association with which it is affiliated. Such additional reports shall be transmitted to the Comptroller of the Currency in such form as the may prescribe. [Any such affiliated bank which fails to obtain and furnish any report required under this section shall be subject to a penalty of $100 for each day during which such failure continues.]

[SEC. 5213. Every association which fails to make and transmit any report required under section 5211 of the Revised Statutes shall be subject to a penalty of one hundred dollars for each day after the periods, respectively, therein mentioned, that it delays to make and transmit its report. Whenever any association delays or refuses to pay the penalty herein imposed, after it has been assessed by the Comptroller of the Currency, the amount thereof may be retained by the Treasurer of the United States, upon the order of the Comptroller of the Currency, out of the interest, as it may

become due to the association, on the bonds deposited with him to secure circulation. All sums of money collected for penalties under this section shall be paid into the Treasury of the United States.]

SEC. 5213. PENALTY FOR FAILURE TO MAKE REPORTS.

(a) PENALTY IMPOSED.—Any association which—

(1) fails to make, obtain, transmit, or publish any report or information required by the Comptroller of the Currency under section 5211 of this chapter; or

(2) submits any false or misleading report or information,

shall be subject to a penalty of not more than $1,000 for each day during which such failure continues or such false or misleading information is not corrected.

(b) ASSESSMENT.—Any penalty imposed under subsection (a) shall be assessed and collected by the Comptroller of the Currency in the manner provided in 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 section.

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FEDERAL DEPOSIT INSURANCE ACT

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SEC. 3. As used in this Act—

(a) * * *

* * * * * * *

(q) The term "appropriate Federal banking agency" shall mean—

(1) * * *

(2) the Board of Governors of the Federal Reserve System—

(A) * * *

* * * * * * *

(D) in the case of any agency or commercial lending company other than a Federal agency, [and]

(E) in the case of supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceedings under the Financial Institutions Supervisory Act, *and*

(F) in the case of national banks with respect to the activities of such banks which are subject to regulation and enforcement by such Board under section 5136(b)(9) of the Revised Statutes,

* * * * * * *

SEC. 7. (a)(1) Each insured State nonmember bank (except a District bank) and each foreign bank having an insured branch which is not a Federal branch shall make to the Corporation reports of condition which shall be in such form and shall contain such information as the Board of Directors may require. Such reports shall be made to the Corporation on the dates selected as provided in paragraph (3) of this subsection and the deposit liabilities shall be

reported therein in accordance with and pursuant to paragraphs (4) and (5) of this subsection. The Board of Directors may call for additional reports of condition on dates to be fixed by it and may call for such other reports as the Board may from time to time require. The Board of Directors may require reports of conditions to be published in such manner, not inconsistent with any applicable law, as it may direct. [Every such bank which fails to make or publish any such report within ten days shall be subject to a penalty of not more than $100 for each day of such failure recoverable by the Corporation for its use.] *Any such bank which—*

(A) fails to make or publish any report required under this paragraph within the period of time specified by the Corporation; or

(B) submits or publishes any false or misleading report or information,

shall be subject to a penalty of not more than $1,000 for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed by the preceding sentence shall be assessed and collected by the Corporation in the manner provided in section 8(i)(2) (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 section.

* * * * * * *

(j)(1) * * *

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(16) Any person who [willfully] violates any provision of this subsection, or any regulation or order issued by the appropriate Federal banking agency pursuant thereto, shall forfeit and pay a civil penalty of not more than $10,000 per day for each day during which such violation countinues. The appropriate Federal banking agency shall have authority to assess such a civil penalty, after giving notice and an opportunity to the person to submit data, view, and arguments, and after giving due consideration to the appropriateness of the penalty with respect to the size of financial resources and good faith of the person charged, the gravity of the violation, and any data, views, and arguments submitted. The agency may collect such civil penalty by agreement with the person or by bringing an action in the appropriate United States district court, except that in any such action, the person against whom the penalty has been assessed have a right to trial de novo.

* * * * * * *

SEC. 8. [(a) Any insured bank (except a national member bank, a foreign bank having an insured branch which is a Federal branch, a foreign bank having an insured branch which is required to be insured under section 6 (a) or (b) of the International Banking Act of 1978, or State member bank) may, upon not less than ninety days written notice to the Corporation, terminate its status as an insured bank. Whenever the Board of Directors shall find that an insured bank or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of such bank, or is in an unsafe or unsound condition to continue op-

erations as an insured bank, or violated an applicable law, rule, regulation or order, or any condition imposed in writing by the Corporation in connection with the granting of any application or other request by the bank, or any written agreement entered into with the Corporation, the Board of Directors shall first give to the Comptroller of the Currency in the case of a national bank or a district bank, to the Federal Home Loan Bank Board in the case of an insured Federal savings bank, to the authority having supervision of the bank in the case of a State bank, and to the Board of Governors of the Federal Reserve System in the case of a State member bank, a statement with respect to such practices or violations for the purpose of securing the correction thereof and shall give a copy thereof to the bank. Unless such correction shall be made within one hundred and twenty days, or such shorter period not less than twenty days fixed by the Corporation in any case where the Board of Directors in its discretion has determined that the insurance risk of the Corporation is unduly jeopardized, or fixed by the Comptroller of the Currency in the case of a national bank, or the Federal Home Loan Bank Board in the case of an insured Federal savings bank, or the State authority in the case of a State bank, or Board of Governors of the Federal Reserve System in the case of a State member bank as the case may be, the Board of Directors, if it shall determine to proceed further, shall give to the bank not less than thirty days' written notice of intention to terminate the status of the bank as an insured bank, and shall fix a time and place for a hearing before the Board of Directors or before a person designated by it to conduct such hearing, at which evidence may be produced, and upon such evidence the Board of Directors shall make written findings which shall be conclusive. If the Board of Directors shall find that any unsafe or unsound practice or condition or violation specified in such statement has been established and has not been corrected within the time above prescribed in which to make such corrections, the Board of Directors may order that the insured status of the bank be terminated on a date subsequent to such finding and to the expiration of the time specified in such notice of intention.]

(a) TERMINATION OF INSURANCE.—

(1) VOLUNTARY TERMINATION.—Any insured bank which is not—

(A) a national member bank;

(B) a State member bank;

(C) a Federal branch; or

(D) 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 bank's status as an insured bank if such insured bank provides written notice to the Corporation of the bank's intent to terminate such status not less than 90 days before the effective date of such termination.

(2) INVOLUNTARY TERMINATION.—

(A) NOTICE TO PRIMARY REGULATOR.—If the Board of Directors determines that—

(i) an insured bank or the directors or trustees of an insured bank have engaged or are engaging in unsafe

or unsound practices in conducting the business of the bank;

(ii) an insured bank is in an unsafe or unsound condition to continue operations as an insured bank; or

(iii) an insured bank or the directors or trustees of the insured bank have violated any applicable regulation, order, condition imposed in writing by the Corporation in connection with the approval of any application or other request by the insured bank, or written agreement entered into between the insured bank and the Corporation.

the Board of Directors shall notify the appropriate Federal banking agency with respect to such bank (if other than the Corporation) or the State banking supervisor of such bank (if the Corporation is the appropriate Federal banking agency) of the Board's determination and the facts and circumstances on which such determination is based.

(B) NOTICE OF INTENTION TO TERMINATE INSURANCE.—If, after giving the notice required under subparagraph (A) with respect to an insured bank, the Board of Directors determines that any unsafe or unsound practice or condition or any violation specified in such notice requires the termination of the insured status of the insured bank, the Board shall—

(i) serve written notice to the insured bank of the Board's intention to terminate the insured status of the bank together;

(ii) provide the insured bank with a statement of the charges on the basis of which the determination to terminate such bank's insured status was made (or a copy of the notice under subparagraph (A)); and

(iii) notify the insured bank of the date (not less than 30 days after notice under this subparagraph) and place for a hearing before the Board of Directors (or any person designated by the Board) with respect to the termination of the bank's insured status.

(3) 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) and the written findings of the Board of Directors (or such person) 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 bank under subparagraph (B) has been established, the Board of Directors may issue an order terminating the insured status of such bank effective as of a date subsequent to such finding.

[Unless the bank shall appear]

(4) APPEARANCE; CONSENT TO TERMINATION.—Unless the bank 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 bank and termination of such status.

(5) JUDICIAL REVIEW.—Any insured bank whose insured status thereupon may be ordered. [Any insured bank 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. [The Corporation may publish]

(6) PUBLICATION OF NOTICE OF TERMINATION.—The Corporation may publish notice of such termination and the bank shall give notice of such termination to each of its depositors at his last address of record on the books of the bank, 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. [After the termination of the insured status]

(7) TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.—After the termination of the insured status of any bank under the provisions of this subsection, the insured deposits of each depositor in the bank on the date of such termination, less all subsequent withdrawals from any deposits of such depositor, shall continue for a period of two years to be insured, and the bank shall continue to pay to the Corporation assessments as in the case of an insured bank during such period. No additions to any such deposits and no new deposits in such bank made after the date of such termination shall be insured by the Corporation, and the bank 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 bank shall, in all other respects, be subject to the duties and obligations of an insured bank for the period of two years from the date of such termination, and in the event that such bank shall be closed on account of inability to meet the demands of its depositors within such period of two years, the Corporation shall have the same powers and rights with respect to such bank as in case of an insured bank.

(b)(1) * * *

* * * * * * *

(6) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.—The authority to issue an order under this subsection which requires an insured bank, or any director, officer, or other person participating in the conduct of the affairs of an insured bank, to take affirmative action to correct any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such bank, officer, director, or other person to—

(A) make restitution or provide reimbursement if—

(i) such bank, officer, director, or other person was unjustly enriched in connection with such violation or practice; or

(ii) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the appropriate Federal banking agency;

(B) provide indemnification or a guarantee against loss;

(C) rescind agreements or contracts;

(D) dispose of any loan or asset involved;

(E) take such other action as the appropriate Federal banking agency determines to be appropriate.

(7) AUTHORITY TO LIMIT ACTIVITIES.—The authority to issue an order under this subsection or subsection (c) includes the authority to place limitations on the activities or functions of an insured bank, or any director, officer, or other person participating in the conduct of the affairs of an insured bank.

(c)(1) * * *

* * * * * * *

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (b)(1) specifies that an insured bank's books and records are so incomplete or inaccurate that the appropriate Federal banking agency is unable (with reasonable effort and because of the particular facts and circumstances stated in the notice) to determine the financial condition of that bank or the details or purpose of any transaction or transactions that may have a substantial effect on the financial condition of that bank, the agency may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or record; or

(ii) affirmative action to restore such books or records to a complete and accurate state,

until the completion of the proceedings under subsection (b)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A) shall—

(i) become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b)(1) in connection with the notice of charges; or

(II) the date the appropriate Federal banking agency determines, by examination or otherwise, that the insured bank's books and records are accurate and capable of reflecting the financial condition of the bank.

* * * * * * *

(e)[(1) Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured bank has committed any violation of law, rule, or regulation or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the bank, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the agency determines that the bank has suffered or will probably suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty or that the director or officer has received financial gain by reason of such violation or practice or braech of fiduciary duty, and that

such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, or one which demonstrates a willful or continuing disregard for the safety or soundness of the bank, the agency may serve upon such director or officer a written notice of its intention to remove him from office.] *(1) AUTHORITY TO ISSUE ORDER.—Whenever the appropriate Federal banking agency determines that—*

(A) any director, officer, or other person participating in the conduct of the affairs of an insured bank has, directly or indirectly—

(i) violated—

(I) any law or regulation;

(II) any cease-and-desist order which has become final;

(III) any condition imposed in writing by the appropriate Federal banking agency in connection with the grant of any application or other request by such bank; or

(IV) any written agreement between such bank and such agency;

(ii) engaged or participating in any unsafe or unsound practice in connection with any insured bank or business institution; or

(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such person's fiduciary duty;

(B) by reason of the violation, practice, or breach described in any clause of subparagraph (A)—

(i) such insured bank or business institution has suffered or will probably suffer financial loss or other damage;

(ii) the interests of the insured bank's depositors have been or could be seriously prejudiced; or

(iii) such director, officer, or other person has received financial gain by reason of such violation, practice, or breach; and

(C) such violation, practice, or breach—

(i) involves personal dishonesty on the part of such director, officer, or other persons; or

(ii) demonstrates willful or continuing disregard by such director, officer, or other person for the safety or soundness of such insured bank or business institution,

the agency may serve upon such officer, director, or other person a written notice of the agency's intention to remove such person from office or to prohibit any further participation, by such person, in any manner in the conduct of the affairs of any insured bank.

[(2) Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured bank, by conduct or practice with respect to another insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to continue as a director or officer and, whenever, in the opinion of the appropriate Federal banking agency, any other person participating in the conduct of the affairs

of an insured bank, by conduct or practice with respect to such bank or other insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to participate in the conduct of the affairs of such insured bank, the agency may serve upon such director, officer, or other person a written notice of its intention to remove him from office or to prohibit his futher participation in any manner in the conduct of the affairs of the bank.]

[(3)] *(2)* Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured bank has committed any violation of the Depository Institution Management Interlocks Act, the agency may serve upon such director or officer a written notice of its intention to remove him from office.

(3) TEMPORARY ORDER.—

(A) SUSPENSION OR PROHIBITION AUTHORIZED.—If the appropriate Federal banking agency serves written notice under paragraph (1) or (2) to any director, officer, or other person participating in the conduct of the affairs of an insured bank of such agency's intention to issue a temporary order under such paragraph, the appropriate Federal banking agency may suspend such director, officer, or other person from office or prohibit such person from further participation in any manner in the conduct of the affairs of the bank, if the agency—

(i) determines that such action is necessary for the protection of the bank or the interests of the bank's depositors; and

(ii) serve such person with written notice of the order.

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A) shall—

(i) become effective upon service; and

(ii) unless a court issues a stay of such order under subsection (f), shall remain in effect and enforceable until—

(I) the date the appropriate Federal banking agency dismissed the charges contained in the notice served under paragraph (1) or (2) with respect to such person; or

(II) the effective date of an order issued by the agency to such person under paragraph (1) or (2).

(C) COPY OF ORDER.—If an appropriate Federal banking agency issues a temporary order under subparagraph (A) to any director, officer, or other person participating in the conduct of the affairs of an insured bank, the agency shall serve a copy of such order on any insured bank with which such director, officer, or other person is associated at the time such order is issued.

[(4) In respect to any director or officer of an insured bank or any other person referred to in paragraph (1), (2), or (3) of this subsection, the appropriate Federal banking agency may, if it deems it necessary for the protection of the bank or the interest of its depositors, by written notice to such effect served upon such director, officer, or other person, suspend him from office or prohibit him from further participation in any manner in the conduct of the af-

fairs of the bank. Such suspension or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (f) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under paragraph (1), (2), or (3) of this subsection and until such time as the agency shall dismiss the charges specified in such notice or, if an order of removal or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the bank of which he is a director or officer or in the conduct of whose affairs he has participated.]

[(5)] *(4)* A notice of intention to remove a director, officer, or other person from office or to prohibit his participation in the conduct of the affairs of an insured bank, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the agency at the request of (A) such director or officer or other person, and for good cause shown, or (B) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the agency shall find that any of the grounds specified in such notice have been established, the agency may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the bank, as it may deem appropriate. In any action brought under this section by the Comptroller of the Currency in respect to any director, officer or other person with respect to a national banking association or a District bank, the findings and conclusions of the Administrative Law Judge shall be certified to the Board of Governors of the Federal Reserve System for the determination of whether any order shall issue. Any such order shall become effective at the expiration of thirty days after service upon such bank and the director, officer, other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

[(6)] *(5)* For the purpose of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term "officer" as used in this subsection means an employee or officer with management functions, and the term "director" includes an advisory or honorary director, a trustee of a bank under the control of trustees, or any person who has a representative or nominee serving in any such capacity.

(6) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES ALLOWED.—Any order issued under this subsection may specifically prohibit the person to whom such order is issued from engaging in an activity described in any paragraph of subsection (j).

(7) INDUSTRYWIDE PROHIBITION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no person who, pursuant to an order issued under this subsection, has been removed or suspended from office in an insured bank or prohibited from participating in the conduct of the affairs of an insured bank may, while such order is in effect, continue or commence to hold any office in, or participate in the conduct of the affairs of—

(i) any other insured bank;

(ii) any institution treated as an insured bank under subsection (b)(3) for purposes of this section;

(iii) any association (as defined in section 2(d) of the Home Owners' Loan Act of 1933);

(iv) any institution treated as an association under section 5(d)(2)(C) of the Home Owners' Loan Act of 1933 for purposes of section 5(d) of such Act;

(v) any insured institution (as defined in section 401(a) of the National Housing Act);

(vi) any institution treated as an insured institution under section 407(e)(3) of the National Husing Act for purposes of section 407 of such Act; or

(vii) any insured credit union (as defined in section 101(7) of the Federal Credit Union Act).

(B) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this subsection which removes or suspends from office any director, officer, or other person participating in the conduct of the affairs of an insured bank or prohibits such director, officer, or oher person from participating in the conduct of the affairs of an insured bank, such director, officer, or other person receives the written consent of the appropriate Federal depository institution regulatory agency of any institution described in any clause of subparagraph (A) to continue or commence to hold any office in, or participate in the conduct of the affairs of, such institution, subparagraph (A) shall cease to apply to such director, officer, or other person with respect to the institution described in the written consent as of the date such consent is received by the director, officer, or other person.

(C) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER.—Any violation of subparagraph (A) by any person who is subject to an order described in such subparagraph shall be treated as a violation of the order.

(D) HEARING; JUDICIAL REVIEW.—

(i) REQUEST FOR HEARING.—Any person who—

(I) is subject to an order issued by an appropriate Federal depository institution regulatory agency under this subsection or any similar provision of law applicable with respect to such agency which has the effect (under such provision of law) of prohibiting such person from continuing or commencing to hold any office in, or participate in the conduct of the affairs of, any institution described in any clause of subparagraph (A); and

(II) is denied permission by the appropriate Federal banking agency under subparagraph (B) to continue or commence to hold any office in, or participate in the conduct of the affairs of an insured bank, may rquest a hearing with respect to the denial of such written consent.

(ii) PROCEDURE FOR HEARING.—Any hearing requested under clause (i) shall be held and conducted in the same manner as a hearing requested under subsection (g)(3).

(iii) JUDICIAL REVIEW.—Any party to a proceeding under clause (ii) may obtain judicial review of the determination in the manner provided in subsection (h)(2).

(E) APPROPRIATE FEDERAL DEPOSITORY INSTITUTION REGULATORY AGENCY DEFINED.—For purposes of this paragraph and subsection (j), the term "appropriate Federal depository institution regulatory agency" means—

(i) the appropriate Federal banking agency, in the case of an insured bank and any institution treated as an insured bank under subsection (b)(3);

(ii) the Federal Home Loan Bank Board, in the case of an association (as defined in section 2(d) of the Home Owners' Loan Act of 1933) and any institution treated as an association under section 5(d)(2)(C) of the Home Owners' Loan Act of 1933;

(iii) the Federal Savings and Loan Insurance Corporation, in the case of an insured institution (as defined in section 401(a) of the National Housing Act) an institution treated as an insured institution under section 407(e)(3) of the National Housing Act; and

(iv) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act).

(F) CONSULTATION WITH ISSUING AGENCY.—Before providing written consent under subparagraph (B) of any person with respect to whom an order described in such subparagraph was issued, the appropriate Federal banking agency shall consult with the appropriate Federal depository institution regulatory agency which issued the order (if other than such banking agency).

(8) NOTICE UNDER THIS SUBSECTION AFTER SEPARATION FROM SERVICE.—The appropriate Federal banking agency may serve notice under paragraph (1) or (2) of the agency's intention to prohibit any person from participating in the conduct of the affairs of any insured bank or other federally regulated depository institution, notwithstanding the fact that such person has ceased to hold the position of officer or director of an insured bank or has ceased to participate in the conduct of the affairs of such insured bank, as the case may be, before such notice is served if such notice is served before the end of the 3-year period beginning on the date such person ceased to hold such position or to participate in the conduct of the affairs of such insured bank.

(f) Within ten days after any director, officer, or other person has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured bank under subsection

[(e)(4)] *(e)(3)* of this section, such director, officer, or other person may apply to the United States district court for the judicial district in which the home office of the bank is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, or other person under subsection [(e)(1), (e)(2), or (e)(3)] *(e)(1) or (e)(2)* of this section, and such court shall have jurisdiction to stay such suspension and/or prohibition.

(g)(1) Whenever any director or officer of an insured bank, or other person participating in the conduct of the affairs of such bank, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the appropriate Federal banking agency may, if continued service or participation by the individual may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank, by written notice served upon such director, officer, or other person, suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the bank. A copy of such notice shall also be served upon the bank. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the agency. In the event that a judgment of conviction with respect to such crime is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the agency may, if continued service or participation by the individual may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank, issue and serve upon such director, officer, or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the bank except with the consent of the appropriate agency. A copy of such order shall also be served upon such bank, whereupon such director or officer shall cease to be a director or officer of such bank. A finding of not guilty or other disposition of the charge shall not preclude the agency from thereafter instituting proceedings to remove such director, officer, or other person from office or to prohibit further participation in bank affairs, pursuant to paragraph [(1), (2), (3), or (4)] *(1), (2), or (3)* of subsection (e) of this section. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the agency.

(2) Any party to the proceeding, [or] any person required by an order issued under this section to cease and desist from any of the violations or practices stated therein, *and any person subject to an order issued pursuant to the hearing requested in accordance with subsection (e)(7)(D)(i)* may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the bank or the director or officer or other person concerned, or an order issued under paragraph (1) of

subsection (g) of this section) [by the filing] *or the order issued pursuant to the hearing requested in accordance with subsection (e)(7)(D)(i) by the filing* in the court of appeals of the United States for the circuit in which the home office of the bank is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the agency be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the agency, and thereupon the agency shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said paragraph (1) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the agency. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the 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 of the United States Code.

* * * * * * *

(i)(1) * * *

(2)(i) Any insured bank which violates or an officer, director, employee, agent, or other person participating in the conduct of the affairs of such a bank who violates the terms of any order which has become final and was issued pursuant to [subsection (b), (c), or (s)] *subsection (b), (c), (e), (g), or (s)* of this section, shall forfeit and pay a civil penalty of not more than [$1,000] *$2,500* per day for each day during which such violation continues: *Provided,* That the agency having authority to impose a civil money penalty may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under such authority. The penalty may be assessed and collected by the appropriate Federal banking agency by written notice. As used in this section, the term "violate" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

* * * * * * *

(3) CIVIL MONEY PENALTIES FOR VIOLATIONS OTHER THAN VIOLATIONS OF ORDERS.—

(A) PENALTY IMPOSED.—Any insured bank which, and any director or officer of such bank or other person participating in the conduct of the affairs of such bank who, has violated—

(i) any law or regulation (the violation of which by such insured bank, officer, director, or other person is not otherwise subject to a civil money penalty);

(ii) any condition imposed in writing by the appropriate Federal banking agency in connection with the grant of any application or other request by such bank; or

(iii) any written agreement between such bank and such agency,

shall forfeit and pay a civil penalty of not more than $2,500 for each day such violation continues.

(B) PROCEDURE.—Any penalty imposed under subparagraph (A) shall be assessed, determined, reviewed, and collected in the manner provided in paragraph (2) for any penalty imposed under such paragraph.

(C) COORDINATION WITH SUBSECTIONS (b), (c), (e), AND (s) AND PARAGRAPH (2).—

(i) PENALTY NOT EXCLUSIVE OF ANY ORDER.—The assessment of any penalty under subparagraph (A) with respect to any violation shall not preclude the appropriate Federal banking agency from—

(I) issuing any order under subsection (b), (c), (e), or (s) with respect to such violation; or

(II) taking any other action authorized by any such subsection with respect to such violation.

(ii) PROHIBITION OF DOUBLE ASSESSMENT.—No penalty may be imposed under subparagraph (A) for any violation for which a penalty is imposed under paragraph (2).

[(j) Any director or officer, or former director or officer of an insured bank, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under subsections (e)(4), (e)(5), or (g) of this section, and who (i) participates in any manner in the conduct of the affairs of the bank involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such bank, or (ii) without the prior written approval of the appropriate Federal banking agency, votes for a director, serves or acts as a director, officer, or employee of any bank, shall upon conviction be finded not more than $5,000 or imprisoned for not more than one year, or both.]

(j) CRIMINAL PENALTY.—Any person against whom there is outstanding and effective any order issued under subsection (e) or (g) who, directly or indirectly and without the prior written approval of the appropriate Federal despository institution regulatory agency (as defined in subsection (e)(7)(E))—

(1) participates in any manner in the conduct of the affairs of—

(A) any insured bank;

(B) any company or organization treated as an insured bank under subsection (b)(3) for purposes of this section;

(C) any association (as defined in section 2(d) of the Home Owner's Loan Act of 1933);

(D) any insured institution (as defined in section 401(a) of the National Housing Act);

(E) any institution treated as an insured institution under section 407(e)(3) of the National Housing Act for purposes of section 407 of such Act; or

(F) any insured credit union (as defined in section 101(7) of the Federal Credit Union Act),

from which such person has been suspended or removed or the conduct of the affairs of which such person has been prohibited

from participating pursuant to such order or by operation of subsection (e)(7) (with respect to such order);

(2) solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote any proxy, consent, or authorization in respect of any voting rights in any institution described in paragraph (1); or

(3) votes for a director, serves or acts as a director, officer, or otherwise participates in any manner in the conduct of the affairs of any institution described in paragraph (1),

shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than $5,000 or imprisoned for not more than one year, or both.

(t) PERSON PARTICIPATING IN THE CONDUCT OF THE AFFAIRS OF AN INSURED BANK DEFINED.—For purposes of this section, the term "person participating in the conduct of the affairs of an insured bank" includes any employee, agent, or stockholder of an insured bank (or any company treated as an insured bank under subsection (b)(3) for purposes of this section) and such other persons as the appropriate Federal banking agency may prescribe by regulations.

(u) PUBLIC DISCLOSURE OF NOTICES AND FINAL ORDERS.—

(1) IN GENERAL—The appropriate Federal banking agency shall publish and make available to the public—

(A) any final order issued with respect to any enforcement proceeding initiated by such agency against any insured bank or individual under this section or any other provision of law; and

(B) any modification to or termination of any final order described in subparagraph (A) of this paragraph.

(2) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES—If the appropriate Federal banking agency makes a determination in writing that the publication of any final order pursuant to paragraph (1) would seriously threaten the safety and soundness of an insured bank or other federally regulated depository institution, such agency may delay the publication of such notice for a reasonable time.

SEC. 18. (a) * * *

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(j)(1) * * *

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(3) SECURITIES AFFILIATIONS OF INSURED NONMEMBER BANKS.—

[(A) IN GENERAL.—The provisions of section 20 of the Banking Act of 1933 (relating to affiliations between member banks and organizations engaged principally in certain securities activities), and the provisions of section 32 of the Banking Act of 1933 (relating to certain officer, director, or employee relationships involving a member bank and a person or organization primarily engaged in certain securities activities) shall apply to every insured nonmember bank in the same manner and to the same extent as if such insured nonmember bank were a member bank.]

(A) IN GENERAL.—Except as provided in section 5 of the Bank Holding Company Act of 1956, no insured bank may be an affil-

iate of any company which engages, directly or indirectly, in the United States in securities activities (as such term is defined in section 2(o)(5) of the Bank Holding Company Act of 1956) other than activities in which a national bank may engage under subsection (b) or (d) of section 5136 of the Revised Statutes.

[(B) CONTINUATION OF CERTAIN AFFILIATIONS.—This paragraph shall not prohibit the continuation of such an affiliation or relationship which commenced before March 5, 1987, or the estalbishment of such an officer, director, or employee relationship in connection with any affiliation established before March 5, 1987.]

(B) CONTINUATION OF CERTAIN AFFILIATIONS AND ACTIVITIES.—This paragraph shall not prohibit any company that was engaged directly or indirectly in any securities activities (as such term is defined in section 2(o)(5) of the bank Holding Company Act of 1956) on March 1, 1988, and that was affiliated with an insured bank on such date, from continuing to be affiliated with such insured bank in the same or any other manner, and, in the case of any such company which is also a company described in section 4(f)(1) of the Bank Holding Company Act of 1956, shall not prohibit such company from directly or indirectly establishing, organizing, sponsoring, acquiring, managing, or controlling additional affiliates engaged directly or indirectly in securities activities.

[(C) 2-YEAR PERIOD.—An affiliation or officer, director, or employee relationship that becomes unlawful as a result of the enactment of this paragraph may continue for a period of 2 years after the date of enactment of this paragraph.]

(C) TRANSITION RULE.—Notwithstanding subparagraph (A), any affiliation of an insured bank with any company which is prohibited under such subparagraph may continue until the earlier of—

(i) the date a qualified securities subsidiary (as defined in section 2(n)(1) of the Bank Holding Company Act of 1956) which is an affiliate of such bank commences operations; or

(ii) the end of the 2-year period beginning on the date of the enactment of the Depository Institutions Act of 1988.

* * * * * * *

(E) EXCEPTIONS.—The provisions of this paragraph *or section 20 of the Banking Act of 1933* shall not apply to any institution described in subparagraph (D), (F), *(H),* or (I) of section 2(c)(2) of the Bank Holding Company Act of 1956.

[(F) APPLICABILITY.—This paragraph shall apply during the period beginning on March 6, 1987, and ending on March 1, 1988.]

(F) DEFINITIONS.—For purposes of this paragraph—

(i) AFFILIATE.—The term "affiliate" has the meaning given to such term in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k)).

(ii) COMPANY.—The term "company" has the meaning given to such term in section 2(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(b)).

(4)(A) Any nonmember insured bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affiars of such nonmember insured bank who violates any provision of section 23A, 23B or 22(h) of the Federal Reserve Act, as amended, or any lawful regulation issued pursuant thereto, [or any provision of section 20 of the Banking Act of 1933] *or any provision of paragraph (3) of this subsection,* shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues: *Provided,* That the Corporation may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Corporation by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

* * * * * * *

[SEC. 19. Except with the written consent of the Corporation, no person shall serve as a director, officer, or employee of an insured bank who has been convicted, or who is hereafter convicted, of any criminal offense involving dishonesty or a breach of trust. For each willful violation of this prohibition, the bank involved shall be subject to a penalty of not more than $100 for each day this prohibition is violated, which the Corporation may recover for its use.]

SEC. 19. PENALTY FOR UNAUTHORIZED PARTICIPATION BY CONVICTED INDIVIDUAL.

(a) PROHIBITION.—Except with the written consent of the Corporation, no person who has been convicted of any criminal offense involving dishonesty or a breach of trust may serve as the director, officer, or employee of an insured bank or participate in the conduct of the affairs of such bank.

(b) CIVIL MONEY PENALTY.—For each willful violation of subsection (a), the insured bank or the individual involved shall each be subject to a penalty of not more than $2,500 for each day such prohibition is violated, which the Corporation may recover for its use.

* * * * * * *

FEDERAL RESERVE ACT

* * * * * * *

STATE BANKS AS MEMBERS

SEC. 9. * * *

* * * * * * *

All banks admitted to membership under authority of this section shall be required to comply with the reserve and capital requirements of this Act, to conform to those provisions of law imposed on national banks which prohibit such banks from lending on or purchasing their own stock and which relate to the withdrawal or impairment of their capital stock, and to conform to the provisions of sections 5199(b) and 5204 of the Revised Statutes with

respect to the payment of dividends; except that any reference in any such provision to the Comptroller of the Currency shall be deemed for the purposes of this sentence to be a reference to the Board of Governors of the Federal Reserve System. Such banks and the officers, agents, and employees thereof shall also be subject to the provisions of and to the penalties prescribed by sections 334, 656, and 1005 of Title 18, United States Code, and shall be required to make reports of condition and of the payment of dividends to the Federal Reserve bank of which they become a member. Not less than three of such reports shall be made annually on call of the Federal Reserve bank on dates to be fixed by the Board of Governors of the Federal Reserve System. [Failure to make such reports within ten days after the date they are called for shall subject the offending bank to a penalty of $100 a day for each day that it fails to transmit such report; such penalty to be collected by the Federal Reserve bank by suit or otherwise.] *Any bank which—*

(1) fails to make such reports within the period of time specified by the Board; or

(2) submits or publishes any false or misleading report or information,

shall be subject to a penalty of not more than $1,000 for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under the preceding sentence shall be assessed and collected by the Board in the manner provided in 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 section.

Such reports of condition shall be in such form and shall contain such information as the Board of Governors of the Federal Reserve System may require and shall be published by the reporting banks in such manner and in accordance with such regulations as the said Board may prescribe.

* * * * * * *

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"] *subsections (b), (c), (d), (e), and (f)* of section 5136 of the Revised Statutes, as amended:

* * * * * * *

SEC. 29. (a) Any member bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such member bank who violates any provision of section 22 or 23A of this Act, or any regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than [$1,000] *$2,500* per day for each day during which such violation continues: *Provided*, That the agency having authority to impose a civil money penalty may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under such authority. The penalty may be assessed and collected by the Comptroller of the Currency in the case of a

national bank, or the Board in the case of a State member bank, by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward casuing, bringing about, participating in, counseling, or aiding or abetting a violation.

* * * * * * *

NATIONAL HOUSING ACT

* * * * * * *

TITLE IV—INSURANCE OF SAVINGS AND LOAN ACCOUNTS

* * * * * * *

LIQUIDATION OF INSURED INSTITUTIONS

SEC. 406. (a) In order to facilitate the liquidation of insured institutions, the Corporation is authorized (1) to contract with any insured institution with respect to the making available of insured accounts to the insured members of any insured institution in default, or (2) to provide for the organization of a new Federal savings and loan association for such purpose subject to the approval of the Federal Home Loan Bank Board, *except that any such association shall operate as an issuer of savings accounts and a lender and investor under section 5 of the Home Owners' Loan Act of 1933 and not as an institution having the special purpose of managing or disposing of assets acquired from insured institutions in default.*

(b)(1) * * *

* * * * * * *

(5) NEW FEDERAL ASSOCIATIONS NOT AUTHORIZED TO ENGAGE IN LIQUIDATION FUNCTIONS.—No provision of this section, including paragraph (1)(A)(iv) of this subsection, may be construed as authorizing the Corporation to organize a new Federal association without account liabilities or lending operations for the purpose of managing or disposing of any assets—

(A) of an insured institution for which the Corporation has been appointed receiver; or

(B) acquired by the Corporation pursuant to any transaction under subsection (f).

(6) DELEGATION OF LIQUIDATION FUNCTIONS TO FSLIC'S REGIONAL OFFICES.—No provision of this section may be construed as prohibiting the Corporation from delegating to the appropriate regional office of the Corporation any authority to manage or to dispose of any asset described in paragraph (5), including any authority to enter into contracts, in accordance with the requirements and procedures of title III of the Federal Property and Administrative Services Act of 1949, with persons in the private sector for such activities.

(7) LIQUIDATION POLICY.—The authority to liquidate assets shall be exercised by the Corporation in a manner which—

(A) minimizes the cost to the Corporation in liquidating assets;

(B) maximizes the return which the Corporation realizes on the assets; and

(C) encourages the use of services of persons in the private sector in managing and disposing of such assets to the maximum extent possible.

SEC. 407. TERMINATION OF INSURANCE AND ENFORCEMENT PROVISIONS.—(a) * * *

* * * * * * *

(e) * * *

* * * * * * * *

(3) This subsection and subsections (f), (g), (h), (j), (k), (m)(3), (n), (o), (p), and (q) of this section shall apply to any savings and loan holding company, and to any subsidiary (other than an insured institution) of a savings and loan holding company, as those terms are defined in section 408 of this title, and to any [affiliate service corporation of an insured institution] *service corporation of an insured institution or subsidiary of such service corporation, whether wholly or partly owned* in the same manner as they apply to insured institutions.

(4) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.—The authority to issue an order under this subsection which requires an insured institution, or any director, officer, or other person participating in the conduct of the affairs of an institution, to take affirmative action to correct any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such insured institution, officer, director, or other person to—

(A) make restitution or provide reimbursement if—

(i) such insured institution, officer, director, or other person was unjustly enriched in connection with such violation or practice; or

(ii) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Corporation;

(B) provide indemnification or a guarantee against loss;

(C) rescind agreements or contracts;

(D) dispose of any loan or asset involved;

(E) take such other action as the Corporation determines to be appropriate.

(5) AUTHORITY TO LIMIT ACTIVITIES.—The authority to issue an order under this subsection or subsection (f) includes the authority to place limitations on the activities or functions of an institution, or any director, officer, or other person participating in the conduct of the affairs of an institution.

* * * * * * *

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (e)(1) specifies that an institution's books and records are so incomplete or inaccurate that the Corporation is unable (with reasonable effort and because of the particular facts and circumstances stated in the notice) to determine the financial condition of that institution or the details or purpose of any

transaction or transactions that may have a substantial effect on the financial condition of that institution, the Corporation may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete inaccurate state of the books or record; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceeding under subsection (e)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A) shall—

(i) become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effective and enforceable until the earlier of—

(I) the completition of the proceeding initiated under subsection (e)(1) in connection with the notice of charges; or

(II) the date the Corporation determines, by examination or otherwise, that the institution's books and records are accurate and capable of reflecting the financial condition of the bank.

[(3)] In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order, the Corporation may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the principal office of the institution is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

(g)[(1) Whenever, in the opinion of the Corporation, any director or officer of an insured institution has committed any violation of law, rule, or regulation or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the institution or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the Corporation determines that the institution has suffered or will probably suffer substantial financial loss or other damage or that the interests of its insured members could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty or that the director or officer has received financial gain by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, or one which demonstrates a willful or continuing disregard for the safety or soundness of the institution, the Corporation may serve upon such director or officer a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.]

(1) AUTHORITY TO ISSUE ORDER.—Whenever the Corporation determines that—

(A) any director, officer, or other person participating in the conduct of the affairs of an insured institution has, directly or indirectly—

(i) violated—

(I) any law or regulation;

(II) any cease-and-desist order which has become final;

(III) any condition imposed in writing by the Corporation in connection with the grant of any application or order request by such institution; or

(IV) any written agreement between such institution and the Corporation;

(ii) engaged or participated in any unsafe or unsound practice in connection with any insured institution or business institution; or

(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such person's fiduciary duty;

(B) by reason of the violation, practice, or breach described in any clause of subparagraph (A)—

(i) such insured institution or business institution has suffered or will probably suffer financial loss or other damage;

(ii) the interests of the insured institution's depositors have been or could be seriously prejudiced; or

(iii) such director, officer, or other person has received financial gain by reason of such violation, practice, or breach; and

(C) such violation, practice, or breach—

(i) involves personal dishonesty on the part of such director, officer, or other person; or

(ii) demonstrates willful or continuing disregard by such director, officer, or other person for the safety or soundness of such insured institution or business institution,

the Corporation may serve upon such officer, director, or other person a written notice of the Corporation's intention to remove such person from office or to prohibit any further participation, by such person, in any manner in the conduct of the affairs of any insured institution.

[(2) Whenever, in the opinion of the Corporation, any director or officer of an insured institution, by conduct or practice with respect to another insured institution or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personel [1] dishonestly or a willful or continuing disregard for its safety and soundnss, and, in addition, has evidenced his unfitness to continue as a director or officer and, whenever, in the opinion of the Corporation, any other person participating in the conduct of the affairs of an insured institution, by conduct or practice with respect to such institution or other insured institution or other business institution which, resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and in addition, has evidenced his unfitness to participate in the conduct of affairs of such insured institution,

the Corporation may serve upon such director, officer, or other person a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.]

[(3)] *(2)* Whenever, in the opinion of the Corporation, any director or officer of an insured institution has committed a violation of the Depository Institution Management Interlocks Act, the Corporation may serve upon such director, or officer a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.

(3) TEMPORARY ORDER.—

(A) SUSPENSION OR PROHIBITION AUTHORIZED.—If the Corporation serves written notice under paragraph (1) or (2) to any director, officer, or other person participating in the conduct of the affairs of an insured institution of the Corporation's intention to issue a temporary order under such paragraph, the Corporation may suspend such director, officer, or other person from office or prohibit such person from further participation in any manner in the conduct of the affairs of the institution, if the Corporation—

(i) determines that such action is necessary for the protection of the institution or the interests of the institution's depositors; and

(ii) serves such person with written notice of the order.

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A) shall—

(i) become effective upon service; and

(ii) unless a court issues a stay of such order under paragraph (6), shall remain in effect and enforceable until—

(I) the date the Corporation dismisses the charges contained in the notice served under paragraph (1) or (2) with respect to such person; or

(II) the effective date of an order issued by the Corporation to such person under paragraph (1) or (2).

(C) COPY OR ORDER.—If the Corporation issues a temporary order under subparagraph (A) to any director, officer, or other person participating in the conduct of the affairs of an insured institution, the Corporation shall serve a copy of such order on any insured institution with which such director, officer, or other person is associated at the time such order is issued.

[(4) In respect to any director or officer of an insured institution or any other person referred to in paragraph (1), (2), or (3) of this subsection, the Corporation may, if it deems it necessary for the protection of the institution or the interests of its insured members or of the Corporation, by written notice to such effect served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the institution. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by paragraph (6) of this subsection, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under paragraph (1), (2) or (3) of this subsection and until

such time as the Corporation shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer or other persons, until the effective date of any such order. Copies of any such notice also be served upon the institution of which he is a director or officer or in the conduct of whose affairs he has participated.]

[(5)] *(4)* A notice of intention to remove a director, officer, or other person from office and/or to prohibit his participation in the conduct of the affairs of an insured institution, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days not later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Corporation at the request of (A) such director, officer, or other person and for good cause shown, or (B) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal and/or prohibition. In the event of such consent, or if upon the record made at any such hearing the Corporation shall find that any of the grounds specified in such notice has been established, the Corporation may issue such orders of suspension or removal from office, and/or prohibition from participation in the conduct of the affairs of the institution, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such institution and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Corporation or a reviewing court.

(5) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES ALLOWED.—Any order issued under this subsection may specifically prohibit the person to whom such order is issued from engaging in an activity described in any paragraph of subsection (p)(1).

(6) Within ten days after any director, officer, or other person has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured institution under paragraph [(4)] *(3)* of this subsection, such director, officer, or other person may apply to the United States district court for the judicial district in which the principal office of the institution is located, or the United States District Court for the District of Columbia, for a stay of suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, or other person under paragraph [(1), (2), or (3)] *(1) or (2)* of this subsection, and such court shall have jurisdiction to stay such suspension and/or prohibition.

(7) INDUSTRYWIDE PROHIBITION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no person who, pursuant to an order issued under this subsection, has been removed or suspended from office in an insured institution or prohibited from participating in the conduct of the affairs of an insured institution may, while such order is in

effect, continue or commence to hold any office in, or participate in the conduct of the affairs of—

(i) any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act;

(ii) any institution treated as an insured bank under subsection 8(b)(3) of the Federal Deposit Insurance Act for purposes of section 8 of such Act;

(iii) any association (as defined in section 2(d) of the Home Owners' Loan Act of 1933);

(iv) any institution treated as an association under section 5(d)(2)(C) of the Home Owners' Loan Act of 1933 for purposes of section 5(d) of such Act;

(v) any insured institution;

(vi) any institution treated as an insured institution under subsection (e)(3) for purposes of this section; or

(vii) any insured credit union (as defined in section 101(7) of the Federal Credit Union Act).

(B) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this subsection which removes or suspends from office any director, officer, or other person participating in the conduct of the affairs of an insured institution of prohibits such director, officer, or other person from participating in the conduct of the affairs of an insured institution, such director, officer, or other person receives the written consent of the appropriate Federal depository institution regulatory agency of any institution described in any clause of subparagraph (A) to continue or commence to hold any office in, or participate in the conduct of the affairs of, such institution, subparagraph (A) shall cease to apply to such director, officer, or other person with respect to the institution described in the written consent as of the date such consent is received by the director, officer, or other person.

(C) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER.—Any violation of subparagraph (A) by any person who is subject to an order described in such subparagraph shall be treated as a violation of the order.

(D) HEARING; JUDICIAL REVIEW.—

(i) REQUEST FOR HEARING.—Any person who—

(I) is subject to an order issued by an appropriate Federal depository institution regulatory agency under this subsection or any similar provision of law applicable with respect to such agency which has the effect (under any such provision of law) of prohibiting such person continuing or commencing to hold any office in, or participate in the conduct of the affairs of, any institution described in any clause of subparagraph (A); and

(II) is denied permission by the Corporation under subparagraph (B) to continue of commence to hold any office in, or participate in the conduct of the affairs of an insured institution,

may request a hearing with respect to the denial of such written consent.

(ii) PROCEDURE FOR HEARING.—Any hearing requested under clause (i) shall be held and conducted in the same manner as a hearing requested under subsection (h)(2).

(iii) JUDICIAL REVIEW.—Any party to a proceeding under clause (ii) may obtain judicial review of the determination in the manner provided in subsection (j)(2).

(E) APPROPRIATE FEDERAL DEPOSITORY INSTITUTION REGULATORY AGENCY DEFINED.—For purposes of this paragraph and subsection (p), the term "appropriate Federal depository institution regulatory agency" means—

(i) the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act), in the case of an insured bank (as defined in section 3(h) of such Act) and any institution treated as an insured bank under section 8(b)(3) of such Act;

(ii) the Federal Home Loan Bank Board, in the case of an association (as defined in section 2(d) of the Home Owners' Loan Act of 1933) and any institution treated as an association under section 5(d)(2)(C) of the Home Owners' Loan Act of 1933;

(iii) the Corporation, in the case of an insured institution and institution treated as an insured institution under subsection (e)(3); and

(iv) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act).

(F) CONSULTATION WITH ISSUING AGENCY.—Before providing written consent under subparagraph (B) to any person with respect to whom an order described in such subparagraph was issued, the Corporation shall consult with the appropriate Federal depository institution regulatory agency which issued the order (if other than the Corporation).

(8) NOTICE UNDER THIS PARAGRAPH AFTER SEPARATION FROM SERVICE.—The Corporation may serve notice under paragraph (1) or (2) of the Corporation's intention to prohibit any person from participating in the conduct of the affairs of any insured institution or other federally regulated depository institution, notwithstanding the fact that such person has ceased to hold the position of officer or director of an insured institution or has ceased to participate in the conduct of the affairs of such insured institution, as the case may be, before such notice is served if such notice is served before the end of the 3-year period beginning on the date such person ceased to hold such position or to participate in the conduct of the affairs of such insured institution.

(h)(1) Whenever any director or officer of an insured institution, or other person participating in the conduct of the affairs of such institution, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the Corporation may, if continued service or participation by the individual may pose a threat to the interests of the institution's depositors or may threaten to impair public confidence in the institution, by written notice served upon

such director, officer, or other person suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the institution. A copy of such notice shall also be served upon the institution. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Corporation. In the event that a judgment of conviction with respect to such crime is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Corporation may, if continued service or participation by the individual may pose a threat to the interests of the institution's depositors or may threaten to impair public confidence in the institution, issue and serve upon such director, officer, or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the institution except with the consent of the Corporation. A copy of such order shall also be served upon such institution, whereupon such director or officer shall cease to be a director or officer of such institution. A finding of not guilty or other disposition of the charge shall not preclude the Corporation from thereafter instituting proceedings to remove such director, officer, or other person from office or to prohibit further participation in institution affairs, pursuant to paragraph [(1), (2), (3) or (4)] *(1), (2), or (3)* of subsection (g) of this section. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (2) hereof unless terminated by the Corporation.

* * * * * * *

(j) HEARINGS AND JUDICIAL REVIEW.—(1) * * *

(2) Any party to the proceeding, [or] any person required by an order issued under this section to cease and desist from any of the violations or practices stated therein, may obtain a review *and any person subject to an order issued pursuant to the hearing requested in accordance with subsection (g)(7)(D)(i)* of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the institution or the director or officer or other person concerned, or an order issued under subsection (h)(1) of this section), [by filing] *or the order issued pursuant to the hearing requested in accordance with subsection (g)(7)(D)(i) by the filing* in the court of appeals of the United States for the circuit in which the principal office of the institution is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Corporation be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Corporation, and thereupon the Corporation shall file in the court the record in the proceeding as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall, except as provided in the last sentence of said paragraph (1), be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the

Corporation. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the 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 of the United States Code.

* * * * * * *

(k) JURISDICTION AND ENFORCEMENT.—(1) * * *

* * * * * * *

(3)(A) Any insured institution or any institution any of the accounts of which are insured which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such an institution who violates the term of any order which has become final and was insured pursuant to subsection (e), (f), [or (g)] *(g), (h), or (s)* of this section shall forfeit and pay a civil penalty of not more than [$1,000] *$2,500* per day for each day during which such violation continues: *Provided,* That the Corporation may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Corporation by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

* * * * * * *

(4) CIVIL MONEY PENALTIES FOR CERTAIN VIOLATIONS OTHER THAN VIOLATIONS OF ORDERS.—

(A) PENALTY IMPOSED.—Any insured institution which, and any director or officer of such institution or other person participating in the conduct of the affairs of such institution who, has violated—

(i) any law or regulation (the violation of which by such insured institution, officer, director, or other person is not otherwise subject to a civil money penalty);

(ii) any condition imposed in writing by the Corporation in connection with the grant of any application or other request by such institution; or

(iii) any agreement between such institution and the Corporation,

shall forfeit and pay a civil penalty of not more than $2,500 for each day such violation continues.

(B) PROCEDURE.—Any penalty imposed under subparagraph (A) shall be assessed, determined, reviewed, and collected in the manner provided in paragraph (3) for any penalty imposed under such paragraph.

(C) COORDINATION WITH SUBSECTIONS (e), (f), (g), AND (s) AND PARAGRAPH (3).—

(i) PENALTY NOT EXCLUSIVE OF ANY ORDER.—The assessment of any penalty under subparagraph (A) with respect to any violation shall not preclude the Corporation from—

(I) issuing any order under subsection (e), (f), (g), or (s) with respect to such violation; or

(II) taking any other action authorized by any such subsection with respect to such violation.

(ii) PROHIBITION OF DOUBLE ASSESSMENT.—No penalty may be imposed under subparagraph (A) for any violation for which a penalty is imposed under paragraph (3).

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[(p) PENALTIES.—(1) Any director or officer, or former director or officer, of an insured institution or an institution any of the accounts of which are insured, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under subsection (g)(4), (g)(5), or (h) of this section, and who (A) participates in any manner in the conduct of the affairs of such institution, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations in respect to any voting rights in such institution, or (B) without the prior written approval of the Corporation, votes for a director or serves or acts as a director, officer, or employee of any insured institution, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.

[(2) Except with the prior written consent of the Corporation, no person shall serve as a director, officer, or employee of an insured institution who has been convicted, or who is hereafter convicted, of a criminal offense involving dishonesty or a breach of trust. For each willful violation of this prohibition, the institution involved shall be subject to a penalty of not more than $100 for each day this prohibition is violated, which the Corporation may recover by suit or otherwise for its own use.]

(p) PENALTIES.—

(1) CRIMINAL PENALTY FOR VIOLATION OF CERTAIN ORDERS.—Any person against whom there is outstanding and effective any order issued under subsection (g) or (h) who, directly or indirectly and without the prior written approval of the appropriate Federal depository institution regulatory agency (as defined in section 407(g)(7)(E))—

(A) participates in any manner in the conduct of the affairs of—

(i) any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act);

(ii) any company or organization treated as an insured bank under section 8(b)(3) of the Federal Deposit Insurance Act for purposes of section 8 of such Act;

(iii) any association (as defined in section 2(d) of the Home Owners' Loan Act of 1933);

(iv) any insured institution;

(v) any institution treated as an insured institution under subsection (e)(3) for purposes of this section; or

(vi) any insured credit union (as defined in section 101(7) of the Federal Credit Union Act),

from which such person has been suspended or removed or the conduct of the affairs of which such person has been

prohibited from participating pursuant to such order or by operation of subsection (e)(7) (with respect to such order);

(B) solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote any proxy, consent, or authorization in respect to any voting rights in any institution described in subparagraph (A); or

(C) votes for a director, or serves or acts as a director or officer or otherwise participates in any manner in the conduct of the affairs of any institution described in subparagraph (A),

shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than $5,000 or imprisoned for not more than one year, or both.

(2) CIVIL MONEY PENALTY FOR UNAUTHORIZED PARTICIPATION BY CERTAIN CONVICTED INDIVIDUALS.—

(A) PROHIBITION.—Except with the written consent of the Corporation, no person who has been convicted of any criminal offense involving dishonesty or a breach of trust may serve as the director, officer, or employee of an insured institution or participate in the conduct of the affairs of such institution.

(B) CIVIL MONEY PENALTY.—For each willful violation of subparagraph (A), the insured institution or the individual involved shall each be subject to a pealty of not more than $2,500 for each day such prohibition is violated, which the Corporation may recover for its use.

(q)(1) * * *

* * * * * * *

(18) Any person who [willfully] violates any provision of this subsection, or any regulation or order issued by the Corporation pursuant thereto, shall forfeit and pay a civil penalty of not more than $10,000 per day for each day during which such violation continues. The Corporation shall have authority to assess such a civil penalty, after giving notice and an opportunity to the person to submit data, views, and arguments, and after giving due consideration to the appropriateness of the penalty with respect to the size of financial resources and good faith of the person charged, the gravity of the violation, and any data, views, and arguments submitted. The agency may collect such civil penalty by agreement with the person or by bringing an action in the appropriate United States district court, except that in any such action, the person against whom the penalty has been assessed shall have a right to trial de novo.

* * * * * * *

(r) DEFINITIONS.—(1) * * *

* * * * * * *

(5) PERSON PARTICIPATING IN THE CONDUCT OF THE AFFAIRS OF AN INSURED INSTITUTION DEFINED.—

(A) IN GENERAL.—For purposes of this section, the term "person participating in the conduct of the affairs of an insured institution" includes any employee, agent, or stockholder of an insured institution, or an affiliate of an insured institution,

and such other persons as the Corporation may prescribe by regulations.

(B) AFFILIATE.—For purposes of the definition contained in subparagraph (A), the term "affiliate"—

(i) has the meaning given to such term in section 408(a)(1)(I); and

(ii) includes any service corporation in which an insured institution has an ownership interest and any subsidiary (as defined in section 408(a)(1)(H)) of such corporation.

* * * * * * *

(u) REPORTS OF CONDITION; PENALTIES.—

(1) REPORTS OF CONDITION.—Each insured institution shall make reports of condition to the Corporation which shall be in such form and shall contain such information as the Corporation may require.

(2) PUBLICATION.—The Corporation may require reports of condition to be published in such manner as the Corporation may direct.

(3) PENALTY FOR FAILURE TO REPORT.—Any insured institution which—

(A) fails to submit or publish any report or information required by the Corporation under paragraph (1) or (2) within the period of time the Corporation specifies; or

(B) submits any false or misleading report or information,

shall be subject to a penalty of not more than $1,000 for each day during which such failure continues or such false or misleading report or information is not corrected.

(4) ASSESSMENT.—Any penalty imposed under paragraph (3) shall be assessed and collected by the Corporation in the manner provided in subsection (k)(3) (for penalties imposed under such subsection) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

(v) PUBLIC DISCLOSURE OF NOTICES AND FINAL ORDERS.—

(1) IN GENERAL.—The Corporation shall publish and make available to the public—

(A) any final order issued with respect to any enforcement proceeding initiated by the Corporation against any insured institution or individual under this section or any other provision of law; and

(B) any modification to or termination of any final order described in subparagraph (A) of this paragraph.

(2) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the Corporation makes a determination in writing that the publication of any final order pursuant to paragraph (1) would seriously threaten the safety and soundness of an insured institution or other federally regulated depository institution, the Corporation may delay the publication of such notice for a reasonable time.

* * * * * * *

REGULATION OF HOLDING COMPANIES

SEC. 408. (a) * * *

* * * * * * *

(j) PENALTIES.—(1) Any company which willfully violates any provision of this section, or any rule, regulation, or order thereunder, shall upon conviction be fined not more than [$1,000] *$2,500* for each day during which the violation continues.

* * * * * * *

(4)(A) Any company which violates or any individual 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 [$1,000] *$2,500* per day for each day during which such violation continues: *Provided,* That the Corporation may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Corporation by written notice. As used in the section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

* * * * * * *

(p) RESTRICTIONS OF ACTIVITIES ON CERTAIN INSURED INSTITUTION SUBSIDIARIES.—

(1) * * *

(2) CROSS-MARKETING PRACTICES.—

(A) * * *

* * * * * * *

(C) EXCEPTION.—This paragraph shall not apply so as to prohibit the insured institution subsidiary of a diversified savings and loan holding company from offering or marketing the products or services of an affiliate or from permitting its products or services to be marketed by or through an affiliate if—

(i) the savings and loan holding company has $2,000,000,000 or less and owned the insured institution before March 5, 1987, in accordance with subsection (c)(6)(B) of this section; and

(ii) the total assets of the insured institution subsidiary of such diversified savings and loan holding company are not more than $250,000,000.

(C) EXCEPTION.—This paragraph shall not apply so as to prohibit the insured institution subsidiary of a diversified savings and loan holding company from offering or marketing insurance products or services on behalf of an affiliate if such insured institution has its corporate headquarters in the State of New Jersey and such diversified savings and loan holding company was formed pursuant to an acquisi-

tion agreement which was publicly announced on August 4, 1987.

* * * * * * *

(u) COMMUNITY BENEFITS REQUIREMENTS.—

(1) MINIMUM COMMUNITY REINVESTMENT RATING REQUIRED FOR CERTAIN APPROVALS.—

(A) IN GENERAL.—Unless the requirements of subparagraph (B) are met, the Corporation shall not approve—

(i) any application under subsection (e)(1)(A) by any savings and loan holding company to acquire control of another insured institution (other than an insured institution described in subclause (I) or (II) of paragraph (6)(B)(i)) or any savings and loan holding company;

(ii) any application under subsection (e)(1)(B) by any insured institution (other than an insured institution described paragraph (6)(B)(i)) to acquire control of another insured institution (other than an insured institution described in subclause (I) or (II) of paragraph (6)(B)(i)) or any savings and loan holding company; or

(iii) any application by a savings and loan holding company to engage in any activity (or to acquire the shares of any company engaged in any activity) described in subsection (c)(2)(F) for which the Corporation's approval is required.

(B) MINIMUM COMMUNITY REINVESTMENT RATING REQUIREMENTS.—The requirements of this subparagraph are met if—

(i) in the case of an application described in clause (i) or (iii) of subparagraph (A), the applicant savings and loan holding company has an imputed community reinvestment rating of 2 or better (as determined in accordance with paragraph (6)); or

(ii) in the case of an application described in clause (ii) of subparagraph (A), the applicant insured institution has a community reinvestment rating of 2 or better (as determined under section 810 of the Community Reinvestment Act of 1977).

(C) SPECIAL RULES FOR THRIFTS, ETC., WITH ABOVE AVERAGE COMMUNITY REINVESTMENT RATINGS.—

(i) WRITTEN FINDINGS WITHIN 60 DAYS IF NO HEARING IS HELD.—In the case of an application described in clause (i) or (iii) of subparagraph (A) by a savings and loan holding company described in subparagraph (B)(i) or an application described in subparagraph (A)(ii) by an insured institution described in subparagraph (B)(ii), if—

(I) no comments are received under paragraph (8)(A); or

(II) with respect to comments received, the Corporation determines that no substantial issue referred to in paragraph (8)(B)(i) has been raised,

the Corporation shall issue a written finding which meets the requirement of paragraph (8)(C) before the end of the 60-day period beginning on the later of the dates described in clauses (i) and (ii) of paragraph (8)(A).

(ii) WRITTEN FINDINGS WITHIN 90 DAYS IF A HEARING IS HELD.—If a hearing is conducted under paragraph (8)(B) in connection with an application described in clause (i) or (iii) of subparagraph (A) by a savings and loan holding company described in subparagraph (B)(i) or an application described in subparagraph (A)(ii) by an insured institution described in subparagraph (B)(ii), the Corporation shall issue a written finding which meets the requirement of paragraph (8)(C) before the end of the 90-day period beginning on the later of the dates described in clauses (i) and (ii) of paragraph (8)(A).

(2) PRELIMINARY APPROVAL WITH REVIEW PERIOD IN CERTAIN OTHER CASES.—

(A) PRELIMINARY APPROVAL.—Notwithstanding paragraph (1), the Corporation may preliminarily approve an application described in such subsection if—

(i) in the case of an application by—

(I) a savings and loan holding company, such savings and loan holding company has an imputed community reinvestment rating of 3 (as determined in accordance with paragraph (6)); or

(II) an insured institution, the applicant insured institution has a community reinvestment rating of 3; and

(ii) the savings and loan holding company or insured institution enters into such commitments as the Corporation may require, taking into account any public comments or testimony received under paragraph (8), to take actions that will enable the company, including the resulting savings and loan holding company in the case of an application by an insured institution, to receive the imputed community reinvestment rating described in paragraph (1)(B)(i) before the end of the 2-year period beginning on the date of the preliminary approval of such application.

(B) REVIEW.—At the end of the 180-day period beginning on the date the Corporation preliminarily approved an application described in paragraph (1) pursuant to subparagraph (A) of this paragraph, the Corporation shall review the policies and programs adopted by the applicant to implement the commitments described in subparagraph (A)(ii) of this paragraph.

(C) EXPIRATION OF PRELIMINARY APPROVAL; FINAL APPROVAL.—No preliminary approval by the Corporation under subparagraph (A) of this paragraph of an application described in paragraph (1) of this subsection shall be effective after the end of the 30-day period beginning at the end of the 180-day period described in subparagraph (B)

unless the Corporation approves such application in a final written approval issued before the end of such 30-day period.

(D) CONDITION ON FINAL APPROVAL.—The Corporation may not approve an application in a final written approval under subparagraph (C) of this paragraph unless the Corporation determines, pursuant to the review under subparagraph (B), that the policies and programs adopted by the applicant to implement the commitments described in subparagraph (A)(ii) of this paragraph have a substantial likelihood of resulting in the fulfillment of such commitments.

(E) PUBLIC HEARING.—At the end of the 2-year period described in subparagaph (A) of this paragraph, the Corporation shall hold a public hearing with respect to any savings and loan holding company which receives final approval under subparagraph (C) at which interested community and consumer groups shall be given opportunity to testify concerning the savings and loan holding company's performance in fulfilling the commitments described in subparagraph (A)(ii).

(F) APPROVAL ALLOWED FOR CERTAIN ACQUISITIONS INVOLVING INSURED INSTITUTION WITH RATING OF LESS THAN 3.—Notwithstanding paragraph (1) and subject to all the requirements of subparagraphs (B) through (E), the Corporation may preliminarily approve, under subparagraph (A), an application under subsection (e)(1) (to which subsection (e)(3) does not apply) by—

(i) an insured institution with a community reinvestment rating of less than 3 for the acquisition of control of another insured institution; or

(ii) any savings and loan holding company for the acquisition of control of any insured institution with a community reinvestment rating of less than 3,

if the acquiring insured institution or savings and loan holding company enters into commitments described in subparagraph (A)(ii) of this paragraph.

(G) PRELIMINARY APPROVAL TREATED AS FINAL APPROVAL FOR CERTAIN PURPOSES.—A preliminary approval by the Corporation under subparagraph (A) of this paragraph of any application shall be treated as a final order with respect to such application for purposes of subsection (k) of this section.

(3) CORPORATION DISAPPROVAL REQUIRED IF APPLICANT EXHIBITS CERTAIN PATTERNS OF ACTIVITY.—

(A) IN GENERAL.—The Corporation shall not approve an application described in paragraph (1)(A) if the applicant savings and loan holding company or any insured institution subsidiary of such company or the applicant insured institution has established a pattern of—

(i) acquiring or chartering federally insured depository institutions in a manner that tends to exclude low- and moderate-income neighborhoods or equivalent areas; or

(ii) opening or closing deposit facilities within the service area of any insured institution subsidiary, in the case of an applying savings and loan holding company, or of the applying insured institution in a manner that tends to exclude low- and moderate-income neighborhoods or equivalent areas, except that the closing of any deposit facility which the Corporation determines was occasioned by considerations relating to the safety and soundness of a depository institution shall not be taken into account for purposes of this subparagraph.

(B) RECONSIDERATION.—The Corporation may reconsider any application described in subparagraph (A) during the 90-day period following disapproval of such application if the applying savings and loan holding company, or the applying insured institution, submits a plan that the Corporation determines would reasonably be expected to improve services for low- and moderate-income persons and neighborhoods.

(4) ADDITIONAL REQUIREMENT RELATING TO SECURITIES ACTIVITIES.—The Corporation shall not approve—

(A) any application by a savings and loan holding company to engage in any securities activity (or acquire the shares of any company engaged in any securities activity); or

(B) any application under subsection (e)(1)(B) to acquire an insured institution by any company which is not an insured institution or savings and loan holding company,

unless the applicant company enters into such commitments as the Corporation may require, taking into account any public comments or testimony received under paragraph (8), to provide reasonable assurance that the proposed combination of insured institution activities and securities activities (if any) within the savings and loan holding company structure following the approval of such application will not diminish the availability of credit and deposit services for low- and moderate-income persons or within low- and moderate-income neighborhoods or equivalent areas.,

(5) ADDITIONAL REQUIREMENTS RELATING TO COMPANIES WHICH ARE NOT THRIFTS OR HOLDING COMPANIES.—The Corporation may not approve an application under subsection (e)(1)(B) by any company which is not an insured institution or a savings and loan holding company at the time of application to—

(A) acquire an insured institution with a community reinvestment rating less favorable than 2 unless the firm enters into such commitments as the Corporation may require, taking into account any public comments or testimony received under paragraph (8), to take actions that will enable the insured institution to achieve a community reinvestment rating of 2 or better before the end of the 2-year period beginning on the date of the approval of such application; or

(B) acquire an insured institution with a community reinvestment rating of 1 or 2 unless the firm enters into such

commitments as the Corporation may require, taking into account any public comments or testimony received under paragraph (8), to take actions that will enable the insured institution to maintain or improve such insured institution's community reinvestment rating.

(6) IMPUTED COMMUNITY REINVESTMENT RATING.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the imputed community reinvestment rating for any savings and loan holding company (for purposes of this subsection) is the community reinvestment rating assigned to the insured institution subsidiary of such company with the least favorable comunity reinvestment rating.

(B) EXCLUSION OF CERTAIN DEPOSITORY INSTITUTION.—

(i) IN GENERAL.—Subject to clause (ii), the community reinvestment ratings of the following depository institutions shall not be taken into account for purposes of determining the imputed community reinvestment rating for any savings and loan holding company under subparagraph (A):

(I) Any insured institution which was acquired by such savings and loan holding company in an acquisition under section 408(m) of the National Housing Act, during the 2-year period beginning on the date such acquisition is made.

(II) Ay insured institution with a CAMEL composite rating of 4 or less under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable system), or a similarly weakened insured institution, which is acquired by such savings and loan holding company, during the 2-year period beginning on the date such acquisition is made.

(III) Any insured institution which commences operations de novo, during the 2-year period beginning on the date such operations commence.

(ii) PLAN.—Clause (i) of this subparagraph shall apply with respect to any savings and loan holding company only if, within the 90-day period beginning on the date an insured institution described in such clause is acquired or commences operations, such savings and loan holding company submits a plan that the Corporation determines would reasonably be expected to enable such insured institution to receive a community reinvestment rating of 1 or 2 (as determined under section 810 of the Community Reinvestment Act of 1977).

(iii) TRANSITION RULE FOR CERTAIN ACQUISITIONS.—In the case of any insured institution described in subclause (I) or (II) of clause (i) which was acquired by any savings and loan holding company after December 31, 1985, and before the date of the enactment of the Depository Institutions Act of 1988, the community reinvestment ratings of such insured institution shall not be taken into account for purposes of determining the

imputed community reinvestment rating for such savings and loan holding company under subparagraph (A) during the 2-year period beginning on the date of the enactment of such Act if such savings and loan holding company submits a plan described in clause (ii) before the end of the 90-day period beginning on the date of the enactment of such Act.

(C) EXCLUSION OF CERTAIN AGRICULTURAL THRIFTS AND THRIFTS WITH ASSETS OF NOT MORE THAN $25,000,000.—

(i) IN GENERAL.—The community reinvestment ratings of the following insured institutions shall not be taken into account for purposes of determining the imputed community reinvestment rating for any savings and loan holding company under subparagraph (A):

(I) Any agricultural insured institution with assets of $50,000,000 or less.

(II) Any insured institution with assets of $25,000,000 or less.

(ii) AGRICULTURAL INSURED INSTITUTION DEFINED.—For purposes of clause (i), the term "agricultural insured institution" means any insured institution which has 25 percent or more of its loan assets in agricultural loans or real estate loans made by such institution to customers located in the market area served by such institution.

(iii) AGRICULTURAL LOAN DEFINED.—For purposes of clause (i), the term "agricultural loan" means—

(I) any loan made to finance the production of agricultural products or livestock in the United States;

(II) any loan secured by farmland or farm machinery in the United States; and

(III) any other category of loans which the Corporation determines have been made for agricultural purposes.

(7) NOTICE REQUIRED.—

(A) NOTICE.—Any savings and loan holding company, insured institution, or other company which submits an application described in paragraph (1)(A) or (5) to the Corporation shall provide notice of such action to the public in such manner as the Corporation shall prescribe by regulation.

(B) BULLETINS REQUIRED.—The Corporation shall—

(i) prepare a weekly bulletin listing the savings and loan holding companies, insured institutions, and older companies, which have submitted applications described in paragraph (1)(A) or (5) since the last bulletin was prepared; and

(ii) shall mail such bulletin without charge to any person upon request.

(8) COMMENTS REQUIRED TO BE ACCEPTED AND CONSIDERED; WRITTEN FINDINGS.—

(A) OPPORTUNITY FOR COMMENT.—Before approving any application described in paragraph (1)(A) or (5), the Corpo-

ration shall accept public comments on the application during a period of not less than 45 days beginning on the later of—

(i) the date of the notice required pursuant to paragraph (7)(A); or

(ii) the date on which the Corporation published the weekly bulletin required under paragraph (7)(B) which contains the notice of such application.

(B) HEARING.—The Corporation may hold an informal hearing relating to any application described in paragraph (1)(A) or (5) at the request of any person who submitted comments under subparagraph (A) of this paragraph with respect to such application which, in the judgment of the Corporation, raises a substantial issue with respect to—

(i) the performance of—

(I) the applicant savings and holding company or any insured institution subsidiary of such holding company or the applicant insured institution; or

(II) in the case of an application by another company, the insured institution which such firm proposes to acquire,

in serving local community credit needs; or

(ii) the adequacy of any commitment made by the applicant pursuant to paragraph (2)(A)(ii), (4), or (5).

(C) WRITTEN FINDINGS.—Before approving any application described in paragraph (1)(A) or (5), the Corporation shall prepare a written finding with respect to each factor the Corporation is required to take into account in considering such application, or in making any determination with respect to such application, under this subsection.

(9) PUBLIC AVAILABILITY OF COMMITMENTS.—Any commitment proposed or agreed to under paragraph (2)(A)(ii), (4), or (5) by any savings and loan holding company or other company in connection with an application described in paragraph (1)(A) shall be available to the public.

(10) CONTINUING ENFORCEMENT.—If—

(A) at any time after a saving and loan holding company receives final approval of an application under paragraph (1), (2)(C), or (5) (including any insured institution or other company which becomes a savings and loan holding company by reason of such approval)—

(i) such savings and loan holding company receives an imputed community reinvestment rating of 4 or 5; or

(ii) such savings and loan holding company violates the terms of any commitment made by such company under paragraph (2)(A)(ii), (4), or (5); and

(B) before the end of the 18-month period beginning on the date such company received the community reinvestment rating described in subparagraph (A)(i) or committed the violation described in subparagraph (A)(ii), such company has not—

(i) received an imputed community reinvestment rating of 3 or better; or

(ii) come into compliance with the terms of such company's commitments,

the failure of the savings and loan holding company to maintain in imputed community reinvestment rating of 3 or better or to remain in compliance with the terms of such company's commitments shall be treated as a violation of this section by such company for purposes of subsection (j)(4) of this section.

(11) DEFINITIONS.—For purposes of this subsection—

(A) COMMUNITY REINVESTMENT RATING.—The term "community reinvestment rating" means, with regard to an insured institution, the numerical rating assigned to such insured institution pursuant to section 810 of the Community Reinvestment Act of 1977 or subsection (e)(3) of this section.

(B) LOW- AND MODERATE-INCOME NEIGHBORHOOD.—The term "low- and moderate-income neighborhood" means a neighborhood described in section 17(c)(2)(B) of the Housing Act of 1937.

(C) LOW- AND MODERATE-INCOME PERSONS.—The term "low- and moderate-income persons" has the meaning given to such term in section 102(a)(20) of the Housing and Community Development Act of 1974.

(v) PENALTY FOR FAILURE TO PROVIDE TIMELY AND ACCURATE REPORTS.—

(1) IN GENERAL.—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 regulations prescribed by the Corporation within the period of time specified by the Corporation; or

(B) submits or publishes any false or misleading report or information,

shall be subject to a penalty of not more than $1,000 for each day during which such failure continues or such false or misleading report or information is not corrected.

(2) ASSESSMENT.—Any penalty imposed under paragraph (1) shall be assessed and collected by the Corporation in the manner provided in section 407(k)(3) (for penalties imposed under such subsection) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

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TITLE V—MISCELLANEOUS

* * * * * * *

APPLLICABILITY OF OTHER ACTS

SEC. 514. The provisions of section 10(a)1 and 10b of the Federal Home Loan Bank Act, as amended (49 Stat. 294, 295); [paragraph seventh] *subsections (b) and (c)* of section 5136 of the Revised Statutes, as amended (49 Stat. 709); section 24 of the Federal Reserve

Act, as amended (49 Stat. 706); subsection (n) of section 77B of the Bankruptcy Act, as amended (49 Stat. 664); section 5(c) of the Act approved January 31, 1935, continuing and extending the functions of the Reconstruction Finance Corporation (49 Stat. 1); and all other provisions of law establishing rights under mortgages insured in accordance with the provisions of the National Housing Act, shall be held to apply to such Act, as amended.

* * * * * * *

SECTION 4 OF THE INTERNATIONAL BANKING ACT OF 1978

FEDERAL BRANCHES AND AGENCIES

SEC. 4. (a) * * *

* * * * * * *

(g)(1) Upon the opening of a Federal branch or agency in any State and thereafter, a foreign bank, in addition to any deposit requirements imposed under section 6 of this Act, shall keep on deposit, in accordance with such rules and regulations as the Comptroller may prescribe, with a member bank designated by such foreign bank, dollar deposits or investment securities of the type that may be held by national banks for their own accounts pursuant to [paragraph "Seventh" of] *subsection (c) of* section 5136 of the Revised Statutes, as amended, in an amount as hereinafter set forth. Such depository bank shall be located in the State where such branch or agency is located and shall be approved by the Comptroller if it is a national bank and by the Board of Governors of the Federal Reserve System if it is a State Bank.

* * * * * * *

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

(B) A bank shall not be deemed to be a "broker" because it engages in one or more of the following activities:

(i) 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 (12 U.S.C. 92a) or for State banks under relevant State trust statutes of law unless the bank—

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

(II) is compensated for such business by the payment of commissions or similar remuneration based on effecting transactions in securities (excluding fees calculated as percentage of assets under management) in excess of the bank's incremental costs directly attributable to effecting such transactions;

except that this clause does not apply to securities safekeeping, self-directed individual retirement accounts, or managed agency or other functionally equivalent accounts of a bank;

(ii) effects transactions in exempted securities, other than municipal securities, or in commercial paper, bankers' acceptances, or commercial bills; and

(iii) effects transactions in municipal securities and is not an affiliate of a qualified securities subsidiary as defined in section 2(n)(1) of the Bank Holding Company Act of 1956.

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

(B) Such term does not include—

(i) any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business; or

(ii) any bank insofar as the bank (I) buys and sells commercial paper, bankers' acceptances, or commercial bills, or exempted securities other than municipal securities; (II) buys and sells municipal securities and is not an affiliate of a qualified securities subsidiary as defined in section 2(n)(1) of the Bank Holding Company Act of 1956; or (III) buys and sells securities for investment purposes in the course of trust activities.

* * * * * * *

(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 *that is* 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 that is not offered to the general public;*

(e) The Commission, by rule, regulation, or order, upon its own motion or upon application, may conditionally or unconditionally exempt any person or class of persons from the definitions of "broker" or "dealer," if the Commission finds that such exemption is consistent with the public interest, the protection of investors, or the purposes of this title.

* * * * * * *

REGISTRATION AND REGULATION OF BROKERS AND DEALERS

[SEC. 15. (a)(1) It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions, in or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.

[(2) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.]

SEC. 15. (a)(1) It shall be unlawful for any broker or dealer that is either a person other than a natural person or a natural person not associated with a broker or dealer that is a person other than a natural person (other that such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.

(2) It shall be unlawful for any bank to act as a broker or dealer, except in the course of an exclusively intrastate business. This section shall not preclude a subsidiary of a bank or an affiliate of a bank holding company other than a bank, as those terms are defined in the Bank Holding Company Act of 1956, that is registered in accordance with subsection (b) of this section from acting as a broker or dealer to any extent otherwise permissible by law.

(3) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraphs (1) and (2) of this sub-

section any broker or dealer or class of brokers or dealers specified in such rule or order.

* * * * * * *

PROVISIONS RELATING TO CERTAIN BROKER-DEALERS AFFILIATED WITH BANK HOLDING COMPANIES

SEC. 15D. (a) DEFINITIONS.—As used in this section—

(1) the terms "bank holding company", "bank", "insured institution", "Board", "control", "subsidiary", "securities subsidiary", "qualified securities subsidiary", and "commercial paper" have the meanings provided by section 2 of the Bank Holding Company Act of 1956; and

(2) the term "affiliated bank, insured institution, or subsidiary thereof" means, with respect to any securities subsidiary that is controlled by a bank holding company, a bank or insured institution that is controlled by such bank holding company, or a subsidiary of such bank or insured institution.

(b) CERTAIN FINANCIAL TRANSACTIONS BETWEEN BROKER-DEALER AND AFFILIATED BANKS, ETC., PROHIBITED.—It shall be unlawful for a securities subsidiary to engage, directly or indirectly, in any of the following transactions involving an affiliated bank, insured institution, or subsidiary thereof:

(1) Except as provided in subsection (i) of this section, knowingly obtain, receive, or enjoy the beneficial use of, any extension of credit in any manner from an affiliated bank, insured institution, or subsidiary thereof.

(2) Knowingly receive, obtain, or enjoy the beneficial use of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, from an affiliated bank, insured institution, or subsidiary thereof.

(3) Knowingly sell to an affiliated bank, insured institution, or subsidiary thereof, for its own account, any asset of the securities subsidiary.

(4) Knowingly sell to an affiliated bank, insured institution, or subsidiary thereof, for its own account, any security or commercial paper of which the securities subsidiary is an underwriter or a member of the selling group during the underwriting period and for 30 days after the end of such period.

(5) Knowingly sell to an affiliated bank, insured institution, or subsidiary thereof, in the bank, insured institution, or subsidiary's capacity as trustee, executor, administrator, custodian, managing agent, or guardian of estates with respect to the account of a customer, any security or commercial paper of which the securities subsidiary is an underwriter or a member of the selling group during the underwriting period and for 30 days after the end of such period, except at the express request of the customer.

(6) Knowingly sell to an affiliated bank, insured institution, or subsidiary thereof, in the bank, insured institution, or subsidiary's capacity as trustee, executor, administrator, custodian, managing agent, or guardian of estates with respect to the account of a customer, and security—

(A) which is issued by an investment company for which such bank, insured institution, or subsidiary acts as investment adviser, or

(B) which is distributed by such bank, insured institution, or affiliate,

except that the Securities and Exchange Commission may, by rule or order, grant such exemptions from this paragraph as it considers necessary or appropriate in the public interest or for the protection of investors.

(7) Arrange for the extension of credit from an affiliated bank, insured institution, or subsidiary thereof in any manner to any investment company—

(A) for which the securities subsidiary, bank, insured institution, or subsidiary of the bank or insured institution acts as investment adviser; or

(B) whose securities are distributed by the securities subsidiary, bank, insured institution, or subsidiary of the bank or insured institution;

except as permitted pursuant to section 18(f)(3) of the Investment Company Act of 1940.

(8) Except as provided in subsection (h), purchase any asset of an affiliated bank, insured institution, or subsidiary thereof, either for its own account or for the accout of any investment company for which it acts as investment adviser.

(9) Arrange for the extension of credit from an affiliated bank, insured institution, or subsidiary to an issuer of securities or commercial paper of which the securities subsidiary is an underwriter—

(A) for the purpose of paying, in whole or in part, the principal of, or any interest or dividends on, those securities or commercial paper; or

(B) providing terms, conditions, or maturities that are substantially similar to those of the underwritten securities or commercial paper.

(10) Arrange for the extension of credit from, or arrange for the issuance or entry into of, a standby letter of credit, asset purchase agreement, indemnity, guarantee, insurance, or other instrument of facility by, and affiliated bank, insured institution, or subsidiary thereof for the purpose of enhancing the marketability of, or in connection with, the issuance of any security or commercial paper of which the securities subsidiary is an underwriter or member of a selling group.

(11) Arrange for the extension of credit from an affiliated bank, insured institution or affiliate thereof on the collateral of securities or commercial paper issued by the securities subsidiary or by an investment company for which the securities subsidiary acts as investment adviser.

(c) DISCLOSURES OF CONFIDENTIAL CUSTOMER INFORMATION BY SECURITIES SUBSIDIARIES PROHIBITED.—

(1) IN GENERAL.—It shall be unlawful for a securities subsidiary to disclose, directly or indirectly, any confidential customer information to an affiliated bank, insured institution, or subsidiary thereof without the express written consent of that cus-

tomer to the disclosure of the specific information concerned for a particular purpose.

(2) CONFIDENTIAL CUSTOMER INFORMATION DEFINED.—For purposes of paragraph (1) of this subsection, the term "confidential customer information" means information, including any evaluation of creditworthiness concerning or acquired from a customer of a securities subsidiary, by reason of a business relationship with the customer, of a type which would not, in the ordinary course of business, be divulged to a bank or insured institution without the consent of the customer.

(d) PROHIBITION ON SHARED NAME, PREMISES, AND ADVERTISING.—

(1) NAMES.—It shall be unlawful for the corporate name and logo of any securities subsidiary to contain any word or design which—

(A) is the same as or similar to a word in, or a design connected with, the name or logo of an affiliated bank, insured institution, or subsidiary thereof; and

(B) would cause a reasonable person to believe that such securities subsidiary is an affiliate of such affiliated bank, insured institution, or subsidiary thereof.

(2) PREMISES.—It shall be unlawful for a securities subsidiary to use—

(A) any part of any office of an affiliated bank, insured institution, or subsidiary thereof which is commonly accessible to the general public for the purpose of conducting any depository, lending, or securities business with such bank, insured institution, or subsidiary; or

(B) any part of any office of such an affiliated bank, insured institution, or subsidiary thereof which is not described in subparagraph (A) except to the extent permitted under regulations prescribed by the Board with the approval of the Commission.

(3) JOINT ADVERTISING.—It shall be unlawful for any securities subsidiary to post, publish, or broadcast any advertisement relating to such securities subsidiary which contains, appears with, or is prepared for broadcast in conjunction with, any advertisement relating to such an affiliated bank, insured institution, or subsidiary thereof.

(4) REGULATIONS.—The Board, with the approval of the Securities and Exchange Commission, shall prescribe such regulations as may be necessary to enforce the requirements of this subsection.

(e) DISCLOSURES OF AFFILIATION REQUIRED.—Each securities subsidiary shall, in accordance with such regulations as the Commission prescribes in the public interest and for the protection of investors, prominently disclose in writing to each of such subsidiary's customers that—

(1) the securities subsidiary—

(A) is not a federally insured bank or insured institution; and

(B) is a separate corporate entity from any bank or insured institution affiliate of such subsidiary; and

(2) commercial paper and securities underwritten, sold, offered, or recommended by the securities subsidiary—

(A) are not deposit instruments which are federally insured;

(B) are not instruments which are guaranteed either as to principal or interest by a bank or insured institution affiliate of such subsidiary; and

(C) are not otherwise obligations of any bank or insured institution.

(f) PROHIBITION ON RECIPROCAL ARRANGEMENTS.—It shall be unlawful for any securities subsidiary to enter into or participate in any reciprocal arrangement prohibited by section 9(f) of the Bank Holding Company Act of 1956.

(g) PROHIBITION ON INTERLOCKING DIRECTORS, OFFICERS, OR EMPLOYEES.—

(1) IN GENERAL.—It shall be unlawful for any director, officer, or employee of any securities subsidiary of such bank holding company to serve at the same time as a director, officer, or employee of an affiliated bank, insured institution, or subsidiary thereof.

(2) BOARD AUTHORITY TO PREEMPT PARAGRAPH (1).—

(A) IN GENERAL.—The Board may, by order or regulation with the approval of the Commission, grant exemptions from paragraph (1) of this subsection.

(B) FACTORS TO BE CONSIDERED.—In determining whether to grant an exemption under subparagraph (A) the Board shall consider—

(i) the size of the bank holding companies involved and the size of the bank subsidiaries and securities subsidiaries involved;

(ii) any burdens imposed by the application of paragraph (1);

(iii) the safety and soundness of the bank subsidiaries of such bank holding companies; and

(iv) other appropriate factors, including unfair competition in securities activities and the improper exchange of confidential customer information.

(3) EXCEPTION FOR CERTAIN BACK OFFICE OPERATIONS.—Paragraph (1) shall not apply to any employee, other than an officer or director, employed by the bank holding company or any subsidiary of such company to perform clerical, accounting, bookkeeping, statistical, or similar functions, including the receipt or transmittal of electronic transfers, if such functions are performed—

(A) in an office or other facility which is separate from any part of any office of any bank or insured institution subsidiary and any qualified securities subsidiary of such bank holding company; and

(B) in a manner which is consistent with the requirements of this section as determined by the Board with the approval of the Commission.

(h) ASSET PURCHASES FROM AFFILIATED BANK, INSURED INSTITUTION, OR SUBSIDIARY THEREOF.—

(1) IN GENERAL.—A securities subsidiary of a bank holding company may, notwithstanding subsection (a)(7) of this section but subject to section 23B of the Federal Reserve Act, purchase any asset of an affiliated bank, insured institution, or subsidiary thereof for the purpose of including such asset in a pool of assets which is held by the securities subsidiary in connection with the issuance of asset-backed securities if—

(A) the sale of such asset to the securities subsidiary is without recourse;

(B) the asset-backed securities which represent interests in, or obligations backed by, the pool of assets of which such asset is a part—

(i) are rated as investment grade by at least one independent and nationally recognized statistical rating organization; or

(ii) are issued or guaranteed by, or represent an interest in securities issued or guaranteed by—

(I) the Federal Home Loan Mortgage Corporation;

(II) the Federal National Mortgage Association; or

(III) the Government National Mortgage Association; and

(C) the price at which an equity security or the yield at which a debt security to be distributed to the public is established at a price no higher, or yield no lower, than that recommended by a qualified independent underwriter which has also participated in the preparation of the registration statement and the prospectus, offering circular, or similar document.

(2) REGULATIONS.—The Board, with the approval of the Securities and Exchange Commission, shall prescribe such regulations as may be necessary to ensure that transactions described in paragraph (1) comply with the requirements of this subsection and section 23B(a)(1) of the Federal Reserve Act.

(3) ASSET DEFINED.—For purposes of this subsection, the term "asset" means any note, draft, acceptance, loan, lease, receivable, other obligation, or pools of any such obligations.

(4) QUALIFIED INDEPENDENT UNDERWRITER.—For purposes of this subsection, the term "qualified independent underwriter" shall be defined by regulation prescribed by the Securities and Exchange Commission.

(i) EXCEPTION FOR INTRA-DAY EXTENSIONS OF CREDIT IN CONNECTION WITH CLEARING GOVERNMENT SECURITIES.—Subsection (b)(1) of this section shall not apply with respect to any extension of credit obtained, received, or used by a securities subsidiary for the purchase or sale of any securities of the United States or any agency of the United States or any securities on which the principal and interest are fully guaranteed by the United States or such agencies if—

(1) the extension of credit is to be repaid on the same calendar day;

(2) the extension of credit is incidental to the clearing of transactions in those securities through such bank, insured institution, or subsidiary; and

(3) both the principal of and the interest on the extension of credit are fully secured by securities of the United States or any agency of the United States or securities on which the principal and interest are fully guaranteed by the United States or any such agency.

(j) SPECIAL AUDIT REQUIREMENTS.—The annual audit report required under section 17(e) of this title with respect to each securities subsidiary shall include a statement, in such form as the Commission shall prescribe by rule or regulation, concerning—

(1) management's responsibilities for the preparation of the financial statements of the securities subsidiary;

(2) management's responsibilities for establishing and maintaining an adequate system of internal controls relating to the financial statements and to controls directly related to, and designed to provide reasonable assurance as to compliance with, the preceding subsections of this section.

(k) AUTHORITY OF COMMISSION TO PRESCRIBE RULES.—In addition to the regulations prescribed under this section by the Board (with the approval of the Commission), the Commission—

(1) may adopt such regulations as may be necessary or appropriate in the public interest or for the protection of investors—

(A) to implement the provisions of this section;

(B) to define any term used in this section; and

(C) to prescribe means reasonably designed to prevent any person from evading or circumventing the provisions of this section; and

(2) may adopt such regulations or orders as may be necessary or appropriate in the public interest or for the protection of investors to exempt any person or transaction or class of persons or transactions as not comprehended within the purposes of this section, in whole or in part, either unconditionally or upon specific terms and conditions.

* * * * * * *

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) * * *

* * * * * * *

(3) "Affiliated person" of another person means (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per

centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; [and] (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof; *and (G) if such other person is an investment company, any person or class of persons which the Commission by order or rule or regulation shall have determined to be affiliated persons 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 any person that is a principal underwriter for, or promoter or sponsor of, such company or any affiliated person (as described in clauses (A) through (F) of this paragraph) of such company.*

* * * * * * *

[(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) "Broker" has the same meaning as in the Securities Exchange Act of 1934, but 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) "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) * * *

* * * * * * *

(v) any broker or dealer registered under the Securities Exchange Act of [1934 or any affiliated person of such a broker or dealer, and] *1934 or any person that, at any time during the last 6 months, has executed any portfolio transactions for, engaged in any principal*

transactions with, or loaned money to, the investment company or any other investment company having the same investment adviser, principal underwriter, sponsor, or promoter, or any affiliated person of such a broker, dealer, or person, and

* * * * * * *

DEFINITION OF INVESTMENT COMPANY

SEC. 3. (a) * * *

* * * * * * *

(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 *that is* 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, *and that is not offered to the general public.*

* * * * * * *

AFFILIATIONS OF DIRECTORS

SEC. 10. (a) * * *

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(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 bank holding company and its affiliates and subsidiaries, as those 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.

* * * * * * *

(f) No registered investment company shall knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security (except a security of which such company is the issuer) *(1)* a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of such registered company, or is a person (other than a company of the character described in section 12(d)(3) (A) and (B)) of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person, unless in

acquiring such security such registered company is itself acting as a principal underwriter for the issuer[.]; *or (2) the proceeds of which will be used to retire any part of an indebtedness owed to a bank where the bank or an affiliated person thereof is an affiliated person of such registered company.* The Commission, by rules and regulations upon its own motion or by order upon application, may conditionally or unconditionally exempt any transaction or classes of transactions from any of the provisions of this subsection, if and to the extent that such exemption is consistent with the protection of investors.

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TRANSACTIONS OF CERTAIN AFFILIATED PERSONS AND UNDERWRITERS

SEC. 17. (a) * * *

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(f)*(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 accountants, 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 simi-

lar 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 paragraph (1)(A) of this subsection, if a bank or banks described in such paragraph, or affiliated person thereof, is an affiliated person of the registered management company, such bank may not serve as custodian under this subsection except in accordance with such rules, regulations, and orders as the Commission prescribes consistent with the protection of investors.*

* * * * * * *

(k) BANK DISCLOSURES IN CONNECTION WITH MUTUAL FUND DISTRIBUTIONS.—Any bank or affiliated person which distributes securities issued by an investment company shall, in accordance with such regulations as the Commission prescribes in the public interest and for the protection of investors, prominently disclose in writing to each of such bank or affiliated person's customers that—

(1) the investment company—

(A) is not a federally insured bank; and

(B) is a separate corporate entity from any bank; and

(2) the securities of such investment company—

(A) are not deposit instruments which are federally insured;

(B) are not instruments which are guaranteed either as to principal or interest by any bank; and

(C) are not otherwise obligations of any bank.

CAPITAL STRUCTURE

SEC. 18. (a) * * *

* * * * * * *

(f)(1) * * *

* * * * * * *

(3) Notwithstanding the provisions of paragraph (1) of this subsection, it shall be unlawful for any registered open-end company to borrow from any bank if such bank or any affiliated person thereof is an affiliated person of such company, except that the Commission may, by rule, regulation, or order, permit such borrowing which the Commission finds to be in the public interest and consistent with the protection of investors.

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UNLAWFUL REPRESENTATIONS AND NAMES

SEC. 35. (a) * * *

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(d) It shall be unlawful for any registered investment company hereafter to adopt as a part of the name or title of such company, or of any security of which it is the issuer, any word or words which the Commission finds and by order declares to be deceptive or misleading. *It shall be deceptive and misleading for any registered investment company which has as an investment adviser or distributor a bank or affiliated person thereof, to adopt, as part of the name, title, or logo of such company, or of any security of which it is the issuer, any word or design which is the same as or similar to, or a variation of, the name, title, or logo of such bank.* The Commission is authorized to bring an action in the proper district court of the United States or United States court of any Territory or other place subject to the jurisdiction of the United States alleging that the name or title of any registered investment company, or of any security which it has issued, is materially deceptive or misleading. If the court finds that the Commission's allegations in this respect, taking into consideration the history of the investment company and the length of time which it may have used any such name or title, are established, the court shall enjoin such investment company from continuing to use any such name or title.

* * * * * * *

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) * * *

(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] *issued 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 *that is* 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 that is not offered to the general public,* 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 contributions 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;

* * * * * * *

(11) Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within or, if a corporation, incorporated by and doing business within, such State or Territory[.]; *(12) Any security on which the payment of interest, principal, and any other amounts when due is guaranteed—*

(A) by an insurance contract described in paragraph (8) of this subsection, issued by a corporation which (i) has filed with the Commission such information as would be required to register a class of such corporation's securities under section 12 of the Securities Exchange Act of 1934, and (ii) after the filing of such information, files with the Commission such information as would be required pursuant to section 13 of that Act with respect to a class of securities registered pursuant to section 12 of that Act; or

(B) by a guarantee issued by a bank which (i) has filed with the appropriate regulatory agency (as that term is defined in section 3(a)(34) of that Act) such information as would be required to register a class of such bank's securities under section 12 of the Securities Exchange Act of 1934, and (ii) after the filing of such information, files with the Commission such information as would be required pursuant to section 13 of that Act with respect to a class of securities registered pursuant to section 12 of that Act;

subject to such rules and regulations as the Commission may prescribe in the public interest or for the protection of investors.

* * * * * * *

SECTION 304 OF THE TRUST INDENTURE ACT OF 1939

EXEMPTED SECURITIES AND TRANSACTIONS

SEC. 304. (a) The provisions of this title shall not apply to any of the following securities:

(1) * * *

* * * * * * *

(4)(A) any security exempted from the provisions of the Securities Act of 1933, as heretofore amended, by paragraph (2), (3), (4), (5), (6), (7), (8), [or] (11), *or (12)* of subsection 3(a) thereof;

* * * * * * *

SECTION 202 OF THE INVESTMENT ADVISERS ACT OF 1940

DEFINITIONS

SEC. 202. (a) When used in this title, unless the context otherwise requires—

(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) "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) "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;* (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.

* * * * * * *

COMMUNITY REINVESTMENT ACT OF 1977

TITLE VIII—COMMUNITY REINVESTMENT

SEC. 801. This title may be cited as the "Community Reinvestment Act of 1977."

SEC. 802. (a) The Congress finds that—

(1) [regulated financial institutions] *insured depository institutions* are required by law to demonstrate that their deposit facilities served the convenience and needs of the communities in which they are chartered to do business;

(2) the convenience and needs of communities include the need for credit services as well as deposit services; and

(3) [regulated financial institutions] *insured depository institutions* have continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.

(b) It is the purpose of this title to require each appropriate Federal [financial supervisory agency] *depository institutions regulatory agency* to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.

SEC. 803. For the purposes of this title—

(1) the term "appropriate Federal [financial supervisory agency] *depository institutions regulatory 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;

(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

(D) the Federal Home Loan Bank Board with respect to institutions the deposits of which are insured by the Federal Savings and Loan Insurance Corporation and to savings and loan holding companies;

(2) the term "[regulated financial institution] *insured depository institutions*" means an insured bank as defined in section 3 of the Federal Deposit Insurance Act or an insured institution as defined in section 401 of the National Housing Act; and

(3) the term "application for a deposit facility" means an application to the appropriate Federal [financial supervisory agency] *depository institutions regulatory agency* otherwise required under Federal law or regulations thereunder for—

(A) a charter for a national bank or Federal savings and loan association;

(B) deposit insurance in connection with a newly chartered State bank, savings bank, savings and loan association or similar institution;

(C) the establishment of a domestic branch or other facility with the ability to accept deposits of a [regulated financial institution] *insured depository institution;*

(D) the relocation of the home office or a branch office of a [regulated financial institution;] *insured depository institution;*

(E) the merger or consolidation with, or the acquisition of the assets, or the assumption of the liabilities of a [regulated financial institution] *insured depository institution* requiring approval under section 18(c) of the Federal Deposit Insurance Act or under regulations issued under the authority of title IV of the National Housing Act; or

(F) the acquisition of shares in, or the assets of, a [regulated financial institution] *insured depository institution* requiring approval under section 3 of the Bank Holding Company Act of 1956 or section 408(e) of the National Housing Act.

(4) A financial institution whose business predominately consists of serving the needs of military personnel who are not located within a defined geographic area may define its "entire community" to include its entire deposit customer base without regard to geographic proximity.

SEC. 804. In connection with its examination of a financial institution, the appropriate Federal [financial supervisory agency] *depository institutions regulatory agency* shall—

(1) assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution; and

(2) take such record into account in its evaluation of an application for a deposit facility by such institution.

SEC. 805. Each appropriate Federal [financial supervisory agency] *depository institutions regulatory agency* shall include in its annual report to the Congress a section outlining the actions it has taken to carry out its responsibilities under this title.

SEC. 806. Regulations to carry out the purposes of this title shall be published by each appropriate Federal [financial supervisory agency] *depository institutions regulatory agencys* and shall take effect no later than 390 days after the date of enactment of this title.

SEC. 807. NOTICE OF EXAMINATION.

(a) NOTICE REQUIRED.—When an examination of an insured depository institution begins under section 804(1), the appropriate Federal depository institutions regulatory agency shall publish a notice of the examination (on the same day such examination begins) in a newspaper of general circulation in the community in which such institution is located.

(b) CONTENTS OF NOTICE.—Any notice required under subsection (a) shall inform the public of its right to submit to the Federal de-

pository institutions regulatory agency any comments in writing or by interview with regard to the insured depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods.

(c) WEEKLY BULLETIN.—Each regional unit of each Federal depository institutions regulatory agency shall—

(1) prepare a weekly bulletin that lists all insured depository institutions within the region of such unit for which public notice under this section has been given since the publication of the preceding bulletin; and

(2) promptly mail a copy of such bulletin without charge to any person upon request.

SEC. 808. PERFORMANCE DATA COLLECTION.

(a) ESTABLISHMENT REQUIRED.—The appropriate Federal depository institutions regulatory agencies shall jointly develop a format for collecting data from insured depository institutions, in connection with examinations under section 804, concerning such institutions' record of meeting the credit needs of their local communities, including low- and moderate-income neighborhoods.

(b) VARIATION IN FORMAT.—The format for collecting performance data established under subsection (a) may vary for different size categories of institutions and may vary between bank and thrift institutions.

(c) REQUIRED DATA FOR LARGE DEPOSITORY INSTITUTIONS.—In the case of insured depository institutions with assets of $100,000,000 or more, the format established pursuant to subsection (a) shall collect performance data for, at a minimum, the following assessment factors:

(1) Housing loans in low- and moderate-income neighborhoods or equivalent areas.

(2) Small business and small farm loans.

(3) Financial investments in and contributions to local community development or redevelopment projects or entities, with separate subcategories for low- and moderate-income housing and small business projects or entities and further itemization by nonprofit and for-profit status.

(4) Participation in governmentally or privately sponsored loan insurance, guarantee, or subsidy programs for housing, small businesses, or small farms.

(5) The scope of efforts to market housing and small business loans in low- and moderate-income neighborhoods and minority neighborhoods.

(d) SIMPLIFIED DATA COLLECTION FOR CERTAIN DEPOSITORY INSTITUTIONS.—

(1) IN GENERAL.—In developing the format for collecting data under subsection (a) as such format relates to depository institutions with total assets of $25,000,000 or less and agricultural depository institutions with total assets of $50,000,000 or less, the special nature and the limited resources of such depository institutions shall be taken into account.

(2) AGRICULTURAL DEPOSITORY INSTITUTIONS DEFINED.—For purposes of paragraph (1), the term "agricultural depository institution" means any depository institution which has 25 per-

cent or more of its loan assets in agricultural loans or real estate loans made by such institution to customers located in the market area served by such institution.

(3) AGRICULTURAL LOAN DEFINED.—For purposes of paragraph (2), the term "agricultural loan" means—

(A) any loan made to finance the production of agricultural products or livestock in the United States;

(B) any loan secured by farmland or farm machinery in the United States; and

(C) any other category of loans which the appropriate Federal depository institutions regulatory agency determines have been made for agricultural purposes.

SEC. 809. WRITTEN EVALUATIONS.

(a) REQUIRED.—

(1) IN GENERAL.—Upon the conclusion of each examination of an insured depository institution under section 804, the appropriate Federal depository institutions regulatory agency shall prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods.

(2) PUBLIC AND CONFIDENTIAL SECTIONS.—Each written evaluation required under paragraph (1) shall have an public section and a confidential section.

(b) PUBLIC SECTION OF REPORT.—

(1) FINDINGS AND CONCLUSIONS.—The public section of the written evaluation shall—

(A) state the appropriate Federal depository institutions regulatory agency's conclusions for each assessment factor identified in the regulations prescribed by the Federal depository institutions regulatory agencies to implement this Act; and

(B) discuss the facts supporting such conclusions, including the information contained in the data collection format established pursuant to section 808.

(2) EMPHASIS ON SPECIFIC TYPES OF CREDIT.—The statement, discussion, supporting facts, and conclusions shall place special emphasis on the insured depository institution's record of serving the housing credit needs of low- and moderate-income persons, small business credit needs, and small farm credit needs.

(3) ASSIGNED NUMERICAL RATING.—The public section shall also contain the institution's numerical rating required by section 810 and a statement describing the basis for the rating.

(4) SUBMISSION TO DEPOSITORY INSTITUTION.—The open section and the corresponding data performance format required by section 808 shall be submitted to the institution and made available to the public.

(c) CONFIDENTIAL SECTION OF REPORT.—

(1) PRIVACY OF NAMED INDIVIDUALS.—The confidential section of the written evaluation shall contain all references that identify any customer of the institution, any employee or officer of the institution, any person or organization that has provided information in confidence to a Federal or State depository institutions regulatory agency.

(2) OTHER TOPICS NOT SUITABLE FOR DISCLOSURE.—The confidential section shall also contain any inflammatory statements or other such statements which, in the judgment of the appropriate Federal depository institutions regulatory agency, are not properly subject to disclosure to the institution or the public.

(3) NONDISCLOSURE TO DEPOSITORY INSTITUTION.—The confidential section shall not be disclosed to the institution or the public, unless the appropriate Federal depository institutions regulatory agency determines that such disclosure would be in the public interest.

SEC. 810. PERFORMANCE RATING SYSTEM.

(a) GUIDELINES REQUIRED TO BE DEVELOPED.—

(1) IN GENERAL.—The Federal depository institutions regulatory agencies shall jointly develop and publish rating guidelines for assigning a numerical rating to an insured depository institution's performance in meeting the credit needs of its entire community, including low- and moderate-income neighborhoods.

(2) RATING METHODOLOGY.—The underlying goal of the rating process shall be to measure the extent to which an insured depository institution is committing financial and managerial resources to community reinvestment activities. The rating guidelines shall expect—

(A) comparable resource commitments from institutions within the same size category; and

(B) institutions located in distressed areas where credit needs are more extreme to be held to equivalent levels of resource commitments as institutions in communities with stronger economies.

(3) PUBLIC NOTICE AND OPPORTUNITY TO COMMENT.—Before developing and publishing the guidelines under paragraph (1), the appropriate Federal depository institutions regulatory agencies shall—

(A) provide public notice in a manner appropriate to achieve broad public knowledge of—

(i) the requirements of paragraphs (1) and (2);

(ii) the period for submitting comments under subparagraph (B); and

(iii) the time and location of the public hearings required under subparagraph (C);9

(B) solicit public comment on the issues which are relevant to the development of rating guidelines; and

(C) conduct a separate public hearing at the head office of each Federal Reserve bank on the issues which are relevant to the development of rating guidelines.

(4) ANNUAL REVIEW.—The Federal depository institutions regulatory agencies shall annually review, and revise when appropriate, the rating guidelines established under paragraph (1).

(5) VIEWS OF COMMUNITY REVIEW BOARDS AND CONSUMER AND COMMUNITY GROUPS.—Any review under paragraph (4) shall take into account the views of—

(A) the community review boards established pursuant to section 412 of the Depository Institutions Act of 1988 by the Federal Reserve banks; and

(B) interested community and consumer groups.

(b) NUMERICAL RATING.—

(1) ASSIGNMENT REQUIRED.—Based on the guidelines established under subsection (a), the appropriate Federal depository institutions regulatory agency shall assign a numerical rating to an institution's record of performance in meeting the credit needs of its entire community, including low- and moderate-income neighborhoods.

(2) TIME OF ASSIGNMENT.—The numerical rating required under paragraph (1) shall be assigned upon the completion of an assessment of the institution pursuant to section 804 of this title.

(3) SUBSEQUENT MODIFICATION FOR APPLICATION PURPOSES.—In considering an application for a deposit facility, an application described in subsection (a)(1) or (e) of section 11 of the Bank Holding Company Act of 1956, or an application described in paragraph (1)(A) or (5) of section 408(u) of the National Housing Act, the appropriate Federal depository institutions regulatory agency, the Board of Governors of the Federal Reserve System (in the case of a bank holding company), or the Federal Savings and Loan Insurance Corporation (in the case of a savings and loan holding company), as the case may be—

(A) shall review the numerical rating assigned under section 804 to any insured depository institution involved with respect to such application; and

(B) may, based on the record developed in the application proceeding, modify such rating for the purpose of acting on such application.

(c) PERFORMANCE SCALE.—

(1) RELATIVE RANKINGS REQUIRED.—Any community reinvestment rating assigned under this subsection with respect to any insured depository institution shall reflect such institution's community reinvestment performance on a comparative basis relative to the community reinvestment performances of other insured depository institutions with similar resources.

(2) 5-GRADE PERFORMANCE SCALE.—The numerical rating assigned with respect to any insured depository institution shall be determined on the basis of the following 5-grade performance rating scale:

(A) 1-excellent.

(B) 2-good.

(C) 3-average.

(D) 4-limited effort.

(E) 5-poor or substantial noncompliance.

SEC. 811. ACTIVITIES OF NONBANK SUBSIDIARIES.

In assessing, compiling data on, or rating the performance of an insured depository institution under this Act or for purposes of the consideration of an application for a deposit facility, an application or notice described in section 11(a)(1) of the Bank Holding Company Act, or an application described in section 408(u)(1)(A) of the Na-

tional Housing Act, a Federal depository insitutions regulatory agency may take into consideration—

(1) the activities of the insured depository institution's parent holding company or nonbank or nonthrift instituion affiliates which help to meet the credit needs of the insured depository institution's local community, including low- and moderate-income neighborhoods; and

(2) the activities of any community development corporation—

(A) which is sponsored by such insured depository institution or the holding company which controls such insured depository institution; and

(B) the activities of which are targeted to meet the credit needs of low- and moderate-income persons or small businesses or low- and moderate-income neighborhoods or equivalent areas.

SEC. 812. ANNUAL REPORT TO CONGRESS.

Before March 1 of each calendar year, the appropriate Federal depository institutions regulatory agencies shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing a compilation of the data collected during the preceding calendar year under sections 807 through 811 of this Act.

HOME OWNERS' LOAN ACT OF 1933

* * * * * * *

FEDERAL SAVINGS AND LOAN ASSOCIATION

SEC. 5. (a) * * *

* * * * * * *

(d)(1) The Board shall have power to enforce this section and rules and regulations made hereunder. In the enforcement of any provision of this section or rules and regulations made hereunder, or any other law or regulation, or in any other action, suit, or proceeding to which it is a party or in which it is interested, and in the administration of conservatorships and receiverships, the Board is authorized to act in its own name and through its own attorneys. Except as otherwise provided herein, the Board shall be subject to suit (other than suits on claims for money damages) by any Federal savings and loan association or director or officer thereof with respect to any matter under this section or any other applicable law, or rules or regulations thereunder, in the United States district court for the judicial district in which the home office of the association is located, or in the United States District Court for the District of Columbia, and the Board may be served with process in the manner prescribed by the Federal Rules of Civil Procedure.

(2)(A) * * *

* * * * * * *

(C) This paragraph and paragraphs (3), (4), (5), (7), (8), (9), (10), (12) (A) and (B), (13), and (14) of this subsection (d) shall apply to any

savings and loan holding company or to any subsidiary (other than an association of a savings and loan holding company, as those terms are defined in section 408 of the National Housing Act (12 U.S.C. 1730a), as amended, and to any [affiliate service corporation of an association] *service corporation of an association or subsidiary of such service corporation, whether wholly or partly owned* in the same manner as they apply to an association.

(D) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.—The authority to issue an order under this subsection which requires an association, or any director, officer, or other person participating in the conduct of the affairs of an association, to take affirmative action to correct any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such association, officer, director, or other person to—

(i) make restitution or provide reimbursement if—

(I) such association, officer, director, or other person was unjustly enriched in connection with such violation or practice; or

(II) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Board;

(ii) provide indemnification or a guarantee against loss;

(iii) rescind agreements or contracts;

(iv) dispose of any loan or asset involved;

(v) take such other action as the Board determines to be appropriate.

(E) AUTHORITY TO LIMIT ACTIVITIES.—The authority to issue an order under this paragraph or paragraph (3) includes the authority to place limitations on the activities or functions of an association, or any director, officer, or other person participating in the conduct of the affairs of an association.

(3)(A) * * *

* * * * * * *

(D) INCOMPLETE OR INACCURATE RECORDS.—

(i) TEMPORARY ORDER.—If a notice of charges served under paragraph (2)(A) specifies that an association's books and records are so incomplete or inaccurate that the Board is unable (with reasonable effort and because of the particular facts and circumstances stated in the notice) to determine the financial condition of that association or the details or purpose of any transaction or transactions that may have a substantial effect on the financial condition of that association, the Board may issue a temporary order requiring—

(I) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or record; or

(II) affirmative action to restore such books or records to a complete and accurate state,

until the completion of the proceedings under paragraph (2)(A).

(ii) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A) shall—

(I) become effective upon service; and

(II) unless set aside, limited, or suspended by a court in proceedings under subparagraph (B), shall remain in effect and enforceable until the earlier of the completion of the proceeding initiated under paragraph (2)(A) in connection with the notice of charge, or the date the Board determines, by examination or otherwise, that the association's books and records are accurate and capable of reflecting the financial condition of the association.

(4)[(A) Whenever, in the opinion of the Board, any director or officer of an association has committed any violation of law, rule, or regulation or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the association, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the Board determines that the association has suffered or will probably suffer substantial financial loss or other damage or that the interests of its savings account holders could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, or that the director or officer has received financial gain by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, or a willful or continuing disregard for the safety or soundness of the association, the Board may serve upon such director or officer a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affair of the association.] *(A) AUTHORITY TO ISSUE ORDER.—Whenever the Board determines that—*

(i) any director, officer, or other person participating in the conduct of the affairs of an association has, directly or indirectly—

(I) violated any law or regulation, any cease-and-desist order which has become final, any condition imposed in writing by the Board in connection with the grant of any application or other request by such association, or any written agreement between such association and the Board;

(II) engaged or participated in any unsafe or unsound practice in connection with any association or business institution; or

(III) committed or engaged in any act, omission, or practice which constitutes a breach of such person's fiduciary duty;

(ii) by reason of the violation, practice, or breach described in clause (i)—

(I) such association or business institution has suffered or will probably suffer financial loss or other damage;

(II) the interests of the association's depositors have been or could be seriously prejudiced; or

(III) such director, officer, or other person has received financial gain by reason of such violation, practice, or breach; and

(iii) such violation, practice, or breach—

(I) involves personal dishonesty on the part of such director, officer, or other person; or

(II) demonstrates willful or continuing disregard by such director, officer, or other person for the safety or soundness of such association or business institution,

the Board may serve upon such officer, director, or other persons a written notice of the Board's intention to remove such person from office or to prohibit any further particiation, by such person, in any manner in the conduct of the affairs of any association.

[(B) Whenever, in the opinion of the Board, any director or officer of an association, by conduct or practice with respect to another savings and loan association or other business institution which resulted in substantial financial loss or other damage, has evidence either his personal dishonesty or willful or continuing disregard for its safety and soundness, and, whenever, in the opinion of the Board, any other person participating in the conduct of the affairs of an association, by conduct or practice with respect to such association or other savings and loan association or other business institution which resulted in susbstantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to participate in the conduct of the affairs of such association, the Board may serve upon such director, officer, or other person a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the association.]

[(C)] *(B)* Whenever, in the opinion of the Board, any director or officer of an association has committed a violation of the Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.), the Board may serve upon such director or officer a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the association.

(C) TEMPORARY ORDER.—

(i) SUSPENSION OR PROHIBITION AUTHORIZED.—If the Board serves written notice under subparagraph (A) or (B) to any director, officer, or other person participating in the conduct of the affairs of an association of the Board's intention to issue a temporary order under such subparagraph, the Board may suspend such director, officer, or other person from office or prohibit such person from further participation in any manner in the conduct of the affairs of the association, if the Board—

(I) determines that such action is necessary for the protection of the association or the interests of the association's depositors; and

(II) serves such person with written notice of the order.

(ii) EFFECTIVE PERIOD.—Any temporary order issued under clause (i) shall—

(I) become effective upon service; and

(II) unless a court issues a stay of such order under subparagraph (E), shall remain in effect and enforceable until the date the Board dismisses the charges contained in the notice served under subparagraph (A) or (B) with respect to

such person, or the effective date of an order issued by the agency to such person under subparagraph (A) or (B).

(iii) COPY OF ORDER.—If the Board issues a temporary order under clause (i) to any director, officer, or other person participating in the conduct of the affairs of an association, the Board shall serve a copy of such order on any association with which such director, officer, or other person is associated at the time such order is issued.

[(D) In respect to any director or officer of an association or any other person referred to in subparagraph (A), (B), or (C) of this paragraph, the Board may, if it deems it necessary for the protection of the association or the interests of its savings account holders, by written notice to such effect served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the association. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subparagraph (F) of this paragraph, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under subparagraph (A), (B), or (C) of this paragraph and until such time as the Board shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the association of which he is a director or officer or in the conduct of whose affairs he has participated.]

[(E)] *(D)* A notice of intention to remove a director, officer, or other person from office and/or to prohibit his participation in the conduct of the affairs of an association, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Board at the request of (i) such director, officer, or other person, and for good cause shown, or (ii) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal and/or prohibition. In the event of such consent, or if upon the record made at any such hearing the Board shall find that any of the grounds specified in such notice has been established, the Board may issue such orders of suspension or removal from office, and/or prohibition from participation in the conduct of the affairs of the association, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such association and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

[(F)] *(E)* Within ten days after any director, officer, or other person has been suspended from office and/or prohibited from par-

ticipation in the conduct of the affairs of an association under subparagraph [(D)] *(C)* of this paragraph, such director, officer, or other person may apply to the United States district court for the judicial district in which the home office of the association is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, or other person under subparagraph [(A), (B), or (C)] *(A) or (B)* of this paragraph, and such court shall have jurisdiction to stay such suspension and/or prohibition.

(F) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES ALLOWED.—Any order issued under this paragraph may specifically prohibit the person to whom such order is issued from engaging in an activity described in any clause of paragraph (12)(A).

(G) INDUSTRYWIDE PROHIBITION.—

(i) IN GENERAL.—Except as provided in clause (ii), no person who, pursuant to an order issued under this paragraph, has been removed or suspended from office in an association or prohibited from participating in the conduct of the affairs of an association may, while such order is in effect, continue or commence to hold any office in, or participate in the conduct of the affiars of—

(I) any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act);

(II) any institution treated as an insured bank under subsection 8(b)(3) of the Federal Deposit Insurance Act for purposes of section 8 of such act;

(III) any other association;

(IV) any institution treated as an association under paragraph (2)(C) for purposes of this subsection;

(V) any insured institution (as defined in section 401(a) of the National Housing Act);

(VI) any institution treated as an insured institution under section 407(e)(3) of the National Housing Act for purposes of section 407 of such Act; or

(VII) any insured credit union (as defined in section 101(7) of the Federal Credit Union Act).

(ii) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this paragraph which removes or suspends from office any director, officer, or other person participating in the conduct of the affairs of an association or prohibits such director, officer, or other person from participating in the conduct of the affairs of an association, such director, officer, or other person receives the written consent of the appropriate Federal depository institution regulatory agency of any institution described in any clause of clause (i) to continue or commence to hold any office in, or participate in the conduct of the affairs of, such institution, clause (i) shall cease to apply to such director, officer, or other person with respect to the institution described in written consent as of the date such consent is received by the director, officer, or other person.

(iii) VIOLATION OF SUBPARAGRAPH TREATED AS VIOLATION OF ORDER.—Any violation of clause (i) by the person who is subject

to the order described in such clause shall be treated as a violation of the order.

(iv) HEARING; JUDICIAL REVIEW.—

(I) REQUEST FOR HEARING.—Any person who is subject to an order issued by an appropriate Federal depository institution regulatory agency under this paragraph or any similar provision of law applicable with respect to such agency which has the effect (under such provision of law) of prohibiting such person from continuing or commencing to hold any office in, or participate in the conduct of the affairs of, any institution describe in any subclause of clause (i) and who is denied permission by the Board under clause (ii) to continue to commence to hold any office in, or participate in the conduct of the affairs of an association may request a hearing with respect to the denial of such written consent.

(II) PROCEDURE FOR HEARING.—Any hearing requested under subclause (I) shall be held and conducted in the same manner as a hearing requested under paragraph (5)(C).

(III) JUDICIAL REVIEW.—Any party to a proceeding under subclause (II) may obtain judicial review of the determination in the manner provided in paragraph (7)(B).

(v) APPROPRIATE FEDERAL DEPOSITORY INSTITUTION REGULATORY AGENCY DEFINED.—For purposes of this subparagraph and paragraph (12)(A), the term "appropriate Federal depository institution regulatory agency" means—

(I) the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act), in the case of an insured bank (as defined in section 3(h) of such Act) and any institution treated as an insured bank under section 8(b)(3) of such Act;

(II) the Board, in the case of an association and any institution treated as an association under paragraph (2)(C);

(III) the Federal Savings and Loan Insurance Corporation, in the case of an in sured institution (as defined in section 401(a) of the National Housing Act) and institution treated as an insured institution under section 407(e)(3) of the National Housing Act; and

(IV) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act).

(vi) CONSULTATION WITH ISSUING AGENCY.—Before providing written consent under clause (ii) to any person with respect to whom an order described in such clause was issued, the Board shall consult with the appropriate Federal depository institution regulatory agency which issued the order (if other than the Board).

(H) NOTICE UNDER THIS PARAGRAPH AFTER SEPARATION FROM SERVICE.—The Board may serve notice under subparagraph (A) or (B) of the Board's intention to prohibit any person from participating in the conduct of the affairs of any association, notwithstanding the fact that such person has ceased to hold the position of officer or director of an association or has ceased to participate in the con-

duct of the affairs of such association, as the case may be, before such notice is served if such notice is served before the end of the 3-year period beginning on the date such person ceased to hold such position or to participate in the conduct of the affairs of such association.

(5)(A) Whenever any director or officer of an association, or other person participating in the conduct of the affairs of such association, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the Board may, if continued service or participation by the individual may pose a threat to the interests of the association's depositors or may threaten to impair public confidence in the association, by written notice served upon such director, officer, or other person suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the association. A copy of such notice shall also be served upon the association. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Board. In the event that a judgment of conviction with respect to such crime is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Board may, if continued service or participation by the individual may pose a threat to the interests of the association's depositors or may threaten to impair public confidence in the association, issue and serve upon such director, officer, or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the association except with the consent of the Board. A copy of such order shall also be served upon such association, whereupon such director or officer shall cease to be a director or officer of such association. A finding of not guilty or other disposition of the charge shall not preclude the Board from thereafter instituting proceedings to remove such director, officer, or other person from office or to prohibit further participation in association affairs, pursuant to subparagraph [(A), (B), (C), or (D)] *(A), (B), or (C)* of paragraph (4). Any notice of suspension or order of removal issued under this subparagraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under subparagraph (C) hereof unless terminated by the Board.

* * * * * * *

(7)(A) * * *

(B) Any party to the proceeding, [or] any person required by an order issued under this subsection to cease and desist from any of the violations or practices stated therein, *and any person subject to an order issued pursuant to the hearing requested in accordance with paragraph (4)(G)(iv)(I)* may obtain a review of any order served pursuant to subparagraph (A) of this paragraph (other than an order issued with the consent of the association or the director or officer or other person concerned, or an order issued under paragraph (5)(A) of this subsection[, by filing] *or the order issued pur-*

suant to the hearing requested in accordance with subsection (e)(7)(D)(i) by the filing in the court of appeals of the United States for the circuit in which the home office of the association is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Board be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said subparagraph (A) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Board. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the 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 of the United States Code.

* * * * * * *

(8)(A) * * *

(B)(i) Any association which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such an association who violates the terms of any order which has become final and was issued pursuant to [paragraph (2), (3), or (16)] *paragraph (2), (3), (4), (5)(A), or (16)* of this subsection, shall forfeit and pay a civil penalty of not more than [$1,000] *$2,500* per day for each day during which such violation continues: *Provided,* That the Board may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Board by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

* * * * * * *

(C) CIVIL MONEY PENALTIES FOR CERTAIN VIOLATIONS OTHER THAN VIOLATIONS OF ORDERS.—

(i) PENALTY IMPOSED.—Any association which, and any director or officer of any association or other person participating in the conduct of the affairs of an association who, has violated—

(I) any law or regulation (the violation of which by such association, officer, director, or other person is not otherwise subject to a civil money penalty);

(II) any condition imposed in writing by the Board in connection with the grant of any application or other request by such association; or

(III) any written agreement between such association and Board,

shall forfeit and pay a civil penalty of not more than $2,500 for each day such violation continue.

(ii) PROCEDURE.—Any penalty imposed under clause (i) shall be assessed, determined, reviewed, and collected in the manner provided in subparagraph (B) for any penalty imposed under such subparagraph.

(iii) COORDINATION WITH PARAGRAPHS (2), (3), (4), AND (16) AND SUBPARAGRAPH (B).—

(I) PENALTY NOT EXCLUSIVE OF ANY ORDER.—The assessment of any penalty under clause (i) with respect to any violation shall not preclude the Board from issuing any order under paragraph (2), (3), (4), or (16) with respect to such violation or taking any other action authorized by any such paragraph with respect to such violation.

(II) PROHIBITION OF DOUBLE ASSESSMENT.—No penalty may be imposed under clause (i) for any violation for which a penalty is imposed under subparagraph (B).

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(12) [(A) Any director or officer, or former director or officer, of an association, or any person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under paragraph (4)(D), (4)(E), (5)(A), or (5)(C) of this subsection, and who (i) participates in any manner in the conduct of the affairs of such association, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorization in respect of any voting rights in such association, or (ii) without the prior written approval of the Board, votes for a director or serves or acts as a director, officer, or employee of any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.] *(A) CRIMINAL PENALTY FOR VIOLATION OF CERTAIN ORDERS.—Any person against whom there is outstanding and effective any order issued under paragraph (4) or (5) who, directly or indirectly and without the prior written approval of the appropriate Federal depository institution regulatory agency (as defined in paragraph (4)(G)(v))—*

(i) participates in any manner in the conduct of the affairs of—

(I) any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act);

(II) any company or organization treated as an insured bank under section 8(b)(3) of the Federal Deposit Insurance Act for purposes of section 8 of such Act;

(III) any association;

(IV) any insured institution (as defined in section 401(a) of the National Housing Act);

(V) any institution treated as an insured institution under section 407(e)(3) of the National Housing Act for purposes of section 407 of such Act; or

(VI) any insured credit union (as defined in section 101(7) of the Federal Credit Union Act),

from which such person has been suspended or removed or the conduct of the affairs of which such person has been prohibited

from participating pursuant to such order or by operation of paragraph (4)(G) (with respect to such order);

(ii) solicits or procures, or transfers or attempts to transfer, votes or attempts to vote any proxy, consent, or authorization in respect to any voting rights in any institution described in clause (i); or

(iii) votes for a director, or serves or acts as a director or officer or otherwise particpates in any manner in the conduct of the affairs of any institution described in clause (i),

shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than $5,000 or imprisoned for not more than one year, or both.

[(B) Except with the prior written consent of the Board, no person shall serve as a director, officer, or employee of an association who has been convicted, or who is hereafter convicted, of a criminal offense involving dishonesty or a breach of trust. For each willful violation of this prohibition, the association involved shall be subject to a penalty of not more than $100 for each day this prohibition is violated, which the Board may recover by suit or otherwise for its own use.]

(B) CIVIL MONEY PENALTY FOR UNAUTHORIZED PARTICIPATION BY CERTAIN CONVICTED INDIVIDUALS.—

(i) PROHIBITION.—Except with the written consent of the Board, no person who has been convicted of any criminal offense involving dishonesty or a breach of trust may serve as the director, officer, or employee of an association or participate in the conduct of the affairs of such association.

(ii) CIVIL MONEY PENALTY.—For each willful violation of clause (i), the association or the individual involved shall each be subject to a penalty of not more than $2,500 for each day such prohibition is violated, which the Board may recover for its use.

* * * * * * *

(17) PERSON PARTICIPATING IN THE CONDUCT OF THE AFFAIRS OF AN ASSOCIATION DEFINED.—

(A) IN GENERAL.—For purposes of this section, the term "person participating in the conduct of the affairs of an association" includes any empoloyee, agent, or stockholder of an association, or any affiliate of such association, and such other persons as the Board may prescribe by regulations.

(B) AFFILIATE.—For purposes of the definition contained in subparagraph (A), the term "affiliate"—

(i) has the meaning given to such term in section 408(a)(1)(I) of the National Housing Act; and

(ii) includes any service corporation in which an association has an ownership interest and any subsidiary (as defined in section 408(a)(1)(H) of the National Housing Act) of such corporation.

(18) PUBLIC DISCLOSURE OF NOTICES AND FINAL ORDERS.—

(A) IN GENERAL.—The Board shall publish and make available to the public—

(i) Any final order issued with respect to any enforcement proceeding initiated by the Board against any association

or individual under this subsection or any other provision of law; and

(ii) any modification to or termination of any final order described in clause (i) of this subparagraph.

(B) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the Board makes a determination in writing that the publication of any final order pursuant to subparagraph (A) would seriously threaten the safety and soundness of an association or other federally regulated depository institution, the Board may delay the publication of such notice for a reasonable time.

* * * * * * *

(t) REPORTS OF CONDITION; PENALTIES.—

(1) REPORTS OF CONDITION.—Each association shall make reports of condition to the Board which shall be in such form and shall contain such information as the Board may require.

(2) PUBLICATION.—The Board may require reports of condition to be published in such manner as the Board may direct.

(3) PENALTY FOR FAILURE TO REPORT.—Any association which—

(A) fails to submit or publish any report or information required by the Board under paragraph (1) or (2) within the period of time specified by the Board; or

(B) submits or publishes any false or misleading report or information,

shall be subject to a penalty of not more than $1,000 for each day during which such failure continues or such false or misleading report or information is not corrected.

(4) ASSESSMENT.—Any penalty imposed under paragraph (3) shall be assessed and collected by the Board in the manner provided in subsection (d)(8)(B) (for penalties imposed under such subsection) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

(5) ACCESS FOR FSLIC.—The Federal Savings and Loan Insurance Corporation shall have access to reports of condition made to the Board pursuant to paragraph (1) and any revision made to any such report.

* * * * * * *

SEC. 11. ASSOCIATION BRANCH CLOSINGS.

(a) NOTICE TO BOARD REQUIRED.—In the case of any association which proposes to close any branch of such association, the association shall provide written notice of such proposed action to the Board not less than 90 days and not more than 180 days before such action is to occur.

(b) NOTICE TO CUSTOMERS.—

(1) NOTICE REQUIRED.—In the case of any association which proposes to close any branch of such association, the association shall provide—

(A) notice of such proposed action to customers of such branch in the manner described in paragraph (2); and

(B) the mailing address of the Board and a statement that comments on the proposed closing of such branch may be mailed to the Board.

(2) METHOD.—Any notice required to be provided under paragraph (1) shall be provided in the following manner:

(A) POSTED ON BRANCH PREMISES.—A general notice of the plan to close a branch and the date such action is planned shall be posted in a conspicuous place on the premises of such branch not later than the date written notice is provided to the Board pursuant to subsection (a).

(B) NOTICE IN STATEMENT OF ACCOUNT.—Notice of such plan shall be inserted in at least 1 of any periodic statements of account which are mailed—

(i) to any person who maintains an account at such branch; and

(ii) during the period beginning 180 days before the date such action is to occur and ending 90 days before such date.

(c) SUBSEQUENT INFORMATION REQUIREMENTS.—Unless no comments or only frivolous comments are received by the Board with respect to any plan to close a branch of an association before the end of the 30-day period beginning on the date written notice is provided by the association of such proposed action to the Board under subsection (a), the Board shall require such association to provide—

(1) a detailed statement of the reasons for the decision to close such branch;

(2) any statistical or other information in support of such reasons;

(3) a financial analysis of deposit activity at such branch during the 3-year period ending on the date of such notice (including the number of accounts, total dollar amounts of deposits, and profits and losses on such deposit activity), and a projection of the deposit activity that could be expected at such branch in the future if the branch were to remain open;

(4) a financial analysis of loan activity at such branch during the 3-year period ending on the date of such notice (including profits and losses on such loan activity), and a projection of the loan activity that could be expected at such branch in the future if the branch were to remain open;

(5) a detailed map of the area served by the branch showing the location of all other branches of depository institutions located within such area and the distance of each such branch from the branch proposed to be closed; and

(6) a description of, and the location of, any limited of full-service facility which the association plans to establish in such area or which the association has reason to believe another depository institution plans to establish in such area.

(d) ACTION REQUIRED OF BOARD.—

(1) DETERMINATION ON AVAILABILITY OF SERVICES.—Whenever the Board receives any notice under subsection (a) with respect to any plan to close a branch of an association, the Board shall determine whether the closing of such branch will result in a significant reduction in the availability of services of depository institutions in the area in which such branch is located.

(2) ASSISTANCE TO COMMUNITY.—If the Board determines that the closing of a branch will result in a significant reduction in the availability of services of depository institutions in the area in which such branch is located, the Board shall consult with leaders in the affected area, and with such other depository institutions as the Board may determine to be appropriate, to explore the feasiblity of replacing such branch with adequate banking facilities, including the establishment of a community development credit union.

(e) EXCEPTION IN CASE OF EMERGENCY ACQUISITION.—This section shall not apply with respect to the closing of a branch of an association pursuant to an order of—

(1) the Board placing the association in receivership; or

(2) the Board or the Federal Savings and Loan Insurance Corporation authorizing another company to acquire (as such term is defined in section 13(f)(8)(E) of the Federal Deposit Insurance Act) control of such association in connection with a transaction under section 408(m) of the National Housing Act if the closing of such branch is necessary to facilitate such acquisition.

(f) DEFINITIONS.—

(1) BRANCH DEFINED.—For purposes of this section, the term "branch" has the same meaning with respect to associations as such term has under section 5155(f) of the Revised Statutes with respect to national banking associations.

(2) DEPOSITORY INSTITUTION.—For purposes of this section, the term "depository institution" has the meaning given to such term in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act.

SEPARABILITY PROVISION

SEC. [11.] *12.* 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. (12 U.S.C. 1468)

CONSUMER CREDIT PROTECTION ACT

* * * * * * *

TITLE I—CONSUMER CREDIT COST DISCLOSURE

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§ 101. Short title

This title may be cited as the Truth in Lending Act.

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CHAPTER 2—CREDIT TRANSACTIONS

Sec.
121. General requirement of disclosure.
122. Form of disclosure; additional information.
123. Exemption for State-regulated transactions.

* * * * * * *

§ 122. Form of disclosures; additional information

(a) Information required by this title shall be disclosed clearly and conspicuously, in accordance with regulations of the Board. The terms "annual percentage rate" and "finance charge" shall be disclosed more conspicuously than other terms, data, or information provided in connection with a transaction, except information relating to the identity of the creditor. Regulations of the Board need not require that disclosures pursuant to this title be made in the order set forth in this title and, except as otherwise provided, may permit the use of terminology different from that employed in this title if it conveys substantially the same meaning.

(b) Any creditor or lessor may supply additional information or explanation with any disclosures required under chapters 4 and 5 and, except as provided in [section] *sections 127A(b)(3) and* 128(b)(1), under this chapter.

* * * * * * *

§ 127. Open end consumer credit plans

(a) Before opening any account under an open end consumer credit plan, the creditor shall disclose to the person to whom credit is to be extended each of the following items, to the extent applicable;

(1) * * *

* * * * * * *

(8) In the case of any account under an open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, any information which—

(A) is required to be disclosed under section 127A(a); and

(B) the Board determines is not described in any other paragraph of this subsection.

* * * * * * *

SEC. 127A. DISCLOSURE REQUIREMENTS FOR OPEN END CONSUMER CREDIT PLANS SECURED BY THE CONSUMER'S PRINCIPAL DWELLING.

(a) APPLICATION DISCLOSURES.—In the case of any open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, the creditor shall make the following disclosures in accordance with subsection (b):

(1) FIXED ANNUAL PERCENTAGE RATE.—Each annual percentage rate imposed in connection with extensions of credit under the plan and a statement that such rate does not include costs other than interest.

(2) VARIABLE PERCENTAGE RATE.—In the case of a plan which provides for variable rates of interest on credit extended under the plan—

(A) a description of the manner in which such rate will be computed and a statement that such rate does not include costs other than interest;

(B) a description of the manner in which any changes in the annual percentage rate will be made, including—

(i) any negative amortization and interest rate carryover;

(ii) the timing of any such changes;

(iii) any index or margin to which such changes in the rate are related; and

(iv) a source of information about any such index;

(C) if an initial annual percentage rate is offered which is not based on an index—

(i) a statement of such rate and the period of time such initial rate will be in effect; and

(ii) a statement that such rate does not include costs other than interest;

(D) a statement that the consumer should ask about the current index value and interest rate;

(E) a statement of the maximum amount by which the annual percentage rate may change in any 1-year period or a statement that no such limit exists;

(F) a statement of the maximum annual percentage rate that may be imposed at any time under the plan;

(G) subject to subsection (b)(3), a table, based on a $10,000 extension of credit, showing how the annual percentage rate and the minimum periodic payment amount under each repayment option of the plan would have been affected during the preceding 15-year period by changes in any index used to compute such rate;

(H) a statement of—

(i) the maximum annual percentage rate which may be imposed under each repayment option of the plan;

(ii) the minimum amount of any periodic payment which may be required, based on a $10,000 outstanding balance, under each such option when such maximum annual percentage rate is in effect; and

(iii) the earliest date by which such maximum annual interest rate may be imposed; and

(I) a statement that interest rate information will be provided on or with each periodic statement.

(3) OTHER FEES IMPOSED BY THE CREDITOR.—An itemization of any fees imposed by the creditor in connection with the availability or use of credit under such plan, including annual fees, application fees, transaction fees, and closing costs (including costs commonly described as "points"), and the time when such fees are payable.

(4) ESTIMATES OF FEES WHICH MAY BE IMPOSED BY THIRD PARTIES.—

(A) AGGREGATE AMOUNT.—An estimate, based on the creditor's experience with such plans and stated as a single amount or as a reasonable range, of the aggregate amount of additional fees that may be imposed by third parties (such as governmental authorities, appraisers, and attorneys) in connection with opening an account under the plan.

(B) STATEMENT OF AVAILABILITY.—A statement that the consumer may ask the creditor for a good faith estimate by the creditor of the fees that may be imposed by third parties.

(5) STATEMENT OF RISK OF LOSS OF DWELLING.—A statement that—

(A) any extension of credit under the plan is secured by the consumer's dwelling; and

(B) in the event of any default, the consumer risks the loss of the dwelling.

(6) CONDITIONS TO WHICH DISCLOSED TERMS ARE SUBJECT.—

(A) PERIOD DURING WHICH SUCH TERMS ARE AVAILABLE.—A clear and conspicuous statement—

(i) of the time by which an application must be submitted to obtain the terms disclosed; or

(ii) if applicable, that the terms are subject to change.

(B) RIGHT OF REFUSAL IF CERTAIN TERMS CHANGE.—A statement that—

(i) the consumer may elect not to enter into an agreement to open an account under the plan if any term changes (other than a change contemplated by a variable feature of the plan) before any such agreement is final; and

(ii) if the consumer makes an election described in clause (i), the consumer is entitled to a refund of all fees paid in connection with the application.

(C) RETENTION OF INFORMATION.—A statement that the consumer should make or otherwise retain a copy of information disclosed under this subparagraph.

(7) RIGHTS OF CREDITOR WITH RESPECT TO EXTENSIONS OF CREDIT.—A statement that—

(A) under certain conditions, the creditor may terminate any account under the plan and require immediate repayment of any outstanding balance, prohibit any additional extension of credit to the account, or reduce the credit limit applicable to the account; and

(B) the consumer may receive, upon request, more specific information about the conditions under which the creditor may take any action described in subparagraph (A).

(8) REPAYMENT OPTIONS AND MINIMUM PERIODIC PAYMENTS.—The repayment options under the plan, including—

(A) if applicable, any differences in repayment options with regard to—

(i) any period during which additional extensions of credit may be obtained; and

(ii) any period during which repayment is required to be made and no additional extensions of credit may be obtained;

(B) the length of any repayment period, including any differences in the length of any repayment period with regard to the periods described in clauses (i) and (ii) of subparagraph (A); and

(C) an explanation of how the amount of any minimum monthly or periodic payment will be determined under each such option, including any differences in the determination of any such amount with regard to the periods described in clauses (i) and (ii) of subparagraph (A).

(9) EXAMPLE OF MINIMUM PAYMENTS AND MAXIMUM REPAYMENT PERIOD.—An example, based on a $10,000 outstanding balance and the interest rate (other than a rate not based on the index under the plan) which is, or was recently, in effect under such plan, showing the minimum monthly or periodic payment, and the time it would take to repay the entire $10,000 if the consumer paid only the minimum periodic payments and obtained no additional extensions of credit.

(10) STATEMENT CONCERNING BALLOON PAYMENTS.—If, under any repayment option of the plan, the payment of not more than the minimum periodic payments required under such option over the length of the repayment period—

(A) would not repay any of the principal balance; or

(B) would repay less than the outstanding balance by the end of such period,

as the case may be, a statement of such fact, including an explicit statement that at the end of such repayment period a balloon payment (as defined in section 147(f)) would result which would be required to be paid in full at that time.

(11) NEGATIVE AMORTIZATION.—If applicable, a statement that—

(A) any limitation in the plan on the amount of any increase in the minimum payments may result in negative amortization;

(B) negative amortization increases the outstanding principal balance of the account; and

(C) negative amortization reduces the consumer's equity in the consumer's dwelling.

(12) LIMITATIONS AND MINIMUM AMOUNT REQUIREMENTS ON EXTENSIONS OF CREDIT.—

(A) NUMBER AND DOLLAR AMOUNT LIMITATIONS.—Any limitation contained in the plan on the number of extensions of credit and the amount of credit which may be obtained during any month or other defined time period.

(B) MINIMUM BALANCE AND OTHER TRANSACTION AMOUNT REQUIREMENTS.—Any requirement which establishes a minimum for—

(i) the initial extension of credit to an account under the plan;

(ii) any subsequent extension of credit to an account under the plan; or

(iii) any outstanding balance of an account under the plan.

(13) STATEMENT REGARDING CONSULTATION OF TAX ADVISOR.—A statement that the consumer should consult a tax adviser regarding the deductibility of interest and charges under the plan.

(14) DISCLOSURE REQUIREMENTS ESTABLISHED BY BOARD.—Any other term which the Board requires, in regulations, to be disclosed.

(b) TIME AND FORM OF DISCLOSURES.—

(1) TIME OF DISCLOSURE.—

(A) IN GENERAL.—The disclosures required under subsection (a) with respect to any open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling and the pamphlet required under subsection (e) shall be provided to any consumer at the time the creditor distributes an application to establish an account under such plan to such consumer.

(B) TELEPHONE, PUBLICATIONS, AND 3D PARTY APPLICATIONS.—In the case of telephone applications, applications contained in magazines or other publications, or applications provided by a third party, the disclosures required under subsection (a) and the pamphlet required under subsection (e) shall be provided by the creditor before the end of the 3-day period beginning on the date the creditor receives a completed application from a consumer.

(2) FORM.—

(A) IN GENERAL.—Except as provided in paragraph (1)B), the disclosure required under subsection (a) shall be provided on or with any application to establish an account under an open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling.

(B) SEGREGATION OF REQUIRED DISCLOSURES FROM OTHER INFORMATION.—The disclosures required under subsection (a) shall be conspicuously segregated from all other terms, date, or additional information provided in connection with the application, either by grouping the disclosures separately on the application form or by providing the disclosures on a separate form, in accordance with regulations of the Board.

(C) PRECEDENCE OF CERTAIN INFORMATION.—The disclosures required by paragraphs (5), (6), and (7) of subsection (a) shall precede all of the other required disclosures.

(D) SPECIAL PROVISION RELATING TO VARIABLE INTEREST RATE INFORMATION.—Whether or not the disclosures required under subsection (a) are provided on the application form, the variable rate information described in subsection (a)(2) may be provided separately from the information required to be disclosed.

(3) REQUIREMENT FOR HISTORICAL TABLE.—In preparing the table required under subsection (a)(2)(G), the creditor shall con-

sistently select one rate of interest for each year and the manner of selecting the rate from year to year shall be consistent with the plan.

(c) 3D PARTY APPLICATIONS.—In the case of an application to open an account under any open end consumer credit plan described in subsection (a) which is provided to a consumer by any person other than the creditor—

(1) such person shall provide such consumer with—

(A) the disclosures required under subsection (a) with respect to such plan, in accordance with subsection (b); and

(B) the pamphlet required under subsection (e); or

(2) if such person cannot provide specific terms about the plan because specific information about the plan terms is not available, no nonrefundable fee may be imposed in connection with such application before the end of the 3-day period beginning on the date the consumer receives the disclosures required under subsection (a) with respect to the application.

(d) PRINCIPAL DWELLING DEFINED.—For purposes of this section and sections 137 and 147, the term "principal dwelling" includes any second or vacation home of the consumer.

(e) PAMPHLET.—In addition to the disclosures required under subsection (a) with respect to an application to open an account under any open end consumer credit plan described in such subsection, the creditor or other person providing such disclosures to the consumer shall provide—

(1) a pamphlet published by the Board pursuant to section 4 of the Home Equity Consumer Protection Act of 1988; or

(2) any pamphlet which provides substantially similar information to the information described in such section, as determined by the Board.

* * * * * * *

SEC. 137. HOME EQUITY PLANS.

(a) INDEX REQUIREMENT.—In the case of extensions of credit under an open end consumer credit plan which are subject to a variable rate and are secured by a consumer's principal dwelling, the index or other rate of interest to which changes in the annual percentage rate are related shall be based on an index or rate of interest which is publicly available and is not under the control of the creditor.

(b) GROUNDS FOR ACCELERATION OF OUTSTANDING BALANCE.—A creditor may not unilaterally terminate any account under an open end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling and require the immediate repayment of any outstanding balance at such time, except in the case of—

(1) fraud or material misrepresentation on the part of the consumer in connection with the account;

(2) failure by the consumer to meet the repayment terms of the agreement for any outstanding balance; or

(3) any other action or failure to act by the consumer which adversely affects the creditor's security for the account or any right of the creditor in such security.

(c) CHANGE IN TERMS.—

(1) IN GENERAL.—No open end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling may contain a provision which permits a creditor to change unilaterally any term required to be disclosed under section 127A(a) or any other term, except a change in insignificant terms such as the address of the creditor for billing purposes.

(2) CERTAIN CHANGES NOT PRECLUDED.—Notwithstanding the provisions of subsection (1), a creditor may make any of the following changes:

(A) Change the index and margin applicable to extensions of credit under such plan if the index used by the creditor is no longer available and the substitute index and margin would result in a substantially similar interest rate.

(B) Prohibit additional extensions of credit or reduce the credit limit applicable to the account under the plan during any period in which the value of the consumer's principal dwelling which secures any outstanding balance is significantly less than the original appraisal value of the dwelling.

(C) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which the creditor has reason to believe that the consumer will be unable to comply with the repayment requirements of the account due to a material change in the consumer's financial circumstances.

(D) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which the consumer is in default with respect to any material obligation of the consumer under the agreement.

(E) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which—

(i) the creditor is precluded by government action from imposing the annual percentage rate provided for in the account agreement; or

(ii) any government action is in effect which adversely affects the priority of the creditor's security interest in the account to the extent that the value of the creditor's secured interest in the property is less than 120 percent of the amount of the credit limit applicable to the account.

(F) Any change that will benefit the consumer.

(3) MATERIAL OBLIGATIONS.—Upon the request of the consumer and at the time an agreement is entered into by a consumer to open an account under an open end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling, the consumer shall be given a list of the categories of contract obligations which are deemed by the creditor to be material obligations of the consumer under the agreement for purposes of paragraph (2)(D).

(4) CONSUMER BENEFIT.—

(A) IN GENERAL.—For purposes of paragraph (2)(F), a change shall be deemed to benefit the consumer is the

change is unequivocally beneficial to the borrower and the change is beneficial through the entire term of the agreement.

(B) BOARD CATEGORIZATION.—The Board may, by regulation, determine categories of changes that benefit the consumer.

(d) TERMS CHANGED AFTER APPLICATION.—If any term or condition described in section 127A(a) which is disclosed to a consumer in connection with an application to open an account under an open end consumer credit plan described in such section (other than a variable feature of the plan) changes before the account is opened, and, as a result of such change, the consumer elects not to enter into the plan agreement, the creditor shall refund all fees paid by the consumer in connection with such application.

(e) ADDITIONAL REQUIREMENTS RELATING TO FUNDS AND IMPOSITION OF NONREFUNDABLE FEES.—

(1) IN GENERAL.—No nonrefundable fee may be imposed by a creditor or any other person in connection with any application by a consumer to establish an account under any open end consumer credit plan which provides for extension of credit which are secured by a consumer's principal dwelling before the end of the 3-day period beginning on the date such consumer receives the disclosure required under section 127A(e) and the pamphlet required under section 127A(e) with respect to such application.

(2) CONSTRUCTIVE RECEIPT.—For purposes of determining when a nonrefundable fee may be imposed in accordance with this subsection if the disclosures and pamphlet referred to in paragraph (1) are mailed to the consumer, the date of the receipt of the disclosures by such consumer shall be deemed to be 3 business days after the date of mailing by the creditor.

* * * * * * *

SEC. 147. ADVERTISING OF OPEN END CONSUMER CREDIT PLANS SECURED BY THE CONSUMER'S PRINCIPAL DWELLING.

(a) IN GENERAL.—If any adverstisement to aid, promote, or assist, directly or indirectly, the extension of consumer credit through an open end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling states, affirmatively or negatively, any of the specific terms of the plan, including any periodic payment amount required under such plan, such advertisement shall also clearly and conspicuously set forth the following information, in such form and manner as the Board may require:

(1) LOAN FEES AND OPENING COST ESTIMATES.—Any loan fee the amount of which is determined as a percentage of the credit limit applicable to an account under the plan and an estimate of the aggregate amount of other fees for opening the account, based on the creditor's experience with the plan and stated as a single amount or as a reasonable range.

(2) PERIODIC RATES.—In any case in which periodic rates may be used to compute the finance charge, the periodic rates expressed as an annual percentage rate.

(3) HIGHEST ANNUAL PERCENTAGE RATE.—The highest annual percentage rate which may be imposed under the plan.

(4) OTHER INFORMATION.—Any other information the Board may by regulation require.

(b) TAX DEDUCTIBILITY.—If any advertisement described in subsection (a) contains a statement that any interest expense incurred with respect to the plan is or may be tax deductible, the advertisement shall not be misleading with repect to such deductibility.

(c) CERTAIN TERMS PROHIBITED.—No advertisement described in subsection (a) with respect to any home equity account may refer to such loan as "free money" or use other terms determined by the Board by regulation to be misleading.

(d) DISCOUNTED INITIAL RATE.—

(1) IN GENERAL.—If any advertisement described in subsection (a) includes an initial annual perentage rate that is not determined by the index or formula used to make later interest rate adjustments, the advertisement shall also state with equal prominence the current annual percentage rate that would have applied using the index or formula if such initial rate had not been offered.

(2) QUOTED RATE MUST BE REASONABLY CURRENT.—The annual percentage rate required to be disclosed under paragraph (1) rate must be current as of a reasonable time given the media involved.

(3) PERIOD DURING WHICH INITIAL RATE IS IN EFFECT.—Any advertisement to which paragraph (1) applies shall also state the period of time during which the initial annual percentage rate referred to in such paragraph will be in effect.

(e) BALLOON PAYMENT.—If any advertisement described in subsection (a) contains a statement regarding the minimum monthly payment under the plan, the advertisement shall also disclose, if applicable, the fact that the plan includes a balloon payment.

(f) BALLOON PAYMENT DEFINED.—For purposes of this section and section 127A, the term "balloon payment" means, with respect to any open end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling, any repayment option under which—

(1) the account holder is required to repay the entire amount of any outstanding balance as of a specified date or at the end of a specified period of time, as determined in accordance with the terms of the agreement pursuant to which such credit is extended; and

(2) the aggregate amount of the minimum periodic payments required would not fully amortize such outstanding balance by such date or at the end of such period.

* * * * * * *

TITLE VII—EQUAL CREDIT OPPORTUNITY ACT

* * * * * * *

§ 701. Prohibited discrimination; reasons for adverse action

(a)(1) * * *

(2) because all or part of the applicant's income derives from any public assistance program; [or]

(3) on the basis of any course of study pursued or intended to be pursued by the applicant; or

[(3)] *(4)* because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

* * * * * * *

§ 703. Regulations

[(a) The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain but are not limited to such classification, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith. In particular, such regulations may exempt from one or more of the provisions of this title any class of transactions not primarily for personal, family, or household purposes, if the Board makes an express finding that the application of such provision or provisions would not contribute substantially to carrying out the purposes of this title. Such regulations shall be prescribed as soon as possible after the date of enactment of this Act, but in no event later than the effective date of this Act.]

(a)(1) Subject to the provisions of paragraph (2), the Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain but are not limited to such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith.

(2) In no event shall any regulation promulgated pursuant to paragraph (1) of this subsection exempt from the provisions of this title any class of transactions that are primarily for personal, family, or household purposes, or business or commercial loans made available by a financial institution, except that a particular type or class of such transactions may be exempted if the Board determines, after a hearing conducted on the record pursuant to chapter 5 of title 5, United States Code, that the application of this title or of any provision of this title of such transaction would not contribute substantially to effecting the purposes of this title.

(3) An exemption granted pursuant to paragraph (2) shall be for no longer than five years and shall be extended only if the Board makes a subsequent determination, in the manner described by such paragraph, tht such exemption remains appropriate.

(4) The Board shall require entities making business or commercial loans subject to the requirements of this subsection to maintain such records or other data relating to all such loans as may be necessary to evidence compliance with this subsection or enforce any action pursuant to the authority of this Act. In no event shall such records or data be maintained for a period of less than one year. The Board shall promulgate regulations to implement this paragraph in the manner prescribed by chapter 5 of title 5, United States Code.

(5) The Board shall provide in regulations promulgated pursuant to this subsection that an applicant who has been denied a business or commercial loan subject to the requirements of this subsection shall be provided a written notice of such applicant's right to receive a written statement of the reasons for the denial of such loan.

* * * * * * *

EXPEDITED FUNDS AVAILABILITY ACT

* * * * * * *

SEC. 603. EXPEDITED FUNDS AVAILABILITY SCHEDULES.

(a) NEXT BUSINESS DAY AVAILABILITY FOR CERTAIN DEPOSITS.—

(1) * * *

(2) GOVERNMENT CHECKS; CERTAIN OTHER CHECKS.—Funds deposited in an account at a depository institution by check shall be available for withdrawal not later than the business day after the business day on which such funds are deposited in the case of—

(A) a check which—

(i) is drawn on the Treasury of the United States; [and]

(ii) is endorsed only by the person to whom it was issued; *and*

(iii) is deposited in a receiving depository institution which is staffed by individuals employed by such institution;

* * * * * * *

[(E) a check deposited in a branch of a depository institution and drawn on the same or another branch of the same depository institution if both such branches are located in the same State or the same check processing region;]

(E) a check which—

(i) is deposited in a branch of a depository institution which is staffed by individuals employed by such institution; and

(ii) is drawn on the same or another branch of the receiving depository institution if both such branches are located in the same State or the same check processing region.

* * * * * * *

SEC. 604. SAFEGUARD EXCEPTIONS.

(a) * * *

(b) LARGE OR REDEPOSITED CHECKS; REPEATED OVERDRAFTS.—The Board may, by regulation, establish reasonable exceptions to any time limitation established under subsection *(a)(2)*, (b), (c), or (e) of section 603 for—

(1) the amount of deposits by one or more checks that exceeds the amount of $5,000 in any one day;

(2) checks that have been returned unpaid and redeposited; and

(3) deposit accounts which have been overdrawn repeatedly.

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—In accordance with regulations which the Board shall prescribe, subsections [(a)(2)(F),] *(a)(2),* (b), (c), and (e) of section 603 shall not apply with respect to any check deposited in an account at a depository institution if the receiving depository institution has reasonable cause to believe that the check is uncollectible from the originating depository institution. For purposes of the preceding sentence, reasonable cause to believe requires the existence of facts which would cause a well-grounded belief in the mind of a reasonable person. Such reasons shall be included in the notice required under subsection (f).

* * * * * * *

(d) EMERGENCY CONDITIONS.—Subject to such regulations as the Board may prescribe, subsections *(a)(2),* (b), (c), and (e) of section 603 shall not apply to funds deposited by check in any receiving depository institution in the case of—

(1) * * *

* * * * * * *

(f) NOTICE OF EXCEPTION; AVAILABILITY WITHIN REASONABLE TIME.—

(1) * * *

(2) TIME FOR NOTICE.—The notice required under paragraph (1)(A) with respect to a deposit to which an exception contained in this section applies shall be made by the time provided in the following subparagraphs:

(A) In the case of a deposit made in person by the depositor at the receiving depository institution, the depository institution shall immediately provide such notice in writing to the depositor.

(B) In the case of any other deposit (other than a deposit described in subparagraph (C)), the receiving depository institution shall mail the notice to the depositor not later than the close of the next business day following the business day on which the deposit is received.

(C) In the case of a deposit to which subsection [d] *(b), (d),* or (e) applies, notice shall be provided by the depository institution in accordance with regulations of the Board.

* * * * * * *

SEC. 607. MISCELLANEOUS PROVISIONS.

(a) * * *

* * * * * * *

(f) TREATMENT OF CERTAIN CREDIT UNIONS AS LOCAL ORIGINATING DEPOSITORY INSTITUTIONS.—

(1) IN GENERAL.—If, in connection with a deposit of a check in an account at a receiving depository institution, the originating depository institution, the originating depository institution with respect to such check is a depository which is—

(A) described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act; and

(B) located in the same check processing region as the receiving depository institution,

the fact that such check is payable through a depository institution located outside such check processing region for collection purposes (pursuant to an agreement entered into by such originating depository institution) shall not affect the designation of such originating depository institution as a local originating depository institution for purposes of this title.

(2) TERMINATION.—Paragraph (1) shall cease to apply as of the end of the 3-year period beginning on the date of the enactment of this subsection.

* * * * * * *

SEC. 611. CIVIL LIABILITY.

(a) * * *

* * * * * * *

(f) AUTHORITY TO ESTABLISH RULES REGARDING LOSSES AND LIABILITY AMONG DEPOSITORY INSTITUTIONS.—The Board is authorized to impose on or allocate among depository institutions *or other entities participating in the payments system, including States and political subdivisions of States on which checks are drawn,* the risks of loss and liability in connection with any aspect of the payment system, including the receipt, payment, collection, or clearing of checks, and any related function of the payment system with respect to checks. Liability under this subsection shall not exceed the amount of the check giving rise to the loss or liability, and, where there is bad faith, other damages, if any, suffered as a proximate consequence of any act or omission giving rise to the loss or liability.

* * * * * * *

SEC. 613. EFFECTIVE DATES.

(a) DATE OF ENACTMENT.—Except as provided in subsection (b), this title shall take effect on the date of the enactment of this title.

(b) 1 YEAR AFTER DATE OF ENACTMENT.—Sections 603, 604, 605, 606, 610, and 611 shall take effect on September 1, 1988.

(c) DELAYED APPLICABILITY OF CERTAIN PROVISIONS.—A depository institution may not be held liable under subsection (a) or (b) of section 611 for failure to comply with any requirement imposed under sections 604(f) and 605 during the period beginning on September 1, 1988, and ending on December 31, 1988.

FEDERAL CREDIT UNION ACT

* * * * * * *

REPORTS OF CONDITION; CERTIFIED STATEMENTS; PREMIUMS FOR INSURANCE

SEC. 202. (a)(1) * * *

* * * * * * *

(3) The Board may require reports of condition to be published in such manner, not inconsistent with any applicable law, as it may

direct. [Every insured credit union which willfully fails to make or publish any such report within ten days shall be subject to a penalty of not more than $100 for each day of such failure, recoverable by the Board for its use.] *Any insured credit union which—*

(A) fails to submit or publish any report required under this subsection or section 106 within the period of time specified by the Board; or

(B) submits or publishes any false or misleading report or information,

shall be subject to a penalty of not more than $1,000 for each day during which such failure continues or such false or misleading report or information is not corrected. Any penalty imposed by the preceding sentence shall be assessed and collected by the Board in the manner provided in section 206(k)(2) (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 section.

* * * * * * *

REQUIREMENTS GOVERNING INSURED CREDIT UNIONS

SEC. 205. (a) * * *

* * * * * * *

[(d) Except with the written consent of the Board, no person shall serve as a director, officer, committee member, or employee of an insured credit union who has been convicted, or who is hereafter convicted, of any criminal offense involving dishonesty or a breach of trust. For each willful violation of this prohibition, the credit union involved shall be subject to a penalty of not more than $100 for each day this prohibition is violated, which the Board may recover for its use.]

(d) CIVIL MONEY PENALTY FOR UNAUTHORIZED PARTICIPATION BY CERTAIN CONVICTED INDIVIDUALS.—

(1) PROHIBITION.—Except with the written consent of the Board, no person who has been convicted of any criminal offense involving dishonesty or a breach of trust may serve as the director, officer, or employee of an insured credit union or participate in the conduct of the affairs of such credit union.

(2) CIVIL MONEY PENALTY.—For each willful violation of paragraph (1), the insured credit union or the individual involved shall each be subject to a penalty of not more than $2,500 for each day such prohibition is violated, which the Board may recover for its use.

* * * * * * *

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) * * *

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(e)(1) * * *

* * * * * * *

(3) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.—The authority to issue an order under this subsection which requires an insured credit union, or any director, officer, or other person participating in the conduct of the affairs of an insured credit union, to take affirmative action to correct any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such insured credit union, officer, director or other person to—

(A) make restitution or provide reimbursement if—

(i) such credit union, officer, director, or other person was unjustly enriched in connection with such violation or practice; or

(ii) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Board;

(B) provide indemnification or a guarantee against loss;

(C) rescind agreements or contracts;

(D) dispose of any loan or asset involved;

(E) take such other action as the Board determines to be appropriate.

(4) AUTHORITY TO LIMIT ACTIVITIES.—The authority to issue an order under this subsection or subsection (f) includes the authority to place limitations on the activities or functions of an insured credit union, or any director, officer, or other person participating in the conduct of the affairs of an insured credit union.

(F)(1) * * *

* * * * * * *

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (e)(1) specifies that an insured credit union's books and records are so incomplete or inaccurate that the Board is unable (with reasonable effort and because of the particular facts and circumstances stated in the notice) to determine the financial condition of that insured credit union or the details or purpose of any transaction or transactions that may have a substantial effect on the financial condition of that insured credit union, the Board may issue a tempoary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or record; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (e)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A) shall—

(i) become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (e)(1) in connection with the notice of charges; or

(II) the date the Board determines, by examination or otherwise, that the insured credit union's books and records are accurate and capable of refleting the financial condition of the credit union.

[(3)] *(A)* In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order, the Board may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the principal office of the credit union is located for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

[(g)(1) Whenever, in the opinion of the Board, any director, officer, committee member, or employee of an insured credit union has committed any violation of law, rule, or regulation, or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the credit union, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director, officer, committee member, or employee and the Board determines that the credit union has suffered or will probably suffer substantial financial loss or other damage or that the interests of its insured members could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, the Board may serve upon such director, officer, or committee member a written notice of its intention to remove him from office.]

(g)(1) AUTHORITY TO ISSUE ORDER.—Whenever the Board determines that—

(A) any director, officer, or other person participating in the conduct of the affairs of an insured credit union has, directly or indirectly—

(i) violated—

(I) any law or regulation;

(II) any cease-and-desist order which has become final;

(III) any condition imposed in writing by the Board in connection with the grant of any application or other request by such credit union; or

(IV) any written agreement between such credit union and the Board;

(ii) engaged or participated in any unsafe or unsound practice in connection with any insured credit union or business institution; or

(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such person's fiduciary duty;

(B) by reason of the violation, practice, or breach described in any clause of subparagraph (A)—

(i) such insured credit union or business institution has suffered or will probably suffer financial loss or other damage;

(ii) the interests of the insured credit union's members have been or could be seriously prejudiced; or

(iii) such director, officer, or other person has received financial gain by reason of such violation, practice or breach; and

(C) such violation, practice, or breach—

(i) involves personal dishonesty on the part of such director, officer, or other person; or

(ii) demonstrates such individual's unfitness to serve as a director or officer of, or to otherwise participate in the conduct of the affairs of, an insured credit union,

the Board may serve upon such officer, director, or other person a written notice of the Board's intention to remove such person from office or to prohibit any further participation, by such person, in any manner in the conduct of the affairs of any insured credit union.

[(2) Whenever, in the opinion of the Board, any director, officer, committee member, or employee, of an insured credit union, by conduct or practice with respect to another insured credit union or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty, or unfitness to continue as a director, officer, committee member, or employee, and, whenever, in the opinion of the Board, any agent or other person participating in the conduct of the affairs of an insured credit union, by conduct or practice with respect to such credit union or other insured credit union or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to participate in the conduct of the affairs of such insured credit union, the Board may serve upon such director, officer, committee member, employee, agent, or other person a written notice of its intention to remove him from office and/or to prohibit his further participation in any manner in the conduct of the affairs of such credit union.]

[(3)] *(2)* Whenever, in the opinion of the Board, any director, officer, or committee member of an insured credit union has committed any violation of the Depository Institution Management Interlocks Act, the Board may serve upon such director, officer, or committee member a written notice of its intention to remove him from office.

(3) TEMPORARY ORDER.—

(A) SUSPENSION OR PROHIBITION AUTHORIZED.—If the Board serves written notice under paragraph (1) or (2) to any director, officer, or other person participating in the conduct of the affairs of an insured credit union of the Board's intention to issue a temporary order under such paragraph, the Board may suspend such director, officer, or other person from office or prohibit such person from further participation in any manner in the conduct of the affairs of the institution, if the Board—

(i) determines that such action is necessary for the protection of the credit union or the interests of the credit union's members; and

(ii) serves such person with written notice of the order.

(B) EFFECTIVE PERIOD—Any temporary order issued under subparagraph (A) shall—

(i) become effective upon service; and

(ii) unless a court issues a stay of such order under paragraph (6), shall remain in effect and enforceable until—

(I) the date the Board dismisses the charges contained in the notice served under paragraph (1) or (2) with respect to such person; or

(II) the effective date of an order issued by the Board to such person under paragraph (1) or (2).

(C) COPY OF ORDER—If the Board issues a temporary order under subparagraph (A) to any director, officer, or other person participating in the conduct of the affairs of an insured credit union, the Board shall serve a copy of such order on any insured credit union with which such director, officer, or other person is associated at the time such order is issued.

[(4) In respect to any director, committee member, or officer of an insured credit union or any other person referred to in paragraph (1), (2), or (3) of this subsection, the Board may, if it deems it necessary for the protection of the credit union or the interests of its members, by written notice to such effect served upon such director, committee member, officer, or other person, suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the credit union. Such suspension or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by paragraph (6) of this subsection, shall remain in effect pending the completion of the administration proceedings pursuant to the notice served under paragraph (1), (2), or (3) of this subsection and until such time as the Board shall dismiss the charges specified in such notice, or, if an order of removal and prohibition is issued against the director, committee member, or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the credit union of which he is a director, committee member or officer or in the conduct of whose affairs he has participated.]

[(5)] *(4)* A Notice of intention to remove a director, committee member, officer, or other person from office or to prohibit his participation in the conduct of the affairs of an insured credit union, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Board at the request of (A) such director, committee member, or officer or other person, and for good cause shown, or (B) the Attorney General of the United States. Unless such director, committee member, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Board shall find that any of the grounds specified in such notice have been established, the Board may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the credit union, as it may deem appropriate. Any such order shall become effective at

the expiration of thirty days after service upon such credit union and the director, committee member, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

(5) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES ALLOWED.—Any order issued under this subsection may specifically prohibit the person to whom such order is issued from engaging in an activity described in any paragraph of subsection (1).

(6) Within ten days after any director, officer, committee member, or other person has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured credit union under paragraph [(4)] *(3)* of this subsection, such director, officer, committee member, or other person may apply to the United States district court for the judicial district in which the principal office of the credit union is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, committee member, or other person under paragraph [(1), (2), or (3)] *(1) or (2)* of this subsection, and such court shall have jurisdiction to stay such suspension and/or prohibition.

[(7)(A) Any person who, pursuant to this subsection, is removed, suspended, or prohibited from participation in the conduct of the affairs of an insured credit union shall also be removed, suspended, or prohibited from participation in the conduct of the affairs of any insured instutution, any bank holding company or subsidiary of a bank holding company, any organization organized and operated under section 25(a) of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act, and any savings and loan holding company or subsidiary of a savings and loan holding company (as those terms are defined in the National Housing Act), and any institution chartered by and subject to regulation by the Farm Credit Administration without the prior written approval of the appropriate Federal regulatory agency.

[(B) As used in subsection (g), the term "insured institution" means an insured credit union or a depository institution whose accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

Submit written materials (or, at the discretion of the Board, oral testimony) and oral argument. Within sixty days of such hearing, the Board shall notify the director, committee member, officer, or other person whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the credit union will be continued, terminated or otherwise modified, or whether the order removing said director, committee member, officer, or other person from office or prohibiting such individual from further participation in any manner in the conduct of the affairs of the credit union will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Board's deci-

sion, if adverse to the director, committee member, officer, or other person. The Board is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.]

(7) INDUSTRYWIDE PROHIBITION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no person who, pursuant to an order issued under this subsection, 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, while such order is in effect, continue or commence to hold any office in, or participate in the conduct of the affairs of—

(i) any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act);

(ii) any institution treated as an insured bank under subsection 8(b)(3) of the Federal Deposit Insurance Act for purposes of section 8 of such Act;

(iii) any association (as defined in section 2(d) of the Home Owners' Loan Act of 1933);

(iv) any institution treated as an association under section 5(d)(2)(C) of the Home Owners' Loan Act of 1933 for purposes of section 5(d) of such Act;

(v) any insured institution (as defined in section 401(a) of the National Housing Act);

(vi) any institution treated as an insured institution under section 407(e)(3) of the National Housing Act for purposes of section 407 of such Act; or

(vii) any insured credit union.

(B) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under paragraph (1), (2), or (3) which removes or suspends from office any director, officer, or other person participating in the conduct of the affairs of an insured credit union or prohibits such director, officer, or other person from participating in the conduct of the affairs of an insured credit union, such director, officer, or other person receives the written consent of the appropriate Federal depository institution regulatory agency of any institution described in any clause of subparagraph (A) to continue or commence to hold any office in, or participate in the conduct of the affairs of, such institution, subparagraph (A) shall cease to apply to such director, officer, or other person with respect to the institution described in the written consent as of the date such consent is received by the director, officer, or other person.

(C) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER.—Any violation of subparagraph (A) by any person who is subject to an order described in such subparagraph shall be treated as a violation of the order.

(D) HEARING; JUDICIAL REVIEW.—

(i) REQUEST FOR HEARING.—Any person who—

(I) is subject to an order issued by an appropriate Federal depository institution regulatory agency under paragraph (1), (2), or (3) of this subsection or any similar provision of law applicable with respect to such agency which has the effect (under such provison of law) of prohibiting such person from continuing or

commencing to hold any office in, or participate in the conduct of the affairs of, any institution described in any clause of subparagraph (A); and

(II) is denied permission by the Board under subparagraph (B) to continue or commence to hold any office in, or participate in the conduct of the affairs of an insured credit union,

may request a hearing with respect to the denial of such written consent.

(ii) PROCEDURE FOR HEARING.—Any hearing requested under clause (i) shall be held and conducted in the same manner as a hearing requested under subsection (h)(2).

(iii) JUDICIAL REVIEW.—Any party to a proceeding under clause (ii) may obtain judicial review of the determination in the manner provided in subsection (j)(2).

(E) APPROPRIATE FEDERAL DEPOSITORY INSTITUTION REGULATORY AGENCY DEFINED.—For purposes of this paragraph and subsection (1), the term "appropriate Federal depository institution regulatory agency" means—

(i) the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act), in the case of an insured bank (as defined in section 3(h) of such Act) and any institution treated as an insured bank under section 8(b)(3) of such Act;

(ii) the Federal Home Loan Bank Board, in the case of an association (as defined in section 2(d) of the Home Owners' Loan Act of 1933) and any institution treated as an association under section 5(d)(2)(C) of the Home Owners' Loan Act of 1933;

(iii) the Corporation, in the case of an insured institution and institution treated as an insured institution under subsection (e)(3); and

(iv) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act).

(F) CONSULTATION WITH ISSUING AGENCY.—Before providing written consent under subparagraph (B) to any person with respect to whom an order described in subparagraph (D)(i)(I) was issued, the Board shall consult with the appropriate Federal depository institution regulatory agency (if other than the Board).

(8) NOTICE UNDER THIS PARAGRAPH AFTER SEPARATION FROM SERVICE.—The Board may serve notice under paragraph (1) or (2) of the Corporation's intention to prohibit any person from participating in the conduct of the affairs of any insured credit union or other federally regulated depository institution, notwithstanding the fact that such person has ceased to hold the position of officer or director of an insured credit union or has ceased to participate in the conduct of the affairs of such insured credit union, as the case may be, before such notice is served if such notice is served before the end of the 3-year period beginning on the date such person ceased to hold such position or to participate in the conduct of the affairs of such insured credit union.

* * * * * * *

(j)(1) * * *

(2) Any party to the proceeding, [or] any person required by an order issued under this section to cease and desist from any of the practices or violations stated therein, *and any person subject to an order issued pursuant to the hearing requested in accordance with subsection (g)(7)(D)(i)* may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the credit union or the director officer, committee member or other person concerned or an order issued under subsection (i)(1) of this section) [by filing] *or the order issued pursuant to the hearing requested in accordance with subsection (g)(7)(D)(i) by the filing* in the court of appeals of the United States for the circuit in which the principal office of the credit union is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Board be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board 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, except as provided in the last sentence of said paragraph (1), be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Board. 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)(1) * * *

(2)(A) Any insured credit union which violates or any officer, director, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union who violates the terms of any order which has become final and was issued pursuant to subsection (e), (f), or (g) of this section, shall forfeit and pay a civil penalty of not more than [$1,000] *$2,500* per day for each day during which such violation continues: *Provided*, That the Board may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Board by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

* * * * * * *

(3) CIVIL MONEY PENALTIES FOR VIOLATIONS OTHER THAN VIOLATIONS OF ORDERS.—

(A) PENALTY IMPOSED.—Any insured credit union which, and any director or officer of such credit union or other person par-

ticipating in the conduct of the affairs of such credit union who, has violated—

(i) any law or regulation (the violation of which by such insured credit union, officer, director, or other person is not otherwise subject to a civil money penalty);

(ii) any condition imposed in writing by the Board in connection with the grant of any application or other request by such credit union; or

(iii) any written agreement between such credit union and the Board,

shall forfeit and pay a civil penalty of not more than $2,500 for each day such violation continues.

(B) PROCEDURE.—Any penalty imposed under subparagraph (A) shall be assessed, determined, reviewed, and collected in the manner provided in paragraph (2) for any penalty imposed under such paragraph.

(C) COORDINATION WITH SUBSECTIONS (e), (f), AND (g) AND PARAGRAPH (2).—

(i) PENALTY NOT EXCLUSIVE OF ANY ORDER.—The assessment of any penalty under subparagraph (A) with respect to any violation shall not preclude the appropriate Federal banking agency from—

(I) issuing any order under subsection (e), (f), or (g) with respect to such violation; or

(II) taking any other action authorized by any such subsection with respect to such violation.

(ii) PROHIBITION OF DOUBLE ASSESSMENT.—No penalty may be imposed under subparagraph (A) for any violation for which a penalty is imposed under paragraph (2).

[(l) Any director, officer, or committee member, or former director, officer, or committee member, of an insured credit union or of a credit union any of the member accounts of which are insured, or any other person against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, committee member, or other person under subsection (g)(4), (g)(5), or (i) of this section and who (i) participates in any manner in the conduct of the affairs of the credit union involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such credit union, or (ii) without the prior written approval of the Board votes for a director, serves or acts as a director, officer, committee member, or employee of any credit union, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.]

(l) CRIMINAL PENALTY FOR VIOLATON OF CERTAIN ORDERS.—Any person against whom there is outstanding and effective any order issued under subsection (g) or (i) who, directly or indirectly and without the prior written approval of the appropriate Federal depository institution regulatory agency (as defined in section 206(g)(7)(E))—

(1) participates in any manner in the conduct of the affairs of—

(A) any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act);

(B) any company or organization treated as an insured bank under section 8(b)(3) of the Federal Deposit Insurance Act for purposes of section 8 of such Act;

(C) any association (as defined in section 2(d) of the Home Owners' Loan Act of 1933);

(D) any insured institution (as defined in section 401(a) of the National Housing Act);

(E) any institution treated as an insured institution under section 407(e)(3) of the National Housing Act for purposes of section 407 of such Act; or

(F) any insured credit union,

from which such person has been suspended or removed or the conduct of the affairs of which such person has been prohibited from participating pursuant to such order or by operation of subsection (e)(7) (with respect to such order);

(2) solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote any proxy, consent, or authorization in respect to any voting rights in any institution described in paragraph (1); or

(3) votes for a director, or serves or acts as a director officer or otherwise participates in any manner in the conduct of the affairs of any institution described in paragraph (1),

shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than $5,000 or imprisoned for not more than one year, or both.

* * * * * * *

(r) PERSON PARTICIPATING IN THE CONDUCT OF THE AFFAIRS OF AN INSURED CREDIT UNION DEFINED.—For purposes of this section, the term "person participating in the conduct of the affairs of an insured credit union" includes any committee member, employee, or agent of an insured credit union and such other persons as the Board may prescribe by regulations.

(s) PUBLIC DISCLOSURE OF NOTICES AND FINAL ORDERS.—

(1) IN GENERAL.—The Board shall publish and make available to the public—

(A) any final order issued with respect to any enforcement proceeding initiated by such agency against any such bank or individual under this section or any other provision of law; and

(B) any modification to or termination of any final order described in subparagraph (A) of this paragraph.

(2) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the Board makes a determination in writing that the publication of any final order pursuant to paragraph (1) would seriously threaten the safety and soundness of an insured credit union or other federally regulated depository institution, the Board may delay the publication of such notice for a reasonable time.

TITLE 1 OF THE 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 1956, to engage directly or indirectly in a nonbanking activity pursuant to section 4 of such Act, 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] *section 15* 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.

(b)(1) * * *

(2)(A) * * *

* * * * * * *

(F)(i) Any bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such bank who violates any provision of section 106(b)(2) shall forfeit and pay a civil penalty of not more than [$1,000] *$2,500* per day for each day during which such violation continues. The penalty may be assessed and collected by the Comptroller of the Currency in the case of a national bank, the Board in the case of a State member bank, or the Federal Deposit Insurance Corporation in the case of an insured nonmember State bank, by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counselling, or aiding or abetting a violation.

* * * * * * *

SECTION 3 OF THE BANK PROTECTION ACT OF 1968

SEC. 3. (a) * * *

(b) The rules shall establish the time limits within which banks and savings and loan associations shall comply with the standards [and shall require the submission of periodic reports with respect

to the installation, maintenance, and operation of security devices and procedures].

DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT

(As contained in P.L. 95-630)

SEC. 201. This title may be cited as the "Depository Institution Management Interlocks Act".

SEC. 202. As used in this title—

(1) * * *

* * * * * * *

(3) the characterization of any corporation (including depository institutions and depository holding companies), as an "affiliate of," or as "affiliated" with any other corporation means that—

(A) one of the corporations is a depository holding company and the other is a subsidiary thereof, or both corporations are subsidiaries of the same depository holding company, as the term "subsidiary" is defined in either section 2(d) of the Bank Holding Company Act of 1956 in the case of a bank holding company or section 408(a)(1)(II) of the National Housing Act in the case of a savings and loan holding company; or

(B) more than [50 per centum] *25 percent* of the voting stock of one corporation is beneficially owned in the aggregate by one or more persons who also beneficially own in the aggregate more than [50 per centum] *25 percent* of the voting stock of the other corporation; or

* * * * * * *

(4) the term management official" means an employee or officer with management functions director [(including an advisory or honorary director)] *(including an advisory or honorary director, except in the case of a depository institution with total assets of less than $100,000,000)*, a trustee of a business organization under the control of trustees, or a person who has a representative or nominee serving in any such capacity: *Provided,* That if a corporator, trustee, director, or other officer of a State-chartered savings bank or cooperative bank is specially authorized under the laws of the State in which said institution is located to serve as a trustee, director, or other officer of a State-chartered trust company which does not make real estate mortgage loans and does not accept savings deposits from natural persons, then for the purposes of this title, such corporator, trustee, director, or other officer shall not be deemed to be a management official of such trust company: *And provided further,* That if a management official of a State-chartered trust company which does not make real estate mortgage loans and does not accept savings deposits from natural persons is specifically authorized under the laws of the State in which said institution is located to serve as a corporate, trustee, director, or other officer of a State-chartered sav-

ings bank or cooperative bank, then, for the purposes of this title, such management official shall not be deemed to be management official of any such savings bank or cooperative bank; [and]

(5) the term "office" used with reference to a depository institution means either a principal office or a branch[.], *and*

(6) the term "appropriate Federal depository institutions regulatory agency" means, with respect to any depository institution or depository holding company, the agency referred to in section 209 in connection with such institution or company.—

* * * * * * *

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) A depository institution or depository holding company which has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function.

(2) A corporation operating under section 25 or 26(a) of the Federal Reserve Act.

(3) A credit union being served by a management official of another credit union.

(4) A depository institution or depository holding company which does not do business within any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands except as an incident to its activities outside the United States.

(5) A State-chartered savings and loan guaranty corporation.

(6) A Federal Home Loan Bank or any other bank organized specifically to serve depository institutions.

(7) A depository institution or a depository holding company which—

(A) is closed or is in danger of closing, as determined by the appropriate Federal depository institutions regulatory agency in accordance with regulations prescribed in such agency; and

(B) is acquired by another depository institution or depository holding company,

during the 5-year period beginning on the date of the acquisition of the depository institution or depository holding company described in subparagraph (A).

(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 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—

(I) the appropriate Federal depository institutions regulatory agency for such company;

(II) the appropriate Federal depository institutions regulatory agency for the nonaffiliated depository institution or depository holding company of which such person is also a director,

not less than 60 days before such dual service is proposed to begin; and

(ii) the proposed dual service is not disapproved by any such appropriate Federal depository institutions regulatory agency before the end of such 60-day period.

(B) Any appropriate Federal depository institutions regulatory agency may disapprove, under subparagraph (A)(ii), a notice of proposed dual service by any individual if such agency finds that—

(i) the dual service cannot be structured or limited so as to preclude the dual service's resulting in a monopoly or substantial lessening of competition in financial services in any part of the United States;

(ii) the dual service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) the diversified savings and loan holding company has neglected, failed, or refused to furnish all the information required by such agency.

(C) Any appropriate Federal depository institutions regulatory agency may, at any time after the end of the 60-day period referred to in subparagraph (A), require that any dual service by any individual which was not disapproved by such agency during such period be terminated if a change in circumstances occurs with respect to any depository institution or depository holding company of which such individual is a director that would have provided a basis for disapproval of the dual service during such period.

SEC. 206. (a) A person whose service in a position as a management official began prior to the date of enactment of this title and who was not immediately prior to the date of enactment of this title in violation of section 8 of the Clayton Act is not prohibited by section 203 or section 204 of this title from continuing to serve in that position for a period of [(ten years)] *15 years* after the date of enactment of this title. The appropriate Federal [banking agency (as set forth in section 209)] *depository institutions regulatory agency* may provide a reasonable period of time for compliance with this title, not exceeding fifteen months, after any change in circumstances which makes service described in the preceding sentence prohibited by this title, except that a merger, acquisition, increase in total assets, establishment of one or more offices, or change in management responsibilities shall not constitute changes in circumstances which would make such service prohibited by section 203 or section 204 of this title.

(b) Effective on the date of enactment of this title, a person who serves as a management official of a company which is not a depository institution or a depository holding company and as a management official of a depository institution or a depository holding company is not prohibited from continuing to serve as a management official of that depository institution or depository holding company as a result of that company which is not a depository in-

stitution or depository holding company becoming a diversified savings and loan holding company as that term is defined in section 408(a) of the National Housing Act. This subsection shall expire [ten years] *15 years* after the date of enactment of this title.

* * * * * * *

ADDITIONAL VIEWS ON THE TIME RESTRICTIONS IMPOSED ON THE ENERGY AND COMMERCE COMMITTEE'S CONSIDERATION OF H.R. 5094, THE DEPOSITORY INSTITUIONS ACT

We wish to express our objection to the untenable procedural dilemma that faced this Committee concerning H.R. 5094, the Depository Institutions Act of 1988. This bill was sequentially referred to this Committee on August 4, 1988, with the referral expiring on September 22, 1988. As a practical matter, this referral meant that the Committee had a mere eleven legislative days to work on a major piece of legislation. The undersigned believe that this Committee should not have been asked to make decisions under these circumstances on a bill that has profound implications for the banking, securities, and insurance industries, and for the citizens of this Nation.

The Depository Institutions Act, as reported by the House Banking Committee, is a comprehensive piece of legislation that affects almost every financial institution in the country. The bill itself runs 376 pages and the accompanying report is 422 pages long. It attempts to modernize the Nation's fiancial laws, whle preventing a repetition of the circumstances that contributed to the 1929 stock market crash and the Great Depression. This bill affects which institutions may underwrite and deal in a range of securities, including mutual funds, corporate debt, convertible bonds, and other securities. It establishes a series of safeguards and firewalls to prevent inappropriate lending practices between banks and their securites affiliates, and charges the Fedeal Reserve, the Securities and Exchange Commission, and other agencies with important regulatory responsibilities. The bill affects who may compete in offering a wide range of financial services to international corporations and to people of the most modest means. It has implications on the depth and liquidity of our financial markets, the protection of investors, and the safety and soundness of our banking system. It changes who may underwrite and sell a variety of insurance products with implications for the preservation of the dual banking system. Yet as important as this bill is for the economic health of the Nation, this Committee was given only the most cursory opportunity to examine the legislation. Such an important bill demanded a more careful examination by the Committee with primary jurisdiction over the insurance and securities industries.

The dilemma that faced the Members of this Committee was compounded by the fact that the Committee had no choice but to amend the bill or to abdicate responsibility for these important issues. Several Republication Members had serious concerns about various provisions in the bill, as reported by the Banking Committee. If these Members had had more time, they would have been able to prepare carefully crafted amendments to address their con-

cerns. Sice time was too short to undertake such a process, some Members might have preferred simply to vote against the bill, rather than trying to cure the problems within this impossibly short time period. Unfortunately, the Members of this Committee had no such alternative. It is our understanding that had the Members of the Committee voted to disapprove that bill, it would have become unlikely that any Members of the Committee would have been appointed to a conference on the bill. As a consequence, the views of the Members of this Committee would have been unrepresented on legislation affecting matters that are squarely within the Committee's jurisdiction. Accordingly, many Members felt obliged to endorse the package of Amendments even if they disagreed with its contents.

We believe that the Members of this Committee should not have been put in such a difficult procedural quandary and should have had a reasonable period of time to examine the complex and important financial and regulatory matters with which this bill was concerned. Only then would the Members have been able to make well-reasoned and thoughtful decisions on the important questions before them. We were denied this opportunity and we believe that the people whom we represent were not well served as a consequence.

NORMAN F. LENT.
ED MADIGAN.
CARLOS J. MOORHEAD.
MATT RINALDO.
BILL DANNEMEYER.
DON RITTER.
DAN COATS.
THOMAS J. BLILEY, Jr.
JACK FIELDS.
MICHAEL G. OXLEY.
HOWARD C. NIELSON.
MICHAEL BILIRAKIS.
DAN SCHAEFER.
JOE BARTON.
SONNY CALLAHAN.

ADDITIONAL VIEWS ON BANK SECURITIES POWERS

We have serious reservations about the reduction in bank securities powers that the Committee amendments impose. The House bill, as reported by the Committee on Banking, Finance, and Urban Affairs, would have allowed banks either directly or through the structure of a Qualified Securities Subsidiary (QSS) in a holding company, new authority to underwrite: (i) mortgage backed, asset backed securities, commercial paper, and municipal revenue bonds; and (ii) corporate debt, convertible bonds if the securities are convertible to equity at a price at least 15 percent above the price of the equity, and mutual funds. The bill places new conditions on banks underwriting the first category of securities and completely prohibits the second. We believe that both of these changes were improper.

As we should be, we are mindful of the fact that Congress passed the Glass-Steagall Act in 1933 to outlaw a series of abuses that may have contributed to the stock market crash of 1929. Congress believed that banking and securities firms engaged in abusive lending and underwriting practices. Congress believed that when banking and securities functions were combined under one roof, there were opportunities for self-dealing and other improper activity. Congress determined that these abuses contributed to bank failures and undermined the securities markets. We do not seek to create an environment that will foster a repetition of the abuses which Congress sought to prohibit in 1933.

However, we also believe that the Glass-Steagall approach to this problem is unnecessarily harsh and inflexible. It places American banks at an enormous disadvantage when compared to many of their foreign competitors. It reduces the amount of competition for financial services in the United States by excluding banks from competing for underwritings and other financial services. As a consequence of this reduced competition, American consumers face higher prices and the Nation is less able to compete.

We believe that a better alternative to the Glass-Steagall Act is to allow both banks and securities firms to compete in all aspects of the financial arena. Rather than excluding one category of financial organization from a market, we believe that competition should play a greater role in determining which organizations offer different financial services. When opportunities for abuse and fraud exist, those dangers should be addressed by regulations and other firewalls, rather than by outright bans. As a result, more financial service organizations could offer services to more people at lower cost without greater risk.

The House Banking bill allowed a QSS to underwrite asset backed securities if they are rated by a nationally recognized rating company or are guaranteed by the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mort-

gage Association (Fannie Mae), or the Government National Mortgage Association (Ginnie Mae). These restrictions were intended to protect investors from overpaying for asset backed securities representing loans that the affiliated bank was selling. In addition to the existing disclosure protections of the Federal securities laws, the restrictions would ensure that the securities had been evaluated by an independent and objective party, i.e. a rating agency, or scrutinized and guaranteed by Freddie Mac, Fannie Mae, or Ginnie Mae. Yet all of these protections were not enough to satisfy this Committee.

The Committee amendments provide that the securities will not merely have to be rated, but will have to be rated investment grade, i.e., in the top few categories of debt securities. Second, the amendment requires that a qualified independent underwriter price the offering and participate in the preparation of the offering documents, including the "due diligence" review. In our judgment, it would have been advisable to delete the rating requirement altogether because we believe that informed investors, and not rating agencies, are best able to decide whether securities are good purchases. We further object to the use of a particular investment grade rating as the determinant of the legal status of whether a bank's QSS can underwrite an issue. We believe that this requirement places a public policy decision in the hands of a private body. While we do not mean to suggest that the national rating agencies do not do a proper job in evaluating securities, we do not believe that they should shoulder public policy responsibilities and confer legal status. The addition of the qualified independent underwriter would address concerns that the bank could overvalue assets and sell them to unsuspecting investors. But adding investment grade requirements and an independent underwriter provision to the bill is regulatory overkill. We believe that the amendment turns H.R. 5094 into a Federal scheme of merit regulation for asset backed securities. Such a philosophy runs counter to the basic disclosure philosophy underlying the Federal securities laws, which have served the Nation so well for over fifty years.

We believe that the deletion of the second category of securities underwriting was excessive. For example, with the proper "firewalls" we see no reason why banks could not underwrite mutual funds. Banks now operate collective trust funds that are, in reality, mutual funds that the banks may not advertise to the general public. Even if banks should be unable to underwrite mutual funds composed of corporate securities, for fear that they would aid their loan clients at the expense of investors, banks could be allowed to underwrite government bond funds. We simply are unable to identify any risk to which banks or their depositors would be exposed by underwriting mutual funds involving U.S. Government securities or State general obligation bonds. Similarly, the Committee has not offered any rationale for why bank QSSs should not be permitted to underwrite corporate bonds or convertible bonds provided the proceeds of the offering cannot be used to repay a loan to the bank. Even if the Committee was concerned that banks would suffer exposure by underwriting a bond issue that proved difficult to sell, it appears that the Committee could have found some way to limit the banks entrance into the corporate underwriting arena

in some logical way, rather than prohibiting it per se. By way of example, since the Committee is satisfied with the quality of independent rating agencies, the amendment could have allowed banks to underwrite rated debt.

We believe that the amendments to the bill include many valuable improvements, and we do not mean to suggest that we disagree with the amendments in their entirety. We fully support the Committee's effort to improve the functional regulation of the financial markets and to ensure that adequate firewalls prevent abuses. Accordingly, we endorse the amendments to the definition of "broker" and "dealer" in the Securities Exchange Act of 1934 that will require banks to conduct discount brokerage in a broker-dealer subsidiary. This requirement will place minimal additional costs on banks and will ensure that they conduct their securities in a manner consistent with the protection of investors and the public (including, in many cases, that they are members of the Securities Investor Protection Corporation). We also concur with the Committee's efforts to ensure that the SEC remains the primary regulator of the securities markets. Changes such as the "mirror" firewalls and other protections further this objective and we generally support this effort.

Despite these improvements, we believe that the unnecessarily restrictive approach contemplated by the Committee's amendments will perpetuate that damage to our economy fostered by legal barriers to entry and a legally mandated lack of competition. The continued restrictions on banks participating in underwriting means that consumers will continue to pay a higher price for all goods and services because of the congressionally mandated lack of competition in underwirting. These amendments will keep America from becoming more efficient and hurt our efforts to compete with foreign financial institutions and industrial companies.

We wish that the Committee had taken a more thoughtful and deliberative approach to modernizing our financial laws. Although partially driven by the extreme lack of time, we believe that a different approach, with well-crafted safeguards, would have protected depositors, the safety and soundness of the banking system, investors, and the quality of our securities markets, and conveyed broad public benefits.

ED P. MADIGAN.
DON RITTER.

SUPPLEMENTAL VIEWS ON H.R. 5094

H.R. 5094, as amended by the Committee on Energy and Commerce, represents a significant, and we believe prudent, step forward in the regulation of financial institutions. We believe that the Committee correctly decided to permit Qualified Securities Subsidiaries (QSSs) and small banks to distribute shares of unaffiliated mutual funds, while prohibiting banks and their affiliates from distributing affiliated funds or sponsoring and underwriting any funds.

The grant of authority to QSSs and small banks to distribute shares issued by unaffiliated mutual funds is in the public interest and provides benefits to both consumers and financial institutions. Under the Committee's bill, consumers will be able to purchase mutual fund shares from an affiliate of the institution that provides them with banking services. Furthermore, in small communities, the small bank exception will permit consumers, many of whom have not previously had easy access to a securities broker, to purchase mutual fund shares directly through the independent bank that normally serves them.

We also believe that the course followed by the Committee will benefit the majority of the nation's banks. In this regard, we are especially gratified that the bill exempts free standing small national banks with less than 500 million dollars in assets from the requirement that mutual fund sales be conducted in a QSS. Requiring these small banks, particularly independent community banks, to form separate securities subsidiaries would have, in many cases, been extremely costly and impractical, and would have had the effect of effectively negating the bill's grant of authority in such circumstances.

While we are gratified that the Committee granted this mutual fund distribution authority to depository institutions, we are also pleased that the Committee elected to require strong firewalls to protect the safety and soundness of the bank. There are potential hazards and conflicts of interest presented by bank involvement in the securities business. The firewalls approved by the Committee are both appropriate and adequate given the limited nature of the authority granted by the bill.

We also agree with the Committee, however, that it would be inappropriate and unwise to grant to banks or their affiliates the authority to distribute affiliated mutual funds or to sponsor and underwrite any mutual funds. Allowing such a broad grant of authority is likely to unleash in full the potential for the substantial hazards and conflicts of interest that Congress recognized when it passed the Glass-Steagall Act in 1933. These hazards were catalogued by the Supreme Court in *Investment Company Institute* v. *Camp*, 401 U.S. 617 (1971), and the Committee has properly recognized their presence here again. These problems can occur, howev-

er, even when banks do not have full underwriting and sponsorship authority. For example, Chase Manhattan Bank in New York recently ran a newspaper advertisement for a mutual fund that it advised. The advertisement, which ran in the New York Times, was clearly intended to leave potential customers with the impression that the bank stood behind the mutual fund. Clearly, there is nothing to prevent even worse conflicts from occurring if banks are permitted full sponsorship and underwriting authority.

Furthermore, evidence strongly indicates that firewalls will not work to insulate banks from these conflicts of interest. This is demonstrated by the bank's experience with their affiliated Real Estate Investment Trusts in the 1970's, when even substantial firewalls did not prevent the banks from rescuing their ailing REITs. Thus, sponsoring and underwriting of mutual funds must be prohibited, and not merely cordoned off by firewalls.

Since the mutual fund industry is already highly diversified, we see no potential benefits to consumers in permitting banks and their affiliates to underwrite and sponsor mutual funds. For these reasons, we strongly endorse the bill as amended by the Committee.

JOHN BRYANT.
JIM SLATTERY.
BILL RICHARDSON.

DISSENTING VIEWS OF CONGRESSMAN JIM COOPER

Bankers are hard to love. So are stock brokers, insurance salesmen, and real estate agents. When they are fighting with each other, they are even worse.

For the last several years, a brawl has been taking place among these four groups. They are fighting over the turf of the financial industry in America in much the same way that urban gangs fight over control of neighborhoods or local drug business. Of course, these fighters are much better dressed, and they fight with words instead of guns or knives.

An uneasy truce had existed among these groups for many decades. This was especially true of the investment and commercial banking industries which were separated for the first time by the Glass-Steagall Act in 1933. This separation was justified on the grounds that affiliations between the two types of banking were a cause of the market crash of 1929 and the Great Depression which followed.

Recently the truce has been breaking down. There are several reasons for this. The original lines that Glass-Steagall drew in the dirt were never very clear or logical. Commercial banks were never banished entirely from the securities business. They kept large trust departments which were able to perform many of the services that modern brokerage firms perform for customers. Banks were also permitted to underwrite government securities and to invest in a broad range of bonds and notes. Thus, if the purpose of Glass-Steagall was to shield the banking industry from the volatility of the securities industry, it should be judged a partial success at best.

In this great division of banking in 1933, it is widely recognized that commercial banks were given a great privilege: federal deposit insurance. It is less apparent that investment banks were given something even more precious: relative freedom from regulation.

TURF BATTLES: WHO'S WINNING?

In the wake of the Depression, few groups were interested in testing the limits established by Glass-Steagall. But in the late 1960s and early 1970s several successful raids were made on others' turf.

Securities firms were able to offer the next best thing to a checking account with their money-market funds. They received many of the benefits of federal deposit insurance when they were able to sell certificates of deposit issued by federally-insured banks around the country. The weaker the bank's condition (and the greater the risk to the insurance fund), the higher and more attractive the interest rate on the certificate. Brokerage houses also began making the equivalent of commercial loans when they issued commercial paper, and making home mortgages when they issued asset-backed

securities. Occasionally, they even loaned cash directly to large companies, such as when they provided short-term bridge loans in takeover battles. Hardly a commercial banking service remained that was not, or could not be, provided by an investment bank. Commercial bankers could run but could not hide.

Likewise, commercial banks tried to raid the investment banks. Although by nature a less aggressive group, they were gradually allowed by a long series of federal and state regulators, and by tolerant courts, to venture outside of their traditional area. Never have unelected federal bureaucrats and liberal federal judges been so popular with otherwise conservative, pin-striped bankers. You will notice that securities firms generally either did not need or seek permission for their forays. The Glass-Steagall wall apparently worked in only one direction.

Another series of obstacles for banks were the many states that prohibited or limited geographical branching, sentencing the bank to the same economic fate as its local economy. This may have worked well for banks and communities when times were good but it proved disastrous, for example, to a Continental Illinois in Chicago, or to smaller banks in the Texas oil patch. Meanwhile securities firms were free to wander nationwide. Shut out of the regular securities business, banks tried to do whatever Senator Glass or Congressman Steagall hadn't thought of forbidding, such as real estate investment trusts or discount brokerage. Some of these efforts went broke (such as REITs), and some have been profitable and safe (such as discount brokerage).

REGULATORY RESPONSE

Banks have not succeeded in completely breaking down the Glass-Steagall wall that confines them but allows securities firms easy access. They have been able to punch some small holes in it with the help of regulators and judges. Recently federal regulators have allowed commercial banks to deal in commercial paper, revenue bonds, and mortgage-backed securities. Translated, this meant that banks were given a chance to keep some of their traditional customers, instead of gradually giving them up to the securities firms. It is important to see how these three new "powers" that the banks were given are the economic equivalent of what they had been doing for years, with Sen. Glass's and Rep. Steagall's explicit blessing.

Both commercial loans and commercial paper are ways to lend a large corporation money for their short-term obligations. The primary difference is that banks raise the money for commercial loans from depositors, and for commercial paper from investors in the paper. The difference between a widow depositor and a Wall Street investor may seem large, but there is little difference between a depositor with a $100,000 CD (whether she is a widow or not) and an investor in $100,000 worth of commercial paper. The risk to the bank is even less with commercial paper than with a loan since private citizens and investors, not the bank, usually end up owning such paper.

Both general-obligation bonds and, their cousins, revenue bonds perform a similar economic function. Banks have always been al-

lowed to underwrite the long-term debts of municipalities because they were, in theory, backed up by the full faith and credit of the municipality. Revenue bonds, which are backed by the revenue stream of a particular project, were hardly thought of in 1933. Some view them as riskier than general obligation bonds because the issuing state or municipality does not stand fully behind them. This may seem to be a sensible distinction when the credit rating of Palm Springs is compared with Fly-by-Night Inc., but how about when the town is Bugtussle and the company is General Electric?

The difference between making a home loan and issuing an asset-backed security is also small. In the first case, the bank gives money to the homeowner in return for the promise that he will repay the money with interest. In event of default, the bank can foreclose on the home. When a bank issues a mortgage-backed security, it is doing the same transaction only in volume and by inviting other investors to help provide mortgage capital. In event of default, the bank or the entity that services the mortgage can foreclose on the particular home involved. As with commercial paper, the risk to the bank is actually less with asset-backed securities than with home mortgages since third parties other than the bank usually end up owning the security.

ATTACK ON THE REGULATORS

What is so earth-shaking about these three new powers? Very little, even to enemies of the banks. The primary argument against them (other than the unwillingness of rivals to share their business) has been the slippery-slope argument of what these modest powers might lead to: such forbidden pleasures as long-term corporate debt or, heaven forbid, convertible debt and equities.

Other arguments have been toll-gate arguments, e.g. If we allow the banks to pass, then what will we charge them? Consumer advocates have demanded strengthening of the Community Reinvestment Act and conditioning new powers only for banks with A or B ratings. They have also demanded free government-check cashing, and low-cost bank accounts for the poor. Funny how no one is even asking the same questions of securities firms even though they could provide similar services to their community. And no one would think of conditioning the availability of, for example, brokered certificates of deposit, on the proper performance of such obligations. But Glass-Steagall has not been interpreted as placing a wall or even a gate in front of securities firms. The freedom they were granted in 1933 has turned out to be more valuable than most people thought.

Another toll-gate argument is: what firewalls should we demand if we let them pass? First, it is necessary to distinguish between firewalls and Chinese walls. The term firewall describes barriers to the improper flow of money between related groups, and Chinese wall is used to describe barriers to information. It is a toss-up whether it is the transfer of money or information which is more valuable, or more imperative to stop.

Generally Chinese walls were built within a single bank or securities firm, and these were, as their name implies, supposed to be strong and impermeable as the Great Wall of China. Banks weren't

supposed to tell the secrets of their commercial loan departments to their trust departments. And the mergers and acquisitions departments of securities firms were ot supposed to tip off the people in the arbitrage department. Of course, Marty Siegal was allowed to be the head of both departments when he was at Kidder, Peabody.

The practical advantage of Chinese walls is their invisibility. No one can tell whether they are in place and working. No inside or outside auditor can count information as they can count dollars, nor can they trace its flows. Chinese walls are a form of the honor system; firewalls are a curfew and body search.

Since securities firms seldom had to seek permission to do anything new (the general philosophy of the SEC is: I don't care what you do, just disclose it in advance), and the banks had to ask for everything (bank regulators' general philosophy is: you can only do what's on my list, no matter how mature you are), securities firms usually got away with Chinese walls whereas banks got stuck with firewalls. They also got away with putting activities in particular departments or divisions, instead of separate subsidiaries. This leads to some strange inequities.

For example, there is not even a Chinese wall theoretically in place today to prevent front-running between the various securities markets by securities firms, despite the fact that this seem to be a clear abuse of inside information. But firewalls are proposed between a bank and its securities subsidiary so that no loan can ever be made, even for the most innocent of purposes, by the bank to its sub.

Another curiosity: Securities firms express great concern for the solvency of the federal deposit insurance funds, as well as the need to prevent any undue risk to the fund, or any unfair advantage gained from access to the funds. No firewall is too thick an insulation. Under this view, common bank names, logos, or premises might endanger the insurance fund. Bank subsidiaries must be down the street and behind different signs so that the sub can burn down without the bank even feeling the heat. But these same securities firms who express such solicitude for the FDIC and FSLIC are the same ones who invented the national market for highest-yield certificates of deposit, so that even more capital has poured into failing but insured banks. These securities firms ask for no firewalls when they are the ones peddling federally-guaranteed paper.

Thick Chinese walls and firewalls are needed within both the commercial and investment banking industry to make sure that as little chicanery is taking place as possible, and to make sure that the federal insurance funds are as solvent as possible. What is prescribed for one industry should be prescribed for the other. Most of today's legislation works just as Glass-Steagall did, however—one-way only and against the banks.

LACK OF CONGRESSIONAL IMAGINATION

As Congress has contemplated loosening the 55-year-old Glass-Steagall restrictions, it has usually considered only one way that banks and securities firms could cross over into each other's turf: a

bank which wishes to have a securities operation. This shows a limited imagination, and even more limited eyesight. Not only have previous incursions by securities firms into banking gone unpunished, Congress has been slow to anger when securities firms (or insurance companies, or retail stores, or automobile companies) buy banks and so-called "non-bank banks" outright. Where are the shouts for firewalls here? Is a securities subsidiary dangerous, and a securities parent safe? And the fact that American securities firms have virtually all had to rely on massive capital infusions from foreign banks, foreign insurance companies, and foreign corporations, has hardly raised a congressional eyebrow. One gets the feeling that if Citicorp had tried the same thing, congressional police would have stepped in. But since it was only Sumitomo or Nippon Life, everything is ok, or if not ok, inevitable.

An even greater lapse of congressional perceptiveness has been our inability to visualize the nature of financial markets overseas. We all know that financial markets are global, but we tend to overlook the possibility that old American laws like Glass-Steagall are one of the reasons foreign markets have grown so rapidly and at our expense. Not that we should imitate the weakest regulations around the world, but we should be able to justify every one of our restraints on free markets. Most congressmen today would have trouble even remembering, much less justifying, our restraints. Europe has already rid itself of any vestige of Glass-Steagall, and Japan is relaxing its already flexible Rule 65. And we have already allowed a number of foreign banks to be exempt from Glass-Steagall even when they are operating on our soil in competition with American banks. Why do we give these banks preferential treatment?

WHY THE TURF FIGHT IS WORTHWHILE

If all of this fighting between banker, broker, salesman, and agent were only about greed, it would not be worth discussing. But these professions are the cogs in a larger machine that must work efficiently and rapidly if America is to retain its preeminence in world finance. We have taken the depth and versatility of our markets for granted as London and Tokyo markets have come further than we realize in catching up with us. For example, of the top 25 banks in the world, not one is American. We have few, if any, of the largest brokerage or insurance houses. And the depth and flexibility of foreign equity markets seem to be increasing rapidly. But we have focused most of our regulatory energy in stunting the growth of any possible American financial bullies, not preparing to compete internationally. Even the presence in our own country of foreign giants has not awakened us to the danger.

CONGRESSIONAL ACTION

Given this background, how would expect the American political system to react? As has been noted, every regulator (the U.S. Treasury, the Federal Reserve Board, the Comptroller of the Currency, the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board) and almost all judges have approved the piecemeal granting

of additional powers to banks so that they could try to keep their traditional customer base: local corporations, local public finance, and mortgage lending. This means that the entire executive branch of government (plus independent agencies like the Federal Reserve Board), as well as the judicial branch, have at least acquiesced in the granting of new powers. Two branches of government have given the green light.

In addition, one half of the legislative branch has enthusiastically endorsed the expansion, most recently by the 94-2 vote on the so-called Proxmire bill. With two and one-half of the three branches of government favoring Glass-Steagall reform, what is left?

The House of Representatives, unlike the U.S. Senate, divided its own committee jurisdiction of these issues in much the same way that Glass and Steagall divided the industry 55 years ago. The House Banking Committee oversees commercial banks (and their regulators: the Fed, the Comptroller, FDIC, FHLBB, and state authorities), and the House Energy and Commerce Committee oversees investment banks (and their regulators: the SEC, the Exchanges, and SROs). Like the industries which they supervise, however, each committee is jealous of the other's turf and partial to its own. The Senate Banking Committee is the only single committee in Congress which can even hold hearings on the full range of Glass-Steagall issues.

The House Banking Committee approved a bill this summer that, by a 31-20 vote, granted new powers to banks, but with such strong consumer provisions and firewalls that most banks ended up opposing the bill despite the new powers. The toll was too expensive. So sensitive was the Banking Committee to its own jurisdiction that it managed to draft a 300-page bill which granted many securities powers but which never mentioned the SEC.

The House Energy and Commerce Committee fought back and managed to retain most, if not all, of its jurisdiction. The Committee was granted a sequential referral with a strict time limit. The Committee was obligated to report something out in order to preserve its jurisdiction in future skirmishes, and to report out something strong so that the Committee's position would have some force behind it.

Here things get really interesting. The Committee could have moved toward the Proxmire bill with its commanding majority, or away from it. The Committee chose to do the latter, and it did it with such force that there are now three different legislative proposals to reform Glass-Steagall. What a surprise, three committees and three different opinions. The basic powers, i.e. commercial paper, revenue bonds, and asset-backed securities, are agreed to by each committee, but the directions in which the bills push bank competitiveness are markedly different. The Proxmire bill was supported by banks and agreed to by the insurance industry. The House Banking Committee bill was hardly supported by anyone outside the Committee members. The House Energy Committee bill may have the support of the securities industry, but hardly anyone else.

Instead of dramatically expanding bank powers as the other two committees did, the House Energy Committee bill even threatens a

rollback of some current bank powers such as the ability to make private placements within the bank. The only positive feature of the bill for banks was the promise of flexibility for banks below $500 million in assets.

How did the Energy Committee, with its well-earned reputation for fairness, toughness, and thoroughness, act on these important proposals to change legislatively the basic financial structure of America for the first time in 55 years? It ducked. There was no subcommittee markup. By a voice vote, with almost no discussion or dissent, the full Committee quietly passed its version of the bill. The whole markup took just a few minutes. Few, if any, members had time to read the bill since the first portion of it was only released 16 hours before, and the final portion, the insurance title, was not even ready when the Committee was about to vote favorably on the bill.

I strongly opposed the Energy Committee bill, and said in my opening statement that it was a regrettable day in the history of the Committee, that we should have moved in the direction of the Proxmire bill, and that, while I hadn't read all the bill, I did have the chance to count the votes behind it. Passage was a foregone conclusion. There were not even enough votes to force a recorded vote on the bill.

What the Committee did was, basically, trust the Chairman. Of all the Members of Congress, the Chair is certainly worthy of such trust. But given the variety of understandings about what is in the bill, given the complexity of issues and ferocity of interest groups, given the lack of time before the end of session, and given the eagerness of the regulators to continue tearing down Glass-Steagall, this trust could prove to be a very heavy burden indeed.

The most commonly heard arguments for passage were that it was a matter of Committee jurisdiction, that we had been deprived of adequate time to study and legislate, and that, whatever we had done, it was the best that we could do.

It would be more than ironic if, in the quest to preserve Committee jurisdiction, we ended up giving away congressional jurisdiction to the regulators because we were unable to conclude a successful conference on the bill before we adjourn. Manuel Johnson of the Federal Reserve Board has even gone so far as to mention giving banks equity powers by regulatory fiat. I certainly hope that a conference can be successfully concluded because I think it is vital to build on whatever momentum may be left from the Proxmire vote. But if we cannot or will not act, then we should not prevent other responsible parties from doing so. No committee in Congress, no matter how powerful or well-intentioned, should have veto power over important financial changes that the other two- and three-quarters branches of government have already strongly agreed to.

It would also be ironic if, again like the industries we are supposed to be regulating, we spent so much time embroiled in domestic disputes that foreign regulation gradually became the accepted international standard.

The second argument about lack of time is valid if you assume that we were unable to act until the House Banking Committee completed action on the bill. Under this argument, we had only a few working days to prepare, and, of course, the August recess and

Jewish holidays interfered with our work. The flaw in this reasoning is that anyone who reads the financial pages of newspapers and magazines, or who followed the Senate's action, knew or should have known that Glass-Steagall was a hot issue. It was just a question of time until we would have to act. And instead of seizing the issue and asserting our jurisdiction early by studying the issue, introducing and reporting legislation, we made do with some hearings. The result of this lapse was to force us to hurriedly pass out a rival bill that few of us begin to understand.

The final argument is that this is the best that we could do. I certainly hope it is not. And I doubt that this argument will be stressed when we are meeting with our bankers back home. The Proxmire bill, with perhaps a few modifications, might have been the best that we could do. It at least was a carefully and deliberately thought-out product from a committee which, unlike the House committees, does not suffer from split jurisdiction. The authority of the SEC was well integrated with the power of the Fed, the Comptroller, the FDIC, the FHLBB, and state banking authorities. A few Senators, it is suggested, have lost their enthusiasm for their vote of approval, but even a loss of 20 or 30 Senators would still mean that a strong majority of the U.S. Senate favors the bill. The silent rejoinder is, of course, that the Senate bill is not our bill. But is this proper concern for preserving committee jurisdiction or just pride of authorship? Sometimes the best that you can do is to see that someone else has done a pretty solid job and endorse it, thereby preserving your committee jurisdiction if not your pride.

Whether a bill results from the upcoming good-faith negotiations or not, and whether it is a good bill or not, the real lesson of this issue may be that a busy committee like Energy and Commerce cannot afford to relax on issues within its jurisdiction. Otherwise, the regulators will do our job for us, and the Senate Banking Committee, and even the House Banking Committee, will be made to seem far-sighted and dynamic in comparison. Members of our Committee have so much work to do that few will even notice the harm that our neglect, or threat of bad legislation, has already done and will continue to do to the American financial system.

(Lest there be any question about my perspective in writing this, let me point out several things. I am the only current member of the Energy and Commerce Committee who has had the privilege of serving on the House Banking Committee. I also come from what may be described as a banking family: an ancestor founded a bank, I inherited considerable bank stock from my father, and I once served on the board of directors of a bank. I hope that this combination of circumstance has made me more knowledgeable than it has prejudiced.)

JIM COOPER.

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