

## PROPOSED SIA-ABA GLASS-STEAGALL COMPROMISE

February 26, 1998

- **Banking Products and Derivatives.** The Committee cannot properly evaluate the scope of the exemptions for "banking products" and "derivative products" because those terms are left undefined.
  - In the Banking Committee version of the Bill, the term banking product could be expanded by the FRB and thus, potentially could include all debt and derivative products.
  - In the Banking Committee version of the Bill, derivative products were defined by reference to bankruptcy legislation that was drafted broadly enough to cover transactions in equity securities.

Thus, under the Banking Committee's bill, banking regulators could expand these definitions to exclude most debt and equity securities transactions. This would gut the functional regulation provisions. While one can argue that such results would not be likely, the Commerce Committee should insist on enough precision in the bill that it knows which securities activities will be functionally regulated and which will not.

- **Private Placements.** As drafted, the private placement exception would permit banks to sell private placements directly even if the bank has a broker-dealer affiliate. Given that private placements can be sold through a dual employee of the bank and the bank's broker-dealer, there is no valid cost basis for extending this exception as drafted. Banks without a broker-dealer affiliate were exempted to avoid imposing new costs on smaller banks. Now, it merely gives banks and brokers the option to conduct business outside the self-regulatory scheme, which includes substantial investor protections, including regulation of sales practices.

Also, the proposal expands the definition of "qualified investor" to include an extremely large class of persons — any corporation with a net worth of \$1 million, any governmental entity and any natural person with assets exceeding \$10 million. Banks will be permitted to sell these persons sophisticated financial products like private placements without the protections of the federal securities laws. By making these thresholds so low, the proposal equates having assets with financial sophistication. It deems anyone with zero or negative net worth, but with highly leveraged assets, to not need the benefits of broker-dealer regulation for these complex products. Also, these cut-offs are easy to avoid.

- **Trust Activities.** The exception for bank trust activities guts the trust exception contained in the Commerce Committee bill by greatly expanding bank security activities in this area. It permits banks to sell securities in a variety of so-called "fiduciary" capacities, including as transfer agent and registrar. However, transfer agents and others are not held to the high duty of fair dealing required of a fiduciary. This definition is so broad that it nullifies any effect of the proposed legislative history insert regarding

trust examinations. In addition, trust examinations do not include SBC investor protections.

Furthermore, banks could charge commissions, so long as they are "primarily" compensated on the basis of an annual fee or a percentage of assets under management (which is the way that broker-dealers are often compensated). Moreover, banks would be permitted to advertise such business, so long as the solicitation is done in connection with other trust business. These full-scale brokerage activities would be conducted outside of the protections of and responsibilities required by the federal securities laws, including the duty to supervise employees.

- **Safekeeping and Custody Services.** The safekeeping and custody exception makes an unsuccessful attempt to use the Banking Committee provision but address the Committee's concerns that banks could act as clearing brokers.

The SIA/ABA proposal adds new language to the Banking Committee safekeeping exception that appears intended to prevent banks from using the exception to act as clearing brokers. Unfortunately, this language does not work. It knocks banks out of the exclusion if they act as a "carrying broker" as defined under current SBC rules. This definition was not designed to distinguish between custodians and clearing brokers; therefore, to limit its broad application, the SIA/ABA proposal allows banks to act as a carrying broker "in connection with providing custody, transfer agency, and similar services." This is circular, and eliminates the carrying broker limitation.

- **Certain Stock Purchase Plans.** The proposal would permit banks to effect unsolicited transactions in the securities of an issuer in connection with that issuer's employee benefit plan and dividend reinvestment plan ("DRP"), and it adds other issuer plans. Banks' activities in this area would be restricted by: (1) requiring registered broker-dealers to execute transactions for all types of plans; (2) precluding banks from netting orders in connection with plans other than employee plans; and (3) requiring banks' compensation with respect to plans other than employee plans and DRPs to be "primarily based on flat per order processing fees" plus costs.

In other words, banks could actively sell for all kinds of plans, and receive transaction-based compensation for many plans. This goes beyond banks' traditional activities in this area -- and gives them a "salesman's stake" for many, if not all, plans.

- **Trust, Stock Purchase Plans and Safekeeping Exceptions.** The proposal adds a new limitation for the trust, stock purchase plans and safekeeping exceptions that require banks to execute the trade through a registered broker-dealer, or to execute it internally in a cross-trade. While this helps limit the three exceptions, it would still allow a bank to act as an introducing broker and to cross orders between investors and issuers as part of plans.

**Securities Industry Association**

1401 Eye Street, NW • Washington, DC 20005-2225 • (202) 296-9410 • Fax (202) 296-9775

225-0828  
942-9150  
226-2447**FAX TRANSMITTAL NOTICE****\*\*PLEASE DELIVER PROMPTLY TO RECIPIENT\*\***DATE: February 25, 1998 TIME: 6:15 AM  PMTO: Linda Rich, Consuella Washington & Kaye WilliamsFROM: **STEVE JUDGE**NUMBER OF PAGES: 39 (INCLUDING COVER SHEET)MEMO: Wanted to make sure that you had a copy. I will call  
tomorrow to discuss.

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IN CASE OF A PROBLEM, PLEASE CALL        AT

PH. 202/296-9410

# DRAFT

498

## 1 Subtitle G—Effective Date of Title

### 2 SEC. 171. EFFECTIVE DATE.

3 Except with regard to any subtitle or  
4 other provision of this title for which a spe-  
5 cific effective date is provided, this title and  
6 the amendments made by this title shall take  
7 effect at the end of the 270-day period begin-  
8 ning on the date of the enactment of this Act.

## 9 TITLE II.—FUNCTIONAL

### 10 REGULATION

## 11 Subtitle A—Brokers and Dealers

### 12 SEC. 201. DEFINITION OF BROKER.

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

### 16 "(4) BROKER.—

17 "(A) IN GENERAL.—The term  
18 'broker' means any person engaged in  
19 the business of effecting transactions  
20 in securities for the account of oth-  
21 ers.

22 "(B) EXCEPTION FOR CERTAIN BANK  
23 ACTIVITIES.—A bank shall not be con-  
24 sidered to be a broker because the  
25 bank engages in any of the following

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499

activities under the conditions described:

"(I) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services on or off the premises of the bank if—

"(I) such broker or dealer is clearly identified as the person performing the brokerage services;

"(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;

"(III) any materials used by the bank to advertise or promote generally the availability of brokerage services

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1 under the contractual or  
2 other arrangement clearly in-  
3 dicate that the brokerage  
4 services are being provided  
5 by the broker or dealer and  
6 not by the bank;

7 "IV. any materials used  
8 by the bank to advertise or  
9 promote generally the avail-  
10 ability of brokerage services  
11 under the contractual or  
12 other arrangement are in  
13 compliance with the Federal  
14 securities laws before dis-  
15 tribution;

16 "V) bank employees  
17 (other than associated per-  
18 sons of a broker or dealer  
19 who are qualified pursuant to  
20 the rules of a self-regulatory  
21 organization) perform only  
22 clerical or ministerial func-  
23 tions in connection with bro-  
24 kerage transactions including  
25 scheduling appointments with

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the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the range of investment vehicles available from the bank and the broker or dealer under the contractual or other arrangement.

"(VI) bank employees do not directly receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of"

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the fee is not contingent on whether the referral results in a transaction;

"(VII) such services are provided by the broker or dealer on a basis in which all customers which receive any services are fully disclosed to the broker or dealer;

"(VIII) the bank does not carry a securities account of the customer except in a customary custodian or trustee capacity; and

"(IX) the bank, broker, or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

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(4) Travel activities. The bank

"(D) effects transactions in a trustee capacity and is primarily compensated based on a percentage of assets under management; or

"(II) is an insured bank  
and—

(iii) effects transactions in a fiduciary capacity in its trust department in connection with the provision of investment advice or the exercise of investment discretion;

"(b) is primarily compensated based on a percentage of assets under management, and does not receive incentive compensation for such broker-dealer activities.

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## INSERT A

1       **"(i) TRUST ACTIVITIES.**—The bank2           " (I) effects transactions in a fiduciary capacity fully subject to applicable  
3           trust regulations and examinations and—4           " (aa) is primarily compensated on the basis of either an annual fee,  
5           a percentage of assets under management, or both; and6           " (bb) does not solicit brokerage business, other than by advertising  
7           that it effects transactions in securities in connection with advertising its  
8           other trust activities; or9           " (II) effects transactions as a trustee (including as a successor trustee)  
10          under an indenture agreement, trust agreement, lease, or similar financing  
11          agreement for debt securities or other forms of indebtedness;"

[Also, see definition of "fiduciary capacity" at p.526, Insert H; and see requirement at p.511, Insert D, that securities trades resulting from these exempt activities must be executed through a registered broker dealer.]

**DRAFT**LEGISLATIVE HISTORY INSERT FOR TRUST ACTIVITIES

The legislative history accompanying the functional regulation provisions shall include, in an appropriate place, the following language:

The exception for trust activities requires the bank to effect transactions in a fiduciary capacity "fully subject to applicable trust regulations and examinations." The applicable trust regulations may be those of either the Office of the Comptroller of the Currency ("OCC") or the appropriate State banking regulatory agency, depending upon the chartering authority of the bank. Congress intends, however, that all such bank trust activities will be subject to regulations and examinations substantially similar in scope and frequency to those of the OCC under its Part 9 regulations.

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"(cc) does not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities; and  
"(dd) such services are not provided by an employee of the bank who is also an employee of a broker-dealer.

"(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—

"(I) commercial paper, bankers acceptances, or commercial bills;

"(II) exempted securities, other than transactions in municipal revenue bonds that a national bank is not explicitly authorized to buy or sell for its own account by the Seventh paragraph of section

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505

1                         5136 of the Revised Statutes  
2                         of the United States (as in ef-  
3                         fect on September 1, 1987),  
4                         without percentage limitation  
5                         on the amount of the invest-  
6                         ment for its own account;

7                         "(iii) qualified Canadian  
8                         government obligations as de-  
9                         fined in section 5136 of the  
10                        Revised Statutes, in conform-  
11                        ity with section 15C of this  
12                        title and the rules and regula-  
13                        tions thereunder, or obliga-  
14                        tions of the North American  
15                        Development Bank; or,

16                        "(iv) any standardized,  
17                        credit enhanced debt security  
18                        issued by a foreign govern-  
19                        ment pursuant to the March  
20                        1989 plan of then Secretary of  
21                        the Treasury Brady, used by  
22                        such foreign government to  
23                        retire outstanding commercial  
24                        bank loans.

-22 to 23-

# DRAFT

506

1                         “(iv) Certain Stock  
2                         Purchase PLANS.—The bank  
3                         effects transactions in—

4                         “(D) the securities of an is-  
5                         suer as part of any pension,  
6                         retirement, profit-sharing,  
7                         bonus, thrift, savings, incen-  
8                         tive, or other similar benefit  
9                         plan for the employees of that  
10                        issuer or its subsidiaries, if  
11                        the bank does not

12                        “(v) solicit trans-  
13                        actions; or

14                        “(vi) receive any com-  
15                        pensation directly or indi-  
16                        rectly from employees for  
17                        effecting such trans-  
18                        actions, other than a flat  
19                        per order processing fee  
20                        that does not exceed the  
21                        bank's incremental costs  
22                        directly attributable to  
23                        effecting such trans-  
24                        actions; or

## DRAFT

507

1                         "(II) the securities of an  
2                         issuer as part of that issuer's  
3                         dividend reinvestment and  
4                         stock purchase plan for its  
5                         shareholders; if the bank does  
6                         not—

7                         "(am) solicit trans-  
8                         actions;

(or)

9                         (bb) receive any com-  
10                         pensation directly or indi-  
11                         rectly from shareholders  
12                         for effecting such trans-  
13                         actions, other than a flat  
14                         per order processing fee  
15                         that does not exceed the  
16                         bank's incremental costs  
17                         directly attributable to  
18                         effecting such trans-  
19                         actions, or

20                         "(cc) not shareholders'  
21                         buy and sell orders;

(bb)

22                         "(v) SWEEP ACCOUNTS.—The  
23                         bank effects transactions as part  
24                         of a program for the investment  
25                         or reinvestment of bank deposit

or [Insert]

**DRAFT****INSERT B**

1                 "(ii) the securities of an issuer as part of a plan or program of that issuer  
2 for the purchase or sale of its shares, if-

- 3                 "(aa) the bank does not solicit transactions;  
4                 "(bb) the bank does not net shareholders' buy and sell orders; and  
5                 "(cc) the bank's compensation for such plan or program is  
6 primarily based on flat per order processing fees plus the cost incurred by  
7 the bank in connection with executing securities transactions resulting  
8 from such plan or program."

[Also, see requirement at p.511, Insert D, that securities trades resulting from the activities covered by all three subparts of this exemption must be executed through a registered broker dealer.]

**DRAFT**

508

1 funds into any no-load, open-end  
2 management investment company  
3 registered under the Investment  
4 Company Act of 1940 that holds  
5 itself out as a money market fund.

6       **AFFILIATE TRANSACTIONS.**—The bank effects trans-  
7 actions for the account of any af-  
8 filiate of the bank (as defined in  
9 section 2 of the Bank Holding  
10 Company Act of 1956) other  
11 than—

12       “(i) a registered broker or  
13 dealer; or

14       “(ii) an affiliate that is en-  
15 gaged in merchant banking,  
16 as described in section  
17 17047)(E)(G)(VIII) of this title.

18       **“(vi) PRIVATE SECURITIES OF-**  
19 **FERENCES.**—The bank—

20       “(i) effects sales as part of  
21 a primary offering of securi-  
22 ties not involving a public of-  
23 fering, pursuant to section  
24 3(b), 4(2), or 4(6) of the Securi-

# DRAFT

509

ties Act of 1933 or the rules  
and regulations issued there-  
under;

and

"(B) at any time after one  
year after the date of enact-  
ment of the Financial Services  
Act of 1997, is not affiliated  
with a broker or dealer that  
has been registered for more  
than one year; and

"(C) effects transactions  
exclusively with qualified in-  
vestors.

II

"(viii) Securitizing and Con-  
tody Services.—The bank—

"(A) provides safekeeping  
or custody services with re-  
spect to securities that are  
pledged by one customer to  
another customer in connec-  
tion with a repurchase agree-  
ment or similar financing ar-  
rangement;

Insert  
B C

"(B) facilitates the trans-  
fer of funds or securities, or a

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**DRAFT**INSERT C(viii) **SAFEKEEPING AND CUSTODY SERVICES.**

(I) The bank, as part of customary banking activities--

(aa) provides safekeeping or custody services with respect to securities, including the exercise of warrants or other rights on behalf of customers;

(bb) clears or settles transactions in securities;

(cc) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to subclauses (aa) and (bb) or invests cash collateral pledged in connection with such transactions; or

(dd) holds securities pledged by one customer to another customer or securities subject to resale agreements between customers or facilities the pledging or transfer of such securities, including by book entry.

(II) The exception in subparagraph (I) shall not apply to any bank that, in connection with the activities described in subparagraph (I), acts as a carrying broker (as that term, and derivations of that term, are used in section 15(c)(3) and the rules and regulations thereunder), other than: (1) with respect to government securities, as defined in section 3(a)(42); or (2) in connection with performing custody, transfer agency and similar services.

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510

1 ~~as a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities; or~~  
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“(III) effects or facilitates the lending or borrowing of securities with or on behalf of its customers as part of services provided to those customers pursuant to subsection (B) or (D).”

“(ix) BANKING PRODUCTS.—The bank effects transactions in banking products, as defined in paragraph (5)(c) of this definition.

[To be decided]

“(x) De minimis exception.— The bank effects, other than in transactions referred to in clauses (I) through (ix), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who

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is also an employee of a broker or dealer.

"(C) EXCEPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term 'broker' does not include a bank that—

"(i) was, immediately prior to the enactment of the Financial Services Act of 1997, subject to section 15(e); and

"(ii) is subject to such restrictions and requirements as the Commission considers appropriate.

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

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

**"(5) DEALER.—**

"(A) IN GENERAL.—The term 'dealer' means any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise.

**DRAFT**

INSERT D

1        "(D) BROKER DEALER EXECUTION.—The exception to being considered a  
2 broker for a bank engaged in activities described in subparagraphs (B)(iii), (B)(iv), and  
3 (B)(viii)(I) shall not apply if the activities described in such provisions result in the trade  
4 in the United States of any security that is a publicly traded security in the United States,  
5 unless—

6        "(i) the bank directs such trade to a registered broker or dealer for  
7 execution; or

8        "(ii) the trade is a cross trade or other substantially similar trade of a  
9 security that—

10       "(I) is made by the bank or between the bank and an affiliated  
11 fiduciary; and

12       "(II) is not in contravention of fiduciary principles established  
13 under applicable federal or state law; or

14       "(E) NO EFFECT OF BANK EXEMPTIONS ON OTHER COMMISSION  
15 AUTHORITY.—The exception to being considered a broker for a bank engaged in  
16 activities described in subparagraphs (B) and (C) shall not affect the Commission's  
17 authority under any other provision of this Act or any other securities law."

"(iii) the Commission otherwise permits pursuant  
to order, rule or regulation.

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512

1                         “(B) EXCEPTION FOR PERSON NOT  
2                         ENGAGED IN THE BUSINESS OF DEAL-  
3                         ING.—The term ‘dealer’ does not in-  
4                         clude a person that buys or sells secu-  
5                         rities for such person’s own account,  
6                         either individually or in a fiduciary  
7                         capacity, but not as a part of a regu-  
8                         lar business.

9                         “(C) EXCEPTION FOR CERTAIN BANK  
10                         ACTIVITIES.—A bank shall not be con-  
11                         sidered to be a dealer because the  
12                         bank engages in any of the following  
13                         activities under the conditions de-  
14                         scribed:

15                         “(I) PERTINENT SECURITIES  
16                         TRANSACTIONS.—The bank buys or  
17                         sells—

18                         “(II) commercial paper,  
19                         bankers acceptances, or com-  
20                         mercial bills;

21                         “(III) exempted securities,  
22                         other than purchases and  
23                         sales of municipal revenue  
24                         bonds that a national bank is  
25                         not explicitly authorized to

**DRAFT**

513

1 buy or sell for its own account  
2 by the Seventh paragraph of  
3 section 5136 of the Revised  
4 Statutes of the United States  
5 (as in effect on September 1,  
6 1997), without percentage limi-  
7 tation on the amount of the  
8 investment for its own ac-  
9 counts;

10 "III) qualified Canadian  
11 government obligations as de-  
12 fined in section 5138 of the  
13 Revised Statutes of the United  
14 States, in conformity with sec-  
15 tion 15C of this title and the  
16 rules and regulations there-  
17 under, or obligations of the  
18 North American Development  
19 Bank; or

20 "IV) any standardized,  
21 credit enhanced debt security  
22 issued by a foreign govern-  
23 ment pursuant to the March  
24 1989 plan of the Secretary of  
25 the Treasury Brady, used by

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514

such foreign government to retire outstanding commercial bank loans.

“(II) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—

“(I) for the bank or

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

“(III) ASSUR-GAGED TRANS. ACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or otherwise, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations predominantly originated by the bank, or a syndicate of banks of which the bank is a member, or an affiliate of any

# DRAFT

515

1 such bank other than a broker or  
2 dealer.

3         “(iv) TRANSACTIONS IN BANKING  
4 PRODUCTS.—The bank buys or  
5 sells banking products, as defined  
6 in paragraph (54) of this rule  
7 section.

[to be  
decided]

8         “(v) DERIVATIVE INSTRU-  
9 MENTS.—The bank issues, buys, or  
10 sells any derivative instrument to  
11 which the bank is a party.

12         “(i) to or from a corpo-  
13 ration, limited liability com-  
14 pany, or partnership that  
15 owns and invests all of its  
16 monetary assets, not less than  
17 \$10,000,000 in investments,  
18 to or from a qualified investor,  
19 except that if the instru-  
20 ment provides for the delivery  
21 of one or more securities  
22 (other than a derivative in-  
23 strument or government secu-  
24 rity), the transaction shall be  
25 effected with or through a

# DRAFT

516

1 registered broker or dealer;  
2 or

3 "(II) to or from other per-  
4 sons, except that if the deriva-  
5 tive instrument provides for  
6 the delivery of one or more  
7 securities (other than a deriv-  
8 ative instrument or govern-  
9 ment security), or is a secu-  
10 rity (other than a government  
11 security), the transaction  
12 shall be effected with or  
13 through a registered broker  
14 or dealer; or

15 "(III) to or from any per-  
16 son if the instrument is nei-  
17 ther a security nor provides  
18 for the delivery of one or  
19 more securities (other than a  
20 derivative instrument).)

Insert E

21 ~~and no registration or filing of such instrument~~

22 ~~is required.~~

23 Section 15A of the Securities Exchange

24 Act of 1934 (15 U.S.C. 78c) is intended by in-

**DRAFT****INSERT E**

- 1       **"(B) NO EFFECT OF BANK EXEMPTIONS ON OTHER COMMISSION**  
2        AUTHORITY.—The exception to being considered a dealer for a bank engaged in  
3        activities described in subparagraph (C) shall not affect the Commission's authority  
4        under any other provision of this Act or any other securities law.

**DRAFT**

517

1 Inserting after subsection (i) the following new  
2 subsection:

3 ~~(ii) REGISTRATION FOR SALES OF PRIVATE  
4 SECURITIES OFFERINGS.—A registered secu-  
5 rities association shall create a limited qual-  
6 ification category for any associated person of  
7 a member who effects sales as part of a pri-  
8 mary offering of securities not involving a  
9 public offering, pursuant to section 3(b), 4(2),  
10 or 4(6) of the Securities Act of 1933 and the  
11 rules and regulations thereunder, and shall  
12 deem qualified in such limited qualification  
13 category, without testing, any bank employee  
14 who, in the six month period preceding the  
15 date of enactment of this Act, engaged in  
16 "offering securities".~~

17 ~~GRIEVANCE PROCESS.~~

18 Section 18 of the Federal Deposit Insur-  
19 ance Act is amended by adding at the end the  
20 following new subsection:

21 "(e) GRIEVANCE PROCESS WITH RESPECT TO  
22 SECURITIES ACTIVITIES—

23 "(1) PROCEDURES REQUIRED.—The ap-  
24 propriate Federal banking agencies shall  
25 jointly establish procedures and facilities

203

**DRAFT**

518

1 for receiving and expeditiously process-  
2 ing complaints against any bank or em-  
3 ployee of a bank arising in connection  
4 with the purchase or sale of a security by  
5 a customer. The use of any such proce-  
6 dures and facilities by such a customer  
7 shall be at the election of the customer.

8        "(2) Required ACTIONS.—The actions  
9 required by the Federal banking agencies  
10 under paragraph (1) shall include the fol-  
11 lowing:

12        "(A) establishing a group, unit, or  
13 bureau within each such agency to  
14 receive such complaints;

15        "(B) developing and establishing  
16 procedures for investigating such  
17 complaints;

18        "(C) developing and establishing  
19 procedures for informing customers  
20 of the rights they may have in con-  
21 nection with such complaints; and

22        "(D) developing and establishing  
23 procedures for resolving such com-  
24 plaints, including procedures for the

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**DRAFT**

519

1 recovery of losses to the extent ap-  
2 propriate.

3       **"(3) PROCEDURES IN ADDITION TO OTHER**  
4       **REMEDIES.**—The procedures and remedies  
5 provided under this subsection shall be  
6 in addition to, and not in lieu of, any  
7 other remedies available under law.

8       **"(4) DEFINITION.**—As used in this sub-  
9 section, the term 'security' has the mean-  
10 ing provided in section 3(a)(10) of the Se-  
11 curities Exchange Act of 1934."

12 ~~SECURITY INFORMATION~~ *20f*

13       Section 18 of the Federal Deposit Insur-  
14 ance Act is amended by adding at the end the  
15 following new subsection:

16       **"(t) RECORDKEEPING REQUIREMENTS.**

17       **"(1) REQUIREMENTS.**—Each appro-  
18 priate Federal banking agency, after con-  
19 sultation with and consideration of the  
20 views of the Commission, shall establish  
21 recordkeeping requirements for banks  
22 relying on exceptions contained in para-  
23 graphs (4) and (5) of section 3(a) of the  
24 Securities Exchange Act of 1934. Such  
25 recordkeeping requirements shall be suf-

*20f*

P22-26-00 15-08 FROM ROSENMAN LLP 202 483-4854 ID 2824637188

PAGE 30/39

**DRAFT**

420

ficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions. Each appropriate Federal banking agency shall make any such information available to the Commission upon request.

"(2) DEFINITION.—As used in this sub-section the term 'Commission' means the Securities and Exchange Commission."

11 SEC. 301. SAVING-PRESERVE INVESTMENT IN

12 *ANTI-QUALIFIED INVENTOR*, p. 12.

13 Section 3(a) of the Securities Exchange Act

14 Act of 1934 is suspended by adding act of

15 the following new terminology

16 [View document](#)

**"(A) DEFINITION.**—The term "banking institution" means—

~~"(I) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank.~~

(ii) a banker's acceptance;  
(iii) a letter of credit issued  
on loan made by a bank.

AND  
FIDUCIARY  
CAPACITY

Note: The definition of banking products is still pending negotiation.

**DRAFT**

521

1                         ~~"(iv) a debit account at a bank~~  
2                         arising from a credit card or similar  
3                         arrangement;

4                         ~~"(v) a participation in a loan~~  
5                         which the bank or an affiliate of  
6                         the bank (other than a broker or  
7                         dealer) funds, participates in, or  
8                         owns that is sold—

9                         ~~"(vi) to qualified investors;~~  
10                         or

11                         ~~"(vii) by an employee of a~~  
12                         bank who is not also an em-  
13                         ployee of a broker or dealer to  
14                         other persons that

15                         ~~"(aa) have the oppor-~~  
16                         ~~tunity to review and as-~~  
17                         ~~sess any material informa-~~  
18                         ~~tion, including informa-~~  
19                         ~~tion regarding the bor-~~  
20                         ~~rower's creditworthiness,~~  
21                         ~~and~~

22                         ~~"(bb) based on such~~  
23                         ~~factors as financial so-~~  
24                         ~~pistication, net worth,~~  
25                         ~~and knowledge and expe-~~

# DRAFT

582

rience in financial matters, have the capability to evaluate the information available; or

(v) any derivative instrument, whether or not individually negotiated, involving or relating to foreign currencies, except options on foreign currencies that trade on a national securities exchange.

~~(B) CLASSIFICATION LIMITED~~

Classification of a particular product as a banking product pursuant to this paragraph shall not be construed as finding or implying that such product is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

**"(55) DERIVATIVE INSTRUMENT.—**

Note: The definition of derivative instrument is still pending negotiation.

# DRAFT

53

1 warrant, note, or option that is based,  
2 in whole or in part, on the value of,  
3 any interest in, or any quantitative  
4 measure or the occurrence of any  
5 event relating to, one or more com-  
6 modities, securities, currencies, inter-  
7 est or other rates, indices, or other  
8 assets, but does not include a banking  
9 product.

10        "B) CLASSIFICATION LIMITED.—  
11        Classification of a particular contract  
12        as a derivative instrument pursuant  
13        to this paragraph shall not be con-  
14        strued as finding or implying that  
15        such instrument is or is not a secu-  
16        rity for any purpose under the securi-  
17        ties laws, or is or is not an account,  
18        agreement, contract, or transaction  
19        for any purpose under the Commodity  
20        Exchange Act.

21        "(A) QUALIFIED INVESTOR.—  
22        (55)

23        "(A) DEFINITION.—The term 'quali-  
24        fied investor' means—

25        "(i) any investment company  
            registered with the Commission;

**DRAFT**

524

1 under section 3 of the Investment  
2 Company Act of 1940;

3 "(ii) any issuer eligible for an  
4 exclusion from the definition of  
5 investment company pursuant to  
6 section 3(c)(7) of the Investment  
7 Company Act of 1940;

8 "(iii) any bank (as defined in  
9 paragraph (6) of this subsection),  
10 savings and loan association (as  
11 defined in section 3(h) of the Fed-  
12 eral Deposit Insurance Act),  
13 broker, dealer, insurance com-  
14 pany (as defined in section  
15 2(a)(18) of the Securities Act of  
16 1933), or business development  
17 company (as defined in section  
18 2(a)(49) of the Investment Com-  
19 pany Act of 1940);

20 "(iv) any small business in-  
21 vestment company licensed by  
22 the United States Small Business  
23 Administration under section  
24 301(c) or (d) of the Small Business  
25 Investment Act of 1958;

**DRAFT**

525

1                         (v) any State sponsored em-  
2 ployee benefit plan, or any other  
3 employee benefit plan, within the  
4 meaning of the Employee Retire-  
5 ment Income Security Act of 1974,  
6 other than an individual retire-  
7 ment account, if the investment  
8 decisions are made by a plan fiduciary,  
9 as defined in section 3(31)  
10 of that Act, which is either a  
11 bank, savings and loan associa-  
12 tion, insurance company, or reg-  
13 istered investment advisor;

14                         (vi) any trust whose pur-  
15 chases of securities are directed  
16 by a person described in clauses  
17 (i) through (v) of this subpara-  
18 graph;

19                         (vii) any market  
20 intermediary except under sec-  
21 tion 3(c)(1) of the Investment  
22 Company Act of 1940;

23                         (viii) any associated person  
24 of a broker or dealer other than a  
25 natural person; *or*

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"(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978);

Insert.  
G

**(B) ADDITIONAL ATTORNEYS - The**

Commission may, by rule or order,  
define a 'qualified investor' as any  
other person, other than a natural  
person, taking into consideration  
such factors as the person's financial  
sophistication, net worth, and knowl-  
edge and experience in financial mat-  
ters".

✓ Insert H

**14 SEC. 807. GOVERNMENT SECURITIES DIVISION.**

15 Section 3(a)(43) of the Securities Ex-  
16 change Act of 1934 (15 U.S.C. 78c(a)(43)) is  
17 amended—

18 (1) by striking "or" at the end of sub-  
19 paragraph (C).

(2) by striking the period at the end  
of subparagraph (D) and inserting " or"  
and

23 (3) by adding at the end the following  
24 new subparagraph:

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"(x) a corporation, partnership, proprietorship, organization, trust or other business entity with a net worth exceeding \$1,000,000 or total assets exceeding \$5,000,000 or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity or by an entity referred to in clause (iii) or clause (xi);

"(xi) any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof [(other than a political subdivision of a state)], or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing; or

"(xii) any natural person with assets exceeding at least \$10,000,000."

**DRAFT****INSERT H**

1        "(36) FIDUCIARY CAPACITY.—For purposes of clause (ii) of paragraph (4)(B),  
2        the term "fiduciary capacity" means trustee, executor, administrator, registrar of stocks  
3        and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform  
4        gifts to minors act; investment adviser, if the bank receives a fee for its investment  
5        advice; any capacity in which the bank possesses investment discretion on behalf of  
6        another; or any other similar capacity.

# DRAFT

527

1                 "(E) for purposes of section 15C as  
2 applied to a bank, a qualified Cana-  
3 dian government obligation as de-  
4 fined in section 5138 of the Revised  
5 Statutes.".

6 SEC. 208. EFFECTIVE DATE.

7                 This subtitle shall take effect at the end  
8 of the 270-day period beginning on the date of  
9 the enactment of this Act.

10                 **Subtitle B—Bank Investment  
11 Company Activities**

12 SEC. 311. CUSTODY OF INVESTMENT COMPANY ASSETS BY  
13 AFFILIATED BANK.

14                 (a) MANAGEMENT COMPANIES.—Section  
15 17(l) of the Investment Company Act of 1940  
16 (15 U.S.C. 80a-17(l)) is amended—

17                 (1) by redesignating paragraphs (1),  
18 (2), and (3) as subparagraphs (A), (B), and  
19 (C), respectively;

20                 (2) by striking "(l) Every registered"  
21 and inserting the following:

22                 “(l) Custody of SECURITIES.—

23                 “(1) Every registered”;

24                 (3) by redesignating the 2d, 3d, 4th,  
25 and 5th sentences of such subsection as