AMENDMENT OFFERED BY MR. DINGELL OF MICHIGAN

TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE

[1. CUSTOMER FEE DISCLOSURE]

At the end of title II of the Amendment in the Nature of a Substitute, insert the following new subtitle (and conform the table of contents accordingly):

1 **Subtitle E—Disclosure of Customer**
2 **Costs of Acquiring Financial**
3 **Products**

4 **SEC. 251. IMPROVED AND CONSISTENT DISCLOSURE.**

5 (a) REVISED REGULATIONS REQUIRED.—Within one
6 year after the date of enactment of this Act, each Federal
7 financial regulatory authority shall prescribe rules, or revi-
8 sions to its rules, to improve the accuracy, simplicity, and
9 completeness, and to make more consistent, the disclosure
10 of information by persons subject to the jurisdiction of
11 such regulatory authority concerning any commissions,

1 fees, markups, or other costs incurred by customers in the
2 acquisition of financial products.
3 (b) CONSULTATION.—In prescribing rules and revi-
4 sions under subsection (a), the Federal financial regu-
5 latory authorities shall consult with each other and with
6 appropriate State financial regulatory authorities.
7 (c) CONSIDERATION OF EXISTING DISCLOSURES.—
8 In prescribing rules and revisions under subsection (a),
9 the Federal financial regulatory authorities shall consider
10 the sufficiency and appropriateness of then existing laws
11 and rules applicable to persons subject to their jurisdic-
12 tion, and may prescribe exemptions to the extent appro-
13 priate in light of the objective of this section to increase
14 the consistency of disclosure practices.
15 (d) ENFORCEMENT.—Any rule prescribed by a Fed-
16 eral financial regulatory authority pursuant to this section
17 shall, for purposes of enforcement, be treated as a rule
18 prescribed by such regulatory authority pursuant to the
19 statute establishing such regulatory authority's jurisdic-
20 tion over the persons to whom such rule applies.
21 (e) DEFINITION.—As used in this section, the term
22 "Federal financial regulatory authority" means the Board
23 of Governors of the Federal Reserve System, the Securi-
24 ties and Exchange Commission, the Comptroller of the
25 Currency, the Federal Deposit Insurance Corporation, the

1 Commodity Futures Trading Commission, and any self-
2 regulatory organization under the supervision of any of
3 the foregoing.

[2. SEC BACKUP AUTHORITY]

In section 17(i)(6) of the Securities Exchange Act of 1934, as amended by section 231(a) of the Amendment in the Nature of a Substitute, after "For purposes of this subsection" insert "and subsection (j)".

In section 17 of the Securities Exchange Act of 1934, as amended by section 231(a) of the Amendment in the Nature of a Substitute, redesignate subsection (j) as subsection (k) and before such redesignated subsection (k) insert the following new subsection:

4 "(j) COMMISSION BACKUP AUTHORITY.—
5 "(1) AUTHORITY.—The Commission may make
6 inspections of any wholesale financial holding com-
7 pany that—
8 "(A) controls a wholesale financial institu-
9 tion,
10 "(B) is not a foreign bank, and
11 "(C) does not control an insured bank
12 (other than an institution permitted under sub-

1 paragraph (D), (F), or (G) of section 2(c)(2),
2 or held under section 4(f), of the Bank Holding
3 Company Act of 1956) or a savings association,
4 and any affiliate of such company, for the purpose
5 of monitoring and enforcing compliance by the
6 wholesale financial holding company with the Fed-
7 eral securities laws.
8 "(2) LIMITATION.—The Commission shall limit
9 the focus and scope of any inspection under para-
10 graph (1) to those transactions, policies, procedures,
11 or records that are reasonably necessary to monitor
12 and enforce compliance by the wholesale financial
13 holding company or any affiliate with the Federal
14 securities laws.
15 "(3) DEFERENCE TO EXAMINATIONS.—To the
16 fullest extent possible, the Commission shall use, for
17 the purposes of this subsection, the reports of exami-
18 nations—
19 "(A) made by the Board of Governors of
20 the Federal Reserve System of any wholesale fi-
21 nancial holding company that is supervised by
22 the Board;
23 "(B) made by or on behalf of any State
24 regulatory agency responsible for the super-

1 vision of an insurance company of any licensed
2 insurance company; and
3 "(C) made by any Federal or State bank-
4 ing agency of any bank or institution described
5 in subparagraph (D), (F), or (G) of section
6 2(c)(2), or held under section 4(f), of the Bank
7 Holding Company Act of 1956.
8 "(4) NOTICE.—To the fullest extent possible,
9 the Commission shall notify the appropriate regu-
10 latory agency prior to conducting an inspection of a
11 wholesale financial institution or institution de-
12 scribed in subparagraph (D), (F), or (G) of section
13 2(c)(2), or held under section 4(f), of the Bank
14 Holding Company Act of 1956.

[3. SAVINGS CLAUSE FOR CFTC]

At the end of subtitle A of title II of the Amendment in the Nature of a Substitute, insert the following new section (and conform the table of contents accordingly):

15 **SEC. 210. RULE OF CONSTRUCTION.**
16 Nothing in this Act shall supersede, affect, or other-
17 wise limit the scope and applicability of the Commodity
18 Exchange Act (7 U.S.C. 1 et seq.).

[4. STATE SECURITIES AND INSURANCE]

In section 104(a)(1) of the Amendment in the Nature of a Substitute, strike "restrict" and insert "significantly interfere with the ability of".

In section 104(a)(1) of the Amendment in the Nature of a Substitute, strike "from being" and insert "to be".

In section 104(b)(1) of the Amendment in the Nature of a Substitute, strike "paragraphs (2) and (3) and subject to section 18(c) of the Securities Act of 1933" and insert "paragraphs (2), (3), and (4)".

In section 104(b)(1) of the Amendment in the Nature of a Substitute, strike "restrict" and insert "significantly interfere with the ability of".

In section 104(b)(1) of the Amendment in the Nature of a Substitute, strike "from engaging," and insert "to engage,".

In section 104(b)(2) of the Amendment in the Nature of a Substitute, strike "As stated by the United States Supreme Court" and insert "In accordance with the decision of the Supreme Court of the United States".

In section 104(b)(2) of the Amendment in the Nature of a Substitute, strike subparagraph (B) and insert the following new subparagraph:

1 (B) subparagraph (A) shall not create any
2 inference regarding State statutes and regula-
3 tions governing insurance sales and solicitations
4 other than State statutes and regulations de-
5 scribed in subparagraph (A).

In section 104(b) of the Amendment in the Nature of a Substitute, strike paragraph (3) and insert the following new paragraph:

6 (3) State statutes, regulations, orders, and in-
7 terpretations or otherwise shall not be preempted
8 under paragraph (1) if they—
9 (A) relate to, or are enacted or issued for
10 the purpose of regulating, the business of insur-
11 ance in accordance with the McCarran-Fer-
12 guson Act;
13 (B) apply only to entities that are not in-
14 sured depository institutions or wholesale finan-
15 cial institutions but which are engaged in the
16 business of insurance;
17 (C) do not relate to, and are not enacted
18 or issued for the purpose of regulating—

1 (i) cross-marketing; or
2 (ii) activities, including cross-market-
3 ing, which are subject to paragraph (2);
4 (D) are applicable to and are applied in
5 the same manner with respect to an affiliate of
6 an insured depository institution or a wholesale
7 financial institution as they are applicable to
8 and are applied to those entities that are not
9 affiliated with an insured depository institution
10 or a wholesale financial institution; and
11 (E) do not prevent or significantly inter-
12 fere with the ability of an insured depository in-
13 stitution or wholesale financial institution to en-
14 gage in activities authorized for such institution
15 under this Act or any other provision of Federal
16 law.

In section 104(b) of the Amendment in the Nature of a Substitute, after paragraph (3) insert the following new paragraph:

17 (4) Paragraphs (1) and (2) shall not be con-
18 strued as affecting the jurisdiction of the securities
19 commission (or any agency or office performing like
20 functions) of any State, under the laws of such
21 State, to investigate and bring enforcement actions,

1 consistent with section 18(c) of the Securities Act of
2 1933, with respect to fraud or deceit or unlawful
3 conduct by any person, in connection with securities
4 or securities transactions.

After section 116 of the Amendment in the Nature of a Substitute, insert the following new section (and amend the table of contents accordingly):

5 **SEC. 117. INTERAGENCY CONSULTATION.**

6 (a) PURPOSE.—It is the intention of Congress that
7 the Board of Governors of the Federal Reserve System,
8 as the umbrella supervisor for financial holding compa-
9 nies, and the State insurance regulators, as the functional
10 regulators of companies engaged in insurance activities,
11 coordinate efforts to supervise companies that control both
12 a depository institution and a company engaged in insur-
13 ance activities regulated under State law. In particular,
14 Congress believes that the Board and the State insurance
15 regulators should share, on a confidential basis, informa-
16 tion relevant to the supervision of companies that control
17 both a depository institution and a company engaged in
18 insurance activities, including information regarding the
19 financial health of the consolidated organization and infor-
20 mation regarding transactions and relationships between
21 insurance companies and affiliated depository institutions.

1 The appropriate Federal banking agencies for depository
2 institutions should also share, on a confidential basis, in-
3 formation with the relevant State insurance regulators re-
4 garding transactions and relationships between depository
5 institutions and affiliated companies engaged in insurance
6 activities. The purpose of this section is to encourage this
7 coordination and confidential sharing of information, and
8 to thereby improve both the efficiency and the quality of
9 the supervision of financial holding companies and their
10 affiliated depository institutions and companies engaged
11 in insurance activities.

12 (b) EXAMINATION RESULTS AND OTHER INFORMA-
13 TION.—

14 (1) INFORMATION OF THE BOARD.—Upon the
15 request of the appropriate insurance regulator of
16 any State, the Board may provide any information
17 of the Board regarding the financial condition, risk
18 management policies, and operations of any financial
19 holding company that controls a company that is en-
20 gaged in insurance activities and is regulated by
21 such State insurance regulator, and regarding any
22 transaction or relationship between such an insur-
23 ance company and any affiliated depository institu-
24 tion. The Board may provide any other information
25 to the appropriate State insurance regulator that the

1 Board believes is necessary or appropriate to permit
2 the State insurance regulator to administer and en-
3 force applicable State insurance laws.

4 (2) BANKING AGENCY INFORMATION.—Upon
5 the request of the appropriate insurance regulator of
6 any State, the appropriate Federal banking agency
7 may provide any information of the agency regard-
8 ing any transaction or relationship between a deposi-
9 tory institution supervised by such Federal banking
10 agency and any affiliated company that is engaged
11 in insurance activities regulated by such State insur-
12 ance regulator. The appropriate Federal banking
13 agency may provide any other information to the ap-
14 propriate State insurance regulator that the agency
15 believes is necessary or appropriate to permit the
16 State insurance regulator to administer and enforce
17 applicable State insurance laws.

18 (3) STATE INSURANCE REGULATOR INFORMA-
19 TION.—Upon the request of the Board or the appro-
20 priate Federal banking agency, a State insurance
21 regulator may provide any examination or other re-
22 ports, records, or other information to which such
23 insurance regulator may have access with respect to
24 a company which—

1 (A) is engaged in insurance activities and
2 regulated by such insurance regulator; and
3 (B) is an affiliate of an insured depository
4 institution, wholesale financial institution, or fi-
5 nancial holding company.
6 (c) CONSULTATION.—Before making any determina-
7 tion relating to the initial affiliation of, or the continuing
8 affiliation of, an insured depository institution, wholesale
9 financial institution, or financial holding company with a
10 company engaged in insurance activities, the appropriate
11 Federal banking agency shall consult with the appropriate
12 State insurance regulator of such company and take the
13 views of such insurance regulator into account in making
14 such determination.
15 (d) EFFECT ON OTHER AUTHORITY.—Nothing in this
16 section shall limit in any respect the authority of the ap-
17 propriate Federal banking agency with respect to an in-
18 sured depository institution, wholesale financial institu-
19 tion, or bank holding company or any affiliate thereof
20 under any provision of law.
21 (e) CONFIDENTIALITY AND PRIVILEGE.—
22 (1) CONFIDENTIALITY.—The appropriate Fed-
23 eral banking agency shall not provide any informa-
24 tion or material that is entitled to confidential treat-
25 ment under applicable Federal banking agency regu-

1 lations, or other applicable law, to a State insurance
2 regulator unless such regulator agrees to maintain
3 the information or material in confidence and to
4 take all reasonable steps to oppose any effort to se-
5 cure disclosure of the information or material by the
6 regulator. The appropriate Federal banking agency
7 shall treat as confidential any information or mate-
8 rial obtained from a State insurance regulator that
9 is entitled to confidential treatment under applicable
10 State regulations, or other applicable law, and take
11 all reasonable steps to oppose any effort to secure
12 disclosure of the information or material by the Fed-
13 eral banking agency.

14 (2) PRIVILEGE.—The provision pursuant to this
15 section of information or material by a Federal
16 banking agency or State insurance regulator shall
17 not constitute a waiver of, or otherwise affect, any
18 privilege to which the information or material is oth-
19 erwise subject.

20 (f) DEFINITIONS.—For purposes of this section, the
21 following definitions shall apply:

22 (1) APPROPRIATE FEDERAL BANKING AGENCY;
23 INSURED DEPOSITORY INSTITUTION.—The terms
24 "appropriate Federal banking agency" and "insured
25 depository institution" shall have the same meanings

1 as in section 3 of the Federal Deposit Insurance
2 Act.
3 (2) BOARD; FINANCIAL HOLDING COMPANY;
4 AND WHOLESALE FINANCIAL INSTITUTION.—The
5 terms "Board", "financial holding company", and
6 "wholesale financial institution" shall have the same
7 meanings as in section 2 of the Bank Holding Com-
8 pany Act of 1956.

9 In paragraph (1) of section 309 of the Amendment
10 in the Nature of a Substitute, strike "restrict" and insert
11 "significantly interfere with the ability of".

12 In paragraph (1) of section 309 of the Amendment
13 in the Nature of a Substitute, strike "from becoming" and
14 insert "to become".

15 In paragraph (1) of section 309 of the Amendment
16 in the Nature of a Substitute, strike "from acquiring" and
17 insert "to acquire".

18 In paragraph (3) of section 309 of the Amendment
19 in the Nature of a Substitute, strike "restrict" and insert
20 "significantly interfere with".

[5. EFFECT ON OTHER LAW]

In paragraph (1) of section 45(g) of the Federal Deposit Insurance Act, as added by section 308(a) of the Amendment in the Nature of a Substitute, strike "(1) No provision" and insert "(1) IN GENERAL.—No provision".

In paragraph (1)(B) of section 45(g) of the Federal Deposit Insurance Act, as added by section 308(a) of the Amendment in the Nature of a Substitute, insert "except as provided in paragraph (2)," after "(B)".

In paragraph (2) of section 45(g) of the Federal Deposit Insurance Act, as added by section 308(a) of the Amendment in the Nature of a Substitute—

(1) strike "(2) Regulations" and insert "'(2) COORDINATION WITH STATE LAW.—

'(A) IN GENERAL.—Except as provided in subparagraph (B), regulations"; and

(2) add at the end the following new subparagraph:

1 (B) PREEMPTION.—If, with respect to any
2 provision of the regulations prescribed under
3 this section, the Board of Governors of the Fed-
4 eral Reserve System, the Comptroller of the
5 Currency, and the Board of Directors of the

1 Federal Deposit Insurance Corporation deter-
2 mine jointly that the protection afforded by
3 such provision for consumers is greater than
4 the protection provided by a comparable provi-
5 sion of the statutes, regulations, orders, or in-
6 terpretations referred to in subparagraph (A) of
7 any State, such provision of the regulations pre-
8 scribed under this section shall supersede the
9 comparable provision of such State statute, reg-
10 ulation, order, or interpretation.

[6. BROKERAGE COMMISSIONS]

In section 3(a)(4)(B) of the Securities Exchange Act of 1934, as amended by section 201 of the Amendment in the Nature of a Substitute, strike clause (ii) (relating to trust activities) and insert the following:

11 "(ii) TRUST ACTIVITIES.—The bank
12 effects transactions in a trustee capacity,
13 or effects transactions in a fiduciary capac-
14 ity in its trust department or other depart-
15 ment that is regularly examined by bank
16 examiners for compliance with fiduciary
17 principles and standards, and (in either
18 case)—

1 "(I) is primarily compensated on
2 the basis of an administration or an-
3 nual fee (payable on a monthly, quar-
4 terly, or other basis), a percentage of
5 assets under management, or a flat or
6 capped per order processing fee, or
7 any combination of such fees, but
8 does not otherwise receive brokerage
9 commissions, or other similar remu-
10 neration based on effecting trans-
11 actions in securities, that exceed the
12 cost incurred by the bank in connec-
13 tion with executing securities trans-
14 actions for trustee or fiduciary cus-
15 tomers; and
16 "(II) does not publicly solicit bro-
17 kerage business, other than by adver-
18 tising that it effects transactions in
19 securities in conjunction with advertis-
20 ing its other trust activities.

In section 3(a)(4)(B) of the Securities Exchange Act of 1934, as amended by section 201 of the Amendment in the Nature of a Substitute, strike clause (iv) (relating to certain stock purchase plans) and insert the following:

1 "(iv) CERTAIN STOCK PURCHASE
2 PLANS.—
3 "(I) EMPLOYEE BENEFIT
4 PLANS.—The bank effects trans-
5 actions, as part of its transfer agency
6 activities, in the securities of an issuer
7 as part of any pension, retirement,
8 profit-sharing, bonus, thrift, savings,
9 incentive, or other similar benefit plan
10 for the employees of that issuer or its
11 subsidiaries, if—
12 (aa) the bank does not so-
13 licit transactions or provide in-
14 vestment advice with respect to
15 the purchase or sale of securities
16 in connection with the plan; and
17 "(bb) the bank's compensa-
18 tion for such plan or program
19 consists of administration fees, or
20 flat or capped per order process-
21 ing fees, or both, but the bank
22 does not otherwise receive broker-
23 age commissions, or other similar
24 remuneration based on effecting
25 transactions in securities, that

1 exceed the cost incurred by the
2 bank in connection with execut-
3 ing securities transactions under
4 this subclause (I).
5 "(II) DIVIDEND REINVESTMENT
6 PLANS.—The bank effects trans-
7 actions, as part of its transfer agency
8 activities, in the securities of an issuer
9 as part of that issuer's dividend rein-
10 vestment plan, if—
11 "(aa) the bank does not so-
12 licit transactions or provide in-
13 vestment advice with respect to
14 the purchase or sale of securities
15 in connection with the plan;
16 "(bb) the bank does not net
17 shareholders' buy and sell orders,
18 other than for programs for odd-
19 lot holders or plans registered
20 with the Commission; and
21 "(cc) the bank's compensa-
22 tion for such plan or program
23 consists of administration fees, or
24 flat or capped per order process-
25 ing fees, or both, but the bank

1 does not otherwise receive broker-
2 age commissions, or other similar
3 remuneration based on effecting
4 transactions in securities, that
5 exceed the cost incurred by the
6 bank in connection with execut-
7 ing securities transactions under
8 this subclause (II).
9 "(III) ISSUER PLANS.—The bank
10 effects transactions, as part of its
11 transfer agency activities, in the secu-
12 rities of an issuer as part of a plan or
13 program for the purchase or sale of
14 that issuer's shares, if—
15 "(aa) the bank does not so-
16 licit transactions or provide in-
17 vestment advice with respect to
18 the purchase or sale of securities
19 in connection with the plan or
20 program;
21 "(bb) the bank does not net
22 shareholders' buy and sell orders,
23 other than for programs for odd-
24 lot holders or plans registered
25 with the Commission; and

1 "(ee) the bank's compensa-
2 tion for such plan or program
3 consists of administration fees, or
4 flat or capped per order process-
5 ing fees, or both, but the bank
6 does not otherwise receive broker-
7 age commissions, or other similar
8 remuneration based on effecting
9 transactions in securities, that
10 exceed the cost incurred by the
11 bank in connection with execut-
12 ing securities transactions under
13 this subclause (III).
14 "(IV) PERMISSIBLE DELIVERY
15 OF MATERIALS.—The exception to
16 being considered a broker for a bank
17 engaged in activities described in sub-
18 clauses (I), (II), and (III) will not be
19 affected by a bank's delivery of writ-
20 ten or electronic plan materials to em-
21 ployees of the issuer, shareholders of
22 the issuer, or members of affinity
23 groups of the issuer, so long as such
24 materials are—

1 "(aa) comparable in scope or
2 nature to that permitted by the
3 Commission as of the date of the
4 enactment of the Financial Serv-
5 ices Act of 1998; or
6 "(bb) otherwise permitted by
7 the Commission.

[7. DERIVATIVE INSTRUMENTS]

In section 206(a)(1)(F) of the Amendment in the Nature of a Substitute, strike clauses (ii) and (iii), and insert the following:

8 (ii) interest rates, except interest rate
9 derivative instruments (I) that are based
10 on a security or a group or index of securi-
11 ties (other than government securities or a
12 group or index of government securities);
13 (II) that provide for the delivery of one or
14 more securities (other than government se-
15 curities); or (III) that trade on a national
16 securities exchange; or
17 (iii) commodities, other rates, indices,
18 or other assets, except derivative instru-
19 ments (I) that are securities or that are

1 based on a group or index of securities
2 (other than government securities or a
3 group or index of government securities);
4 (II) that provide for the delivery of one or
5 more securities (other than government se-
6 curities); or (III) that trade on a national
7 securities exchange.

In section 206(a)(3) of the Amendment in the Nature of a Substitute, strike "and" at the end of subparagraph (B); redesignate subparagraph (C) as subparagraph (E); and after subparagraph (B), insert the following new subparagraphs:

8 (C) the term 'security' has the meaning
9 provided in section 3(a)(10) of such Act;
10 "(D) the term 'government securities' has
11 the meaning provided in section 3(a)(42) of
12 such Act, and, for purposes of this subsection,
13 commercial paper, bankers acceptances, and
14 commercial bills shall be treated in the same
15 manner as government securities; and

[8. COMMUNITY NEEDS]

At the end of subtitle A of title I of the Amendment in the Nature of a Substitute, insert the following new section (and amend the table of contents accordingly):

1 **SEC. 109. RESPONSIVENESS TO COMMUNITY NEEDS FOR FI-**
2 **NANCIAL SERVICES.**

3 (a) STUDY.—The Secretary of the Treasury, in con-
4 sultation with the Federal banking agencies (as defined
5 in section 3(z) of the Federal Deposit Insurance Act) and
6 the Securities and Exchange Commission, shall conduct
7 a study of the extent to which adequate services are being
8 provided as intended by the Community Reinvestment Act
9 of 1977, including services in low- and moderate-income
10 neighborhoods and for persons of modest means, as a re-
11 sult of the enactment of this Act.

12 (b) REPORT.—Before the end of the 2-year period be-
13 ginning on the date of the enactment of this Act, the Sec-
14 retary of the Treasury, in consultation with the Federal
15 banking agencies and the Securities and Exchange Com-
16 mission, shall submit a report to the Congress on the
17 study conducted pursuant to subsection (a) and shall in-
18 clude such recommendations as the Secretary determines
19 to be appropriate for administrative and legislative action

1 with respect to institutions covered under the Community
2 Reinvestment Act of 1977.

In paragraph (1) of section 6(d) of the Bank Holding Company Act of 1956, as added by section 103(a) of the amendment in the nature of a substitute, strike "or (C)" and insert "(C), or (D)".

In paragraph (4)(D) of section 6(d) of the Bank Holding Company Act of 1956, as added by section 103(a) of the amendment in the nature of a substitute, strike "or (C)" and insert "(C), or (D)".