

Financial Consumer Association



Citizen Works is working with members of Congress to introduce legislation for a Financial Consumer Association, a nongovernmental organization to protect consumers, based on an updated version of Senator Wellstone's legislation below.

- [Financial Consumer Association Q & A](#)
- [Citizen Utility Boards -- how they work](#)

Consumer and Shareholder Protection Act of 2002, S. 3143

On October 17, 2002, Senator Paul Wellstone (D-MN) introduced a bill to provide for the establishment of the Consumer and Shareholder Protection Association.

CRS Summary of S. 3143:

The Consumer and Shareholder Protection Association Act of 2002 authorizes the establishment of the Consumer and Shareholder Protection Association as a private, nonprofit corporation to: (1) educate and advise consumers and shareholders about the actions of certain entities, and how corporate initiatives will affect them; (2) represent and promote the interests of consumers, and negotiate on behalf of consumers and shareholders with such entities; (3) monitor the availability and quality of financial or shareholder services to low- and moderate-income constituencies and the elderly; and (4) develop data to assist shareholders and consumers in making informed decisions in the marketplace.

The entities subject to this Act are defined as: (1) any company with revenues during its last fiscal year of over \$1.2 billion which is required to file periodic reports under the Securities Exchange Act of 1934; and (2) any insured depository institution.

The Act establishes an interim board of directors representing: (1) consumer groups; (2) institutional shareholder groups; (3) labor unions; (4) civil rights groups; (5) neighborhood groups; (6) elderly groups; and (7) organizations representing low-income persons.

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- [More information on the Consumer and Shareholder Protection Association](#)
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The Act empowers the Association to: (1) represent the interests of consumers before Federal regulatory agencies, legislative bodies, the courts, and other public forums; (2) sue on behalf of Association members for judicial relief, including damages; and (3) participate in research, surveys, and investigations in consumer matters.

Entities subject to this Act are required to include inserts periodically in mailings and proxy statements sent to shareholders and customers, advising them that the Association is established under Federal law to: (1) inform and represent consumers; (2) work on their behalf to prevent corporate fraud and deceptive business practices; and (3) ensure the protection of retirement funds and investments.

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FAQs about a Federally Chartered FINANCIAL CONSUMER ASSOCIATION

A Consumer Watchdog for the Financial Industry

The world is currently facing the worst financial crisis since the Great Depression. Leading up to the crisis over the past 10 years, the financial industry has spent, through lobbying expenditures and campaign contributions, over \$5 billion pushing for and winning deregulation.¹ This deregulation has come at a huge cost to taxpayers and consumers who currently have had little voice in the regulatory debate. To protect consumers and to forestall future financial meltdowns, Congress should empower consumers to protect themselves by chartering an independent, nationwide, citizen-run Financial Consumer Association (FCA).

What is a Financial Consumer Association?

A FCA would be a federally chartered, nationwide, citizen-run, membership association of financial consumers. It would serve as an institutionalized, independent watchdog for the financial industry. In addition to keeping an eye on the financial industry, the FCA's full-time staff would monitor legislative and regulatory activities and lobby for pro-consumer reforms. It would also represent financial consumers before regulatory agencies, Congress, state legislatures and the courts. It would serve as an important countervailing force to the power and influence of the financial industry. The FCA would also educate and advise consumers on financial service matters.

Why do we need a FCA?

The power of the financial industry to push for legislation and regulations that serve its own interests far outweighs that of existing consumer groups. Financial consumers currently lack the resources necessary to advocate their interests before regulatory and legislative bodies. A FCA would serve as a mechanism through which consumers could pool their resources, and would bring about a balance of advocacy before legislative and regulatory bodies.

Aren't existing government regulatory bodies sufficient to protect consumer interests?

Government regulators do seek to protect consumers, however, these regulators do not have the interests of consumers as their only focus and are generally not able to give priority to consumers' interests. In fact, when predatory lending abuse was widespread from 2004 to 2006, the Office of Comptroller of the Currency, which has authority over almost 1,800 banks, took only three consumer-protection enforcement actions.²

A FCA would have protecting financial consumers as its only purpose and, as a member-funded organization, would be immune to outside financial and political pressures. It would respond only to its members who would have a direct voice in the FCA's policies and leadership.

A FCA would complement the work of government regulatory bodies by educating the public about financial products and the actions of the financial industry. A nationwide FCA would give consumers the best chance at effectively monitoring the performance of the state and federal regulators and at participating in the public policy debate regarding the financial industry.

Won't the proposed Financial Product Safety Commission (FPSC), if created, have financial consumer protection as its main focus?

The FPSC would play an important role in terms of consumer protection, however it would not be an entity independent from government and is therefore susceptible to the overwhelming financial and political pressures of the financial industry. A FCA would compliment the work of the FPSC by monitoring both the financial industry and the government regulators. The FCA would enhance the work of the FPSC.

¹ www.wallstreetwatch.org

² *ibid.*

How would a FCA work?

Consumers would be notified of the existence of the FCA through inserts in the customer statements from financial institutions. These inserts would describe the purpose and democratic structure of the FCA, membership fees and eligibility requirements, and the independence of the FCA from government bodies and financial industry groups. Financial consumers would join the FCA by mailing their membership fee and application to the FCA.

Why do FCA inserts need to be included in the customer statements of financial institutions? Can't the FCA recruit members through its own independent mailings?

The insert mechanism would allow the FCA to solicit members and gather the critical mass of resources needed to hire economists, experts, organizers and attorneys at no additional cost to the financial institutions and at minimal cost to the FCA. Therefore, the bulk of the money collected by the FCA could go to advocacy purposes, rather than to the FCA's own fundraising and administrative costs. This would also foster low FCA membership fees.

Couldn't the FCA use its mailing privilege to make untrue or inflammatory statements about the very financial institution in whose customer statement FCA material is enclosed?

No. The FCA legislation would prohibit the FCA from making false or misleading statements in FCA insert material. This legislation could also require the Federal Trade Commission (FTC) to review the wording of the FCA's inserts.

Why should Congress mandate the establishment of a federally chartered FCA? Don't consumers currently have the ability to form their own advocacy organization?

In order to effectively monitor regulators and financial institutions, consumers must possess a high level of expertise about the financial industry. Without adequate resources, it is prohibitively expensive for consumers to develop this expertise, or to hire experts with the requisite sophistication. Currently, financial consumers have few efficient mechanisms for pooling resources. An FCA would be an effective way to foster this organization with minimal cost and maximum benefit because the Association would be allowed to piggyback onto the mailings that the financial institutions are sending out regularly. Without a mandate from Congress, however, no financial institution would voluntarily allow the FCA to include inserts in the mailings to customers.

Wouldn't the FCA be a discriminatory institution since it would represent only financial consumers and not the financial industry?

The FCA's mandate would be to represent a particular point of view – that of the financial consumer. The interests of financial consumers and financial institutions are rarely the same. The financial industry has the resources and mechanisms to very effectively look after its own interests in regulatory proceedings. Financial consumers, however, are a diverse group without any means to effectively organize and pool their resources. A FCA would give them the means to band together and make their viewpoint known.

Isn't it likely that the FCA would be taken over by narrow, special interest groups?

As a member-funded entity, the FCA would be required to maintain a steady flow of voluntary member contributions. This would require the FCA to maintain a broad base of support and serve the common interests of all financial consumers. If the organization were to become too narrow in focus, it would face losing its funding.



Citizen Utility Boards (CUBs)

The idea for a nationwide Financial Consumer Association (FCA) stems from existing state Citizen Utility Boards (CUBs), which focus on utility rate issues. CUBs are nonprofit, nonpartisan utility ratepayers organizations that provide consumers a voice in the regulatory proceedings for monopoly utilities. CUBs help ratepayers coordinate their efforts to control utility rates and establish regulatory policies that benefit consumers. CUBs both advocate for consumers and foster consumer involvement in regulatory and legislative proceedings. They empower utility ratepayers through increased knowledge of and participation in utility issues. This combination of empowerment and advocacy has proven key for effective representation of consumer interests.

CUBs currently exist in four states (WI, IL, OR and CA) and have enjoyed a large degree of success.

Examples of Major CUB Accomplishments:

Illinois CUB

- The Illinois CUB, with over 100,000 members, has saved consumers \$10 billion over the past 25 years.
- The IL CUB's first major victory was the revision of the state's Public Utilities Act in 1985. The Act now requires energy utilities to use the least expensive power available and to conduct management audits as well as audits on utility construction projects.
- In 2006, the IL CUB uncovered evidence that Peoples Energy used an illegal profit-sharing deal with Enron Corp. to overcharge customers in the winter of 2000-2001. The company agreed to a historic \$196 million refund package for Peoples Gas and North Shore Gas customers.

Wisconsin CUB

- The Wisconsin CUB fights aggressively to protect Wisconsin utility ratepayers from unnecessary rate hikes. The WI CUB saved ratepayers over \$200 million in 2008 alone.
- In 2007, WE Energies applied for permission from the Public Service Commission (PSC) to increase electric rates for 2008 by \$712 million or 28 percent, the largest single-year increase in the utility's history. After Wisconsin CUB argued against these increases, the WI Public Service Commission allowed an increase of only 6.9 percent over the following two years; a savings for WE Energies' ratepayers of \$106 million.
- Also in 2007, the WI CUB worked to prevent the Legislature from passing legislation that would have deregulated local telephone service, allowing local telephone companies to charge customers using basic telephone service any price the companies wanted. CUB continues to make the case that consumers still need to be protected from price gouging and poor service from telephone companies.

Oregon CUB

- Since 1984, the Oregon CUB has saved Oregon utility ratepayers more than \$3.9 billion.
- In 1986, the OR CUB, along with OSPIRG, lobbied the Legislature for two additional members to be appointed to the existing one-member Public Utilities Commission. The Legislature sent the issue to the voters in a referendum. Voters strongly approved the measure.
- In 2007, the Oregon CUB defeated in the Legislature, the attempt by big telecommunications companies like Qwest to deregulate Oregon residential phone service, saving customers \$46.2 million in just 2 years.

San Diego Utility Consumers' Action Network (UCAN)

- In 2004, UCAN brought a class action lawsuit against Discover Credit Card that compelled the card company to suspend its "Universal Default" policy where if a person is late on a payment to one creditor, such as a phone company, Discover will raise the interest rate on that person's credit card to the maximum specified in the contract.
- In 2005, the California Public Utilities Commission rejected San Diego Gas & Electric's (SDG&E) demand for a \$500 million rate hike and instead ordered them to reduce their rates based on UCAN's exhaustive 2004 audit of SDG&E's proposal.
- In 2006, UCAN filed a lawsuit alleging that the City of San Diego had overcharged residential sewer customers. The case sparked two investigations and resulted in \$40 million in refunds to be given to sewer customers over the next four years.



Consumer and Shareholder Protection Association

Government's Failure to Protect Consumers

The current financial crisis has made clear that unregulated markets will *not*, despite market fundamentalists' claims, self-correct. Government has an important regulatory role to play.

Over the last few decades, Wall Street has been able to engage in increasingly reckless financial gambling by means of convoluted financial innovations coupled with lax governmental oversight. This combination has led to the creation, and subsequent bursting, of several asset bubbles – the housing bubble is the most recent example.

In his statement introducing his American Recovery and Reinvestment plans, President Obama said the financial crisis is "due to an era of profound irresponsibility that stretched from corporate boardrooms to the halls of power in Washington, D.C. For years, too many Wall Street executives made imprudent and dangerous decisions, seeking profits with too little regard for risk, too little regulatory scrutiny, and too little accountability." President Obama said we need to reform our "weak and outdated regulatory system" so that we can better protect consumers, investors, and businesses from the "reckless greed and risk-taking that must never endanger our prosperity again."¹

It is clear that our financial sector requires a regulatory overhaul. This overhaul must include both new regulations and an independent mechanism through which consumers can protect themselves.

Threats to Future Consumer Protection

What is not clear is how new regulations will hold up to the inevitable attempts by future financial players to free themselves from regulatory control. American citizens have no guarantee that existing and new financial innovations will not, yet again, lead to perverse incentives on the part of financial players to exploit American consumers.

So far neither Congress nor the Obama administration have introduced any significant protections for consumers and investors. This protection is becoming more crucial as we enter a period in which corporate power will become even more concentrated. Consumer advocate Ralph

Nader has pointed out that the "forced or willing mergers, acquisitions and panic takeovers of big banks by bigger banks along with bankruptcies of companies further reduce what is left of quality competition for consumer benefit." Nader warns that, "The fallout from the Wall Street binge is likely to lead to a country run by an even smaller handful of monopolistic global goliaths."²

Without adequate consumer protection, there is nothing to prevent future financial players from engaging, once again, in the "reckless greed and risk-taking" noted by President Obama. The remarks of Nobel Prize winning economist Joseph Stiglitz at a recent House Financial Services Committee hearing emphasize this point. He said it is important to be sensitive to the design of regulations because "There is always going to be some circumvention of regulation"³

In his opening remarks at a February 4, 2009 Senate Banking Committee hearing on modernizing the U.S. financial regulatory system, Committee Chairman Senator Chris Dodd (D-CT) recognized that consumers had been cheated. He pointed out that the current crisis began with brokers and lenders enticing borrowers to take out subprime and exotic loans despite the borrowers' inability to meet the terms of such loans. Dodd said that he would continue to seek answers to the question of how to protect consumers from abusive practices. He said, "We will explore whether to enhance the consumer protection mission of the prudential regulators or to create a regulator whose sole job is protecting the American consumer."⁴

In his testimony at the same committee meeting, Gene Dodaro, Acting Comptroller general of the United States, acknowledged that in the last few years, many consumers that received loans did not understand the risks associated with those loans nor how those risks compounded if housing prices did not continue to rise at the rate they had in recent years. He also predicted that

¹ Remarks of President-Elect Barak Obama as Prepared for Delivery, *American Recovery and Reinvestment*, January 8, 2009. [available at <http://www.whitehouse.gov/agenda/economy/>].

² Nader, Ralph., "Wither Wall Street," January, 30 2009. [available at <http://www.nader.org/index.php?archives/2099-Wither-Wall-Street.html>].

³ U.S. Congress. House. 2008. Committee on Financial Services. *Hearing on The Future of Financial Services Regulation*. 110th Congress., 2nd sess., October 21, 2008. Available at <http://financialservices.house.gov/hearing110/stiglitz102108.pdf>

⁴ U.S. Congress. Senate. 2009. Committee on banking, Housing, and Urban affairs. *Hearing on Modernizing the U.S. Financial Regulatory System*. 111th Congress., 1st sess., February 4, 2009. [Dodd's opening remarks available at <http://banking.senate.gov/public/files/DoddOpeningStatement14.pdf>].

new and more complex financial products will lead to more “challenges” in this area, and said that “opportunities need to be identified” that would protect and empower consumers through improving consumers’ financial literacy.⁵

Ultimately, our country is facing a need for financial regulatory controls that strengthen consumer protection. However the American consumer has little reason to believe that future regulations will prove adequate and that regulators will effectively perform their role. Additionally, consumers are lacking the empowerment and financial literacy necessary to protect themselves.

A Consumer Protection Solution

Congress can help empower consumers by passing the Consumer and Shareholder Protection Act, a bill introduced in the Senate in 2002 by the consumer crusader, Senator Paul Wellstone (D-MN). This act would create a Consumer and Shareholder Protection Association (CSPA), a citizen watchdog group that would work on behalf of the public interest to guarantee an end to abusive and exploitative practices on the part of large corporations and the financial sector. This Association would inform and represent consumers, shareholders, and the public interest in regulatory battles where financial services industry lobbyists currently far outnumber consumer groups, and conduct effective and vigorous oversight of corporate entities, especially financial institutions.

The CSPA’s mission would be to advance the rights and remedies available to consumers and shareholders with respect to financial services, securities investments, insurance, and consumer credit by developing initiatives that would improve the flow of accurate information provided by banks and other financial institutions to consumers and shareholders, and empower and represent shareholders about options for more democratic voting procedures and broader review authority.

The CSPA would be run initially by an interim board of directors which would be appointed by the President and the highest-ranking leaders in both houses of Congress. The members of this board would, to the extent possible, represent a diverse array of consumer groups. This interim board of directors will also be required to inform the public of the existence, nature, and purpose of the Association, and encourage association membership, participation in association activities, and contributions to the

Association. A \$5 million appropriation to the Federal Trade Commission would be used to jump start the CSPA – a small price tag for providing a means for adequate and effective consumer protection. This number seems especially modest when compared to the more than \$9 trillion that the government has committed in bailouts of the financial sector.⁶

Although the Association would be established under federal law as a consumer membership organization, the CSPA would be primarily supported by membership fees, not public funds. For just \$10, anyone 16 years of age or older who pays the annual membership fee would be eligible to become a member of the Association. Reduced-cost membership fees would be available for low-income populations and senior citizens.

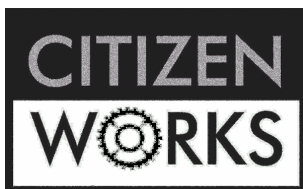
An essential provision of the bill calls for the creation, maintenance and funding of the CSPA through the use of informational inserts included in periodic mailings of the large publicly traded corporations subject to this act, including financial institutions. Paid for by the CSPA, these inserts would inform consumers of the purpose and existence of the Association as well as membership benefits and fees.

As President Obama noted, the current financial crisis is due to the profound irresponsibility of both corporations and government. There is a clear need for strengthened consumer protection in order to prevent a repeat of the exploitative and greed-driven practices of the financial sector. The government must act now to prevent future failures of our regulatory oversight mechanisms. The way to guarantee adequate and effective consumer protection is for Congress to both implement prudent regulations and pass the Consumer and Shareholder Protection Act that would facilitate a member-run citizen watchdog group with a mission to represent, protect and promote the public interest.

By Anniki Laine
Citizen Works, Corporate Reform Project Manager

⁵ U.S. Congress. Senate. 2009. Committee on banking, Housing, and Urban affairs. *Hearing on Modernizing the U.S. Financial Regulatory System*. 111th Congress., 1st sess., February 4, 2009. [testimony by Gene L. Dodaro available at <http://banking.senate.gov/public/ files/DodaroTestimony2409.pdf>].

⁶ New York Times., *Adding Up the Government’s Total Bailout Tab*. February 4, 2009., [available at <http://www.nytimes.com/interactive/2009/02/04/business/2009-0205-bailout-totals-graphic.html>].



Consumer and Shareholder Protection Association

Related Legislation:

Consumer and Shareholder Protection Association Act of 2002

Introduced by Senator Paul Wellstone (D-MN) in 2002, this bill calls for the establishment of a democratically controlled, self-funded, nationwide membership association of consumers and shareholders to enhance their representation and to effectively combat corporate fraud.

<http://thomas.loc.gov/cgi-bin/query/C?c107:./temp/~c107ynlh5x>

Financial Consumers Associations Act of 1992

Introduced by Representative Joseph P. Kennedy II (D-MA) in 1992, this bill would provide consumers with a stronger voice in the financial services industry and before government bodies through the establishment of the Financial Consumer Association—a public purpose, democratically controlled, self-funded, nationwide membership association of financial consumers.

<http://thomas.loc.gov/cgi-bin/query/C?c102:./temp/~c102lxQpPD>

Support for the CSPA:

US PIRG is calling on Congress to enact broad prudential regulatory reforms meant to hold both regulated companies as well as their regulators more accountable. One of the recommended proposals is that consumers be given their own watchdog—a government-chartered, consumer controlled non-profit *Consumer and Shareholder Protection Association* (as introduced by Senator Paul Wellstone in 2002) to protect consumers and investors.

Critical Reforms to Protect Taxpayers and Homeowners Were Not Included in the Emergency Economic Stabilization Act of 2008.

Policy Platform of the Main Street Before Wall Street Campaign – USPIRG

<http://www.uspirg.org/uploads/Oh/dt/Ohdt-kwBt8DsF2p-Coy2LA/platformpostvote2.pdf>

Here, Ralph Nader expresses his support for Senator Paul Wellstone's Consumer and Shareholder Protection Act of 2002.

Nader Lauds Wellstone Legislation

Tuesday, October 21, 2003

<http://www.nader.org/index.php?/archives/80-Nader-Lauds-Wellstone-Legislation.html>

In this report, Robert Kuttner, co-founder and co-editor of *The American Prospect*, catalogues the abuses which led to the recent financial collapse and recommends several regulatory remedies including strengthening consumer protection.

Financial Regulation: After the Fall

Robert Kuttner

http://www.demos.org/pubs/reg_fall.pdf

S. 3143 – Consumer and Shareholder Protection Act of 2002

The need for a CSPA:

This article reveals that the SEC failed to prevent the Stanford Group scheme despite repeated instances of securities violations and allegations of fraud.

S.E.C. Fines Didn't Avert Stanford Group Case

By Stephen Labaton and Charlie Savage – Published: February 18, 2009

<http://www.nytimes.com/2009/02/19/business/19stanford.html?ref=business>

Here, Washington Post Staff Writer Zachary A. Goldfarb reports that top SEC officials warned that they lack the money and staff for comprehensive oversight.

SEC Officials Say the Agency Lacks Cash for Full Oversight

By Zachary A/ Goldfarb – Wednesday, January 28, 2009; Page D02

<http://www.washingtonpost.com/wp-dyn/content/article/2009/01/27/AR2009012703395.html?wpisrc=newsletter&wpisrc=newsletter&wpisrc=newsletter>

Here, CQ columnist John Cranford points to the SEC's repeated failures to root out and prevent fraud in the financial sector, to show that the SEC is overwhelmed; leaving investors with insufficient protection. He doubts whether the SEC can recover from its lax enforcement practices and questions whether a new, adequate financial regulatory regime can be put in place quickly.

Political Economy: Too Many Balls in the Air

By John Cranford – CQ Columnist – January 5, 2009

<http://www.cqpolitics.com/wmspage.cfm?docID=weeklyreport-000003002472&cpage=1>

This article describes the controversial and close ties between the Treasury Department and former employees of the major investment bank Goldman Sachs. Ties which lead some to wonder about whose interests—Wall Street's or American taxpayers'—take first priority.

The Guys From 'Government Sachs'

By Julie Creswell and Ben White – Published: October 17, 2008

<http://www.nytimes.com/2008/10/19/business/19gold.html?ref=business>

This article reports on the admission by top SEC officials of serious regulatory failures that helped cause the economic crisis and the consequent decision to end the SEC's voluntary supervision program for Wall Street's largest investment banks.

S.E.C. Concedes Oversight Flaws Fueled Collapse

By Stephen Labaton – Published: September 26, 2008

http://www.nytimes.com/2008/09/27/business/27sec.html?_r=1&scp=1&sq=sec%20deregulation&st=cse

HR 4979 IH

102d CONGRESS
2d Session
H. R. 4979

To provide consumers with a stronger voice in the financial services industry and before government bodies through the establishment of the Financial Consumers Association, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

April 9, 1992

Mr. KENNEDY (for himself, Mr. EVANS, Mr. LIPINSKI, Ms. KAPTUR, Mr. OWENS of New York, and Mr. LEVINE) introduced the following bill; which was referred jointly to the Committees on Banking, Finance and Urban Affairs and Energy and Commerce

A BILL

To provide consumers with a stronger voice in the financial services industry and before government bodies through the establishment of the Financial Consumers Association, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Financial Consumers Association Act of 1992'.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS- The Congress hereby finds the following:

- (1) Consumers and depositors are an integral part of the financial system and are affected by the safety and soundness of the financial industry in the economy.
- (2) Consumers have more financial choices today than ever before, but not enough information with which to make those choices.
- (3) The American public is confronting the worst banking crisis in the history of the United States since the depression of the 1930s.
- (4) major factors contributing to the banking crisis include--
 - (A) the deregulation of the savings and loan industry without regard to the interests of or the effect on financial service consumers; and

(B) the State and Federal regulators' failure to adequately police the financial services markets to curb insider abuse, fraud, and mismanagement.

(5) The financial industry has enjoyed access to, and has powerfully represented its interests before, Congress and Federal and State regulators, and the courts, while financial service consumers have had limited representation.

(6) The Comptroller General of the United States currently estimates the cost of the savings and loan bailout to be \$500,000,000,000 over the next 30 years and that most of this cost will be borne by consumer taxpayers.

(7) Consumers insure financial depository institutions through their tax dollars, yet lack adequate representation before Congress, State legislatures, and State and Federal regulatory agencies.

(8) The resources available for representation of consumer, minority, and local community interests in the financial industry need to be expanded so citizens can better monitor the performance of State and Federal agencies which regulate depository institutions and participate in public policy debate regarding the financial industry.

(9) The creation of a public purpose, democratically controlled, self-funded, nationwide membership Association of financial service consumers is the most effective way to enhance the representation of consumer, minority and local community interest in the financial industry and to meet the expanding information needs of consumers in the financial services market.

(10) It is appropriate for the Federal Government to require federally insured depository institutions to include in their mailings to depositors an insert informing the depositors about a financial consumers association.

(b) PURPOSES- It is the purpose of this Act--

(1) to establish a public purpose, nonprofit, democratically controlled, membership Association of financial service consumers;

(2) to give the Association a mandate to inform consumers and represent consumer, local community, and broad public interests in financial service matters;

(3) to establish democratic rules of governance for the Association; and

(4) to require federally insured depository institutions to include inserts concerning the Association within their deposit account mailings to consumers.

SEC. 3. DEFINITIONS.

For purposes of this Act--

(1) ASSOCIATION- The term `Association' means the Financial Consumers Association authorized to be established under this Act.

(2) FINANCIAL SERVICE- The term `financial service'--

(A) means any financial service, any financial service delivery system, and any activity closely related to or functionally similar to a financial service; and

(B) includes the following:

(i) Any payment or transfer of funds.

- (ii) Any acceptance of a deposit.
 - (iii) The making of a loan or an extension of credit.
 - (iv) Credit reporting.
 - (v) Securities activities.
 - (vi) Investment or management of funds.
 - (vii) Investment advice.
 - (viii) Financial counseling.
- (3) CONSUMER AND RELATED TERMS- The terms `financial service consumer', `consumer customer' and `consumer' means an individual who uses a financial service.
- (4) INTERESTS OF CONSUMERS IN FINANCIAL SERVICE MATTERS- The terms `interests of consumers in financial service matters' and `interests of financial service consumers' means the interests of consumers in financial service matters, as individual consumers, collectively in terms of local community needs, or as reflected in the broad public interest.
- (5) MEMBER- The term `member' means any individual who meets the requirements for membership in the Association set forth in section 4 of this Act.
- (6) ASSOCIATION DIRECTOR- The terms `association director' and `director' means any individual serving on the board of directors of the Association.
- (7) CAMPAIGN CONTRIBUTION- The term `campaign contribution' means any money, good, service, credit, or other benefit provided or promised for the purpose of electing a delegate.
- (8) CAMPAIGN EXPENDITURE- The term `campaign expenditure' means any payment, use, distribution, or gift of money or anything of value made or promised for the purpose of electing a delegate.
- (9) REGULATORY AGENCY- The term `regulatory agency' means any governmental office, agency, department, or commission at the Federal, State, or local level, which controls, monitors, directs, or governs financial services.
- (10) REGULATORY PROCEEDING- The term `regulatory proceeding' means any formal or informal proceeding conducted by any governmental office, agency, department, or commission at the Federal, State, or local level, which affects financial services.
- (11) IMMEDIATE FAMILY- The term `immediate family' means a person's spouse and legal dependents.
- (12) FINANCIAL SERVICE PROVIDER- The term `financial service provider' means any person who engages in the business of providing any financial service to any consumer.

SEC. 4. ESTABLISHMENT OF THE ASSOCIATION.

- (a) CHARTER- There is hereby authorized to be established a nonprofit corporation by the interim board of directors which will not be an agency or establishment of the United States Government, to be known as the `Financial Consumers Association' (hereafter in this Act referred to as the `Association'). The Association shall be subject to the provisions of this Act, and, to the extent consistent with this Act, to the District of

Columbia Nonprofit Corporations Act. The Association's head office shall be located in Washington, District of Columbia.

(b) REGIONAL AND LOCAL OFFICES- The Association shall establish regional offices in each of the Federal Reserve districts established pursuant to the Federal Reserve Act. The Association shall also establish local offices in each of the several States, Puerto Rico, Guam, Virgin Islands, and American Samoa pursuant to criteria contained in the bylaws adopted by the first elected Board of Directors.

(c) BYLAWS- Except as provided in this Act and in the District of Columbia Nonprofit Corporation Act, the affairs of the Association shall be regulated as determined in the bylaws.

(d) NONPROFIT, NONSTOCK STATUS- The Association chartered under this section-

(1) shall be a nonprofit corporation; and

(2) may not issue any shares of stock or other securities or pay any dividends.

(e) MEMBERSHIP- The membership of the Association shall consist of all individuals who--

(1) are 18 years of age or older; and

(2) have contributed the required annual membership fee to the Association.

(f) MEMBERSHIP FEE-

(1) INITIAL FEE- Until the end of the 180-day period beginning on the date of the first election of directors, the Association's annual membership fee shall be \$10.

(2) PERMANENT FEE DETERMINED BY BOARD OF DIRECTORS- After the end of the 180-day period referred to in paragraph (1), the Association may, by vote of the board of directors, alter the annual membership fee, including the adoption of a sliding fee structure related to a member's income.

(g) POLITICAL CONTRIBUTIONS PROHIBITED- The Association shall not make any contributions to any political candidate or party.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for the purpose of establishing the Financial Consumer Association \$1,000,000 for the fiscal year ending 1 year after enactment of this Act.

SEC. 6. DUTIES AND POWERS OF THE ASSOCIATION.

(a) DUTIES- The Association shall have the following duties, and all actions by the Association shall be directed toward the performance of such duties:

(1) To inform, educate, and advise consumers and others on financial service matters.

(2) To represent and promote the interests of consumers in financial service matters as individual consumers and collectively in terms of local community needs and broad public interests.

- (3) To take affirmative measures to encourage membership by low- and moderate-income and minority consumers, to disseminate information and advice to consumers, and to represent consumer interests in financial service matters.
 - (4) To inform financial service consumers about the Association, including the procedures for obtaining membership in the Association.
 - (5) To allocate not less than 5 percent of the Association's budget to public education programs and to allocate not less than 50 percent of the Association's budget each year to establish and maintain regional and local offices.
- (b) POWERS- In addition to the rights and powers provided by other provisions of this Act, the Association shall have the following powers:
- (1) To represent the interests of consumers in financial service matters before regulatory agencies, legislative bodies, the courts, and other public forums.
 - (2) To establish the policies of the Association regarding appearances before the regulatory agencies, the courts, and other public bodies, and regarding other activities which the Association has the authority to perform under this Act.
 - (3) To maintain up-to-date membership rolls, and to keep them in confidence to the extent required by the provisions of this Act.
 - (4) To initiate, to intervene as a party, or otherwise participate on behalf of financial service consumers in any regulatory proceeding which the Association reasonably determines may affect their interests in financial service matters.
 - (5) To sue on behalf of any member, group of members, or all members for judicial relief, including damages, in any court of competent jurisdiction in regard to any financial service matter.
 - (6) To generally assist financial service consumers in the resolution of complaints involving financial service providers.
 - (7) To negotiate on behalf of financial service consumers as a class with financial service providers.
 - (8) To conduct, support, and assist research, surveys, and investigations in financial service matters.
 - (9) To establish regional and local offices and to provide any such offices with appropriate financial, technical, and other assistance.
 - (10) To contract for services which cannot reasonably be performed by its employees.
 - (11) To solicit and accept gifts, loans, grants, or other aid in order to support activities concerning the interests of financial service consumers, except that the Association may not accept gifts, loans, or other aid from any financial service providers or from any director, employee or agent or member of the immediate family of a director, employee, or agent of any financial service provider.
- (c) STANDING- The Association shall be deemed to have an interest sufficient to obtain judicial review or enforcement in any court of competent jurisdiction of any regulatory decision or other regulatory action which the Association reasonably determines may affect the interest of consumers in financial service matters.

SEC. 7. THE INTERIM BOARD.

- (a) ESTABLISHMENT OF THE INTERIM BOARD-

(1) IN GENERAL- The interim board of directors of the Association shall be appointed as follows:

(A) 3 members appointed by the President of the United States.

(B) 3 members appointed by the Speaker of the House of Representatives, 1 of whom shall be appointed upon the recommendation of the minority leader of the House of Representatives, from among individuals who represent 1 or more of the following categories of citizens' organizations:

(i) Consumer groups.

(ii) Labor unions.

(iii) Civil right groups.

(C) 3 members appointed by the President pro tempore of the Senate, 2 of whom shall be appointed upon the recommendation of the majority leader of the Senate and 1 of whom shall be appointed upon the recommendation of the minority leader of the Senate, from among individuals who represent 1 or more of the following categories of citizens' organizations:

(i) Neighborhoods groups.

(ii) Elderly groups.

(iii) Organizations representing low-income persons.

(2) REGIONAL REPRESENTATION- Individuals considered for appointment to the interim board shall, to the extent possible, represent different regions of the United States.

(b) ELIGIBILITY- To qualify for nomination or appointment as an interim director representing a category of citizens' organizations designated in subparagraph (B) or (C) of subsection (a)(1), an individual must currently be an officer, employee, or member of a citizens' organization within such category or previously have been an officer or employee of 1 or more citizens' organizations within such category for a cumulative period of at least 2 years.

(c) DUTIES OF INTERIM BOARD- The interim board of directors shall have the following duties:

(1) Within 60 days of appointment, incorporate the Association under the laws of the District of Columbia subject to the provisions and limitations of this Act.

(2) Manage the affairs of the Association until the first elected delegates and board of directors takes office.

(3) Inform the residents of the election districts of the existence, nature, and purpose of the Association, and encourage such persons to join the Association, participate in its activities, and to contribute to the Association.

(4) Adopt procedures and standards, consistent with the requirements of this Act, for the nomination and election of the Association's first elected delegates.

(5) Make all necessary preparations for the Association's first election of delegates and oversee the election campaign and tally the votes.

(6) Conduct meetings of the interim board of directors at least once every 3 months, which shall comply with the open meeting requirement of section 9(d)(5).

(7) Keep minutes, financial books, and records which shall reflect the acts and transactions of the interim board of directors.

- (8) Employ such interim staff as the interim directors deem necessary to carry out their responsibilities under this Act.
- (d) **APPLICABILITY OF CERTAIN OTHER PROVISIONS OF THIS ACT-** Interim directors shall be subject to the requirements of subsections (g), (h), and (i) of section 10 and subsections (d), (e), and (f) of section 13.
- (e) **LIMITATION ON AUTHORITY TO APPEAR BEFORE OTHER BODIES-** The interim board of directors shall not engage in representation or intervention on behalf of consumers or otherwise before any regulatory, legislative, judicial, or other body, except to the extent necessary to maintain or exercise the powers granted and the duties imposed upon it by this Act.
- (f) **FIRST GENERAL ELECTION-**
- (1) **IN GENERAL-** Once the membership of the Association reaches 100,000 or within 18 months of the appointment of the last interim director, whichever occurs first, the interim board of directors shall set a date for the first general election of delegates and shall promptly notify every member.
 - (2) **TIMELY ELECTION REQUIREMENT-** The date set for the election shall be not more than 90 days after such notification.
 - (3) **EXCEPTION-** Notwithstanding the provisions of paragraph (1) above, no election shall be held in an election district unless there are at least 50 residents of any such district who are Association members.

SEC. 8. INSERT PROVISIONS.

- (a) **DEFINITIONS-** For purposes of this section--
- (1) **INSURED DEPOSITORY INSTITUTION-** The term 'insured depository institution' means--
 - (A) any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and
 - (B) any insured credit union (as defined in section 101(7) of the Federal Credit Union Act).
 - (2) **DEPOSIT ACCOUNT-** The term 'deposit account' means--
 - (A) any deposit (as defined in section 3(l) of the Federal Deposit Insurance Act);
 - (B) any deposit, certificate, share, or other such account which is authorized for savings associations pursuant to section 5 of the Home Owners' Loan Act; or
 - (C) a member account (as defined in section 101 of the Federal Credit Union Act) or a deposit at a credit union which is eligible for insurance under section 201 of the Federal Credit Union Act.
 - (3) **DEPOSIT ACCOUNT STATEMENT-** The term 'deposit account statement' means a statement which--
 - (A) indicates the balance on a deposit account;
 - (B) involves an outstanding deposit account contractor agreement between a federally insured depository institution and a customer of such institution; and
 - (C) is mailed or otherwise distributed to such customer.

(4) STATUTORY INSERT- The term `statutory insert' means--

(A) except as provided in subsection (e), a statement containing the following information:

`The Financial Consumers Association (FCA) is a consumer membership organization established under Federal law to inform and represent consumers on financial service matters.

`FCA provides consumers with information and advice on a range of financial services, such as consumer loans, mortgage loans, credit cards, debit cards, deposit accounts, investment funds, securities and financial planning.

`FCA also represents consumer, local community, and broad public interests in financial service issues before regulatory agencies and legislative bodies.

`FCA is a democratically controlled consumer membership organization.

`Although the FCA has been established under Federal law, as a consumer membership organization, the Association is primarily supported by membership fees, not public funds. Thus the FCA depends on its membership base for funding to undertake its information and representation activities.

`Anyone who is 18 years of age or older is entitled to become a member of FCA by paying the annual membership fee. The amount of the annual membership fee is \$10.

`You may become a member simply by filling out the attached application and mailing it and the membership fee to FCA in the attached preaddressed envelope.'

(B) an application for Association membership which requests the applicant's name and indicates the annual membership fee; and

(C) a preaddressed, business reply envelope for mailing the application and membership fee to the Association.

(b) REQUIREMENTS APPLICABLE TO STATUTORY INSERTS- The statutory insert required by this section shall be subject to the following requirements:

(1) The statutory insert shall contain only the statement, application, and preaddressed business reply envelope specified in subsection (a)(4).

(2) The statement, application, and preaddressed business reply envelope shall be presented to the customer as a single document, although the document may be separable into different parts by tearing along perforated lines.

(3) The statement and application shall be printed in at least 10-point type.

(4) The Financial Consumers Association shall pay the cost of printing and placing the statutory insert in all appropriate mailings but shall not pay any postage costs if the insert weighs less than .35 ounces.

(c) STATUTORY INSERT REQUIRED TO BE INCLUDED IN STATEMENTS OF DEPOSITORY INSTITUTION-

(1) IN GENERAL- Each insured depository institution shall include, or cause such institution's agent to include, a statutory insert or a Financial Consumers Association insert in deposit account statements that such institution mails or

otherwise distributes to the institution's depositors as specified in paragraphs (2) and (3).

(2) STATUTORY INSERT- The Financial Consumers Association shall have the right to include statutory inserts in each depository account statement for each depositor once each calendar quarter.

(3) FINANCIAL CONSUMERS ASSOCIATION INSERTS- In addition, the Financial Consumers Association shall have the right to include in deposit account statements once each calendar quarter an insert that it prepares and furnishes to any institution required to carry the statutory insert.

(4) CONTENTS OF FCA INSERTS- The insert furnished by the Association shall be limited to soliciting information and membership from consumers and explaining--

(A) the purpose, history, nature, activities, and achievements of the Association;

(B) that the Association is open to membership by residential consumers;

(C) that the Association is not connected to any financial services entity;

(D) that the Association is a nonprofit Association directed by its consumer members;

(E) the procedure for contributing to or becoming a member of the Association; and

(F) the yearly membership fee.

(5) CERTIFICATION- Prior to furnishing an insert to an insured depository institution for mailing, the Association shall certify that the insert--

(A) is not false or misleading; and

(B) contains and is limited to the information permitted by this section.

(6) REVISIONS-

(A) RETURN FOR REVISION- If a depository institution finds that the insert may be false or misleading or is not limited to the information permitted by this section, then it may return the insert to the Association for revision.

(B) SUBMISSION TO FDIC-

(i) IN GENERAL- If the financial services entity and the Association are unable to agree on said revision, the insert shall be submitted to the board of directors of the Federal Deposit Insurance Corporation.

(ii) REVIEW- The Federal Deposit Insurance Corporation shall review the insert and make a determination promptly, but in no event later than 30 days after receipt of the insert.

(iii) DETERMINATION- The Federal Deposit Insurance Corporation may disapprove the insert for mailing if the Corporation finds that the insert is false or misleading or contains information not permitted by this section.

SEC. 9. DELEGATES.

(a) IN GENERAL- Members of the Association shall have duly elected representatives who shall be elected in accordance with the provisions of this section and sections 11 and 13.

(b) ONE DELEGATE TO BE ELECTED FROM EACH DISTRICT- 1 delegate shall be elected by the Association members from each Association election district, except that an election shall not take place in an election district if there is no candidate who has satisfied the qualification requirements of sections 11 and 13.

(c) ELECTION DISTRICTS-

(1) IN GENERAL- The Association election districts shall correspond to the United States congressional districts.

(2) DISTRICTS IN UNITED STATES POSSESSIONS- For the purposes of this Act, the District of Columbia, Puerto Rico, Guam, Virgin Islands, and American Samoa shall each be considered an election district.

(d) DUTIES AND POWERS OF DELEGATES- Each delegate shall have the following duties and powers:

(1) ANNUAL SURVEY- To survey Association members in the delegate's election district at least 1 time each year to ascertain members' concerns using written surveys provided by the Association up to 50 percent of the survey questions in which may be provided by the delegate.

(2) LIAISON- To act as a liaison between the board of directors and the members in the delegate's election district, including transmitting any comments, writings, and suggestions concerning the Association from members in the delegate's election district to the board of directors and informing such members of the board's response to their statements.

(3) OFFICE PLANNING- To develop plans for the organization of regional and local offices.

(4) VOTING ON CHANGES IN ARTICLES OF INCORPORATION, BYLAWS, AND MAJOR POLICIES- To vote at the annual meeting of delegates and at special meetings of delegates called by the board of directors on amendments to the bylaws or the articles of incorporation or on matters involving changes in major policies or operations of the Association.

(5) APPROVAL OF RULES- To approve rules proposed by the board of directors for the nomination and election of the directors.

(6) VOTING AT ANNUAL AND SPECIAL MEETINGS- To vote on other items submitted to delegates by the board of directors at annual and special meetings.

(7) OTHER DUTIES AND POWERS- To carry out all other duties and exercise all other powers accorded to delegates under this Act.

(e) ANNUAL MEETINGS-

(1) TIME AND PLACE- An annual meeting of delegates shall be held in the month of January on a date and at a place within the United States to be determined by the board of directors at least 6 months in advance of the meeting.

(2) PROCEDURES-

(A) VOTING- All delegates shall be eligible to attend, participate in, and vote in the annual meeting of delegates.

(B) QUORUM- A majority of the delegates shall constitute a quorum.

(C) 1 PERSON-1 VOTE- Each delegate shall have 1 vote at such meetings.

(D) MAJORITY VOTE- A majority vote of the delegates shall indicate approval by the delegates of any items submitted for the consideration of the delegates.

(E) ABSENTEE VOTING- The 1st elected board of directors shall establish procedures for absentee voting.

(3) AGENDA- Items may be placed on the meeting's agenda by any of the following methods:

(A) By request of any director or delegate not less than 5 days and not more than 4 months in advance of the date of such meeting.

(B) By petition which--

(i) contains the valid signatures of at least 20 percent of the members in any delegate's election district or at least 1 percent of the total membership; and

(ii) was filed with the board of directors not less than 5 days and not more than 4 months in advance of the date of such meeting.

(4) FORM OF MEETING- The form of the annual meeting of delegates shall be as provided in the laws of the District of Columbia regarding nonprofit corporations; and

(5) OPEN MEETINGS-

(A) MEETINGS OPEN TO PUBLIC- The annual meeting of delegates shall be open to the public.

(B) MEMBERS OPPORTUNITY TO BE HEARD- Members shall be given a reasonable opportunity at any annual meeting to present any comment, criticism, or suggestion concerning the Association, but members may not vote at such meetings.

(6) MINUTES- Complete minutes of each annual meeting shall be kept and shall be distributed to 1 Federal depository library in each election district.

(f) TERMS AND CONDITIONS OF OFFICE-

(1) IN GENERAL- The term of office for any delegate shall be 3 years.

(2) MAXIMUM NUMBER OF TERMS- No delegate shall serve more than 2 terms.

(3) SERVICE WITHOUT PAY OTHER THAN REIMBURSEMENT FOR EXPENSES- Delegates of the Association shall serve without compensation, except that delegates may be reimbursed for actual expenses incurred by them in the performance of their duties.

(g) VACANCY-

(1) IN GENERAL- If a vacancy occurs in any position of delegate, the board of directors shall appoint, as the successor for the balance of the term, the person who--

(A) meets the requirements of sections 11 and 13; and

(B) had the highest vote total in the most recent delegate election from the district in which such vacancy occurred of all candidates (who meet the requirements of sections 11 and 13) other than the candidate whose failure to continue to serve as delegate created the vacancy.

(2) ALTERNATIVE METHOD OF APPOINTMENT- If any vacancy referred to in paragraph (1) cannot be filled in the manner described in such paragraph, the board of directors, by vote of not less than 2/3 of all directors, shall appoint within 60 days of the occurrence of the vacancy a successor from the same election district for the remainder of the current term. The person appointed by the board of directors shall meet the qualifications for delegate.

(h) RECALL- Any delegate shall be removed from office by the board of directors if not less than 40 percent of the members from the delegate's election district who voted in the last election have signed a petition for recall.

SEC. 10. BOARD OF DIRECTORS.

(a) MANAGEMENT- The affairs of the Association shall be managed by a board of directors consisting of 17 members elected by the delegates of the Association in accordance with the provisions of section 12.

(b) 1 PERSON-1 VOTE- Each director shall have 1 vote on the board of directors.

(c) TERMS AND CONDITIONS OF OFFICE-

(1) IN GENERAL- The term of office for any director shall be 3 years.

(2) MAXIMUM NUMBER OF TERMS- No director shall serve more than 2 terms.

(3) SERVICE WITHOUT PAY OTHER THAN REIMBURSEMENT FOR EXPENSES- Directors shall serve without compensation, except that directors may be reimbursed for actual expenses incurred in the performance of their duties.

(d) RECALL- Any director shall be removed from the board of directors by the board of directors if not fewer than 40 percent of the delegates or members of a director's election district who voted in the last election have signed a petition for recall.

(e) POWERS AND DUTIES OF BOARD OF DIRECTORS- The board of directors shall, in addition to its other responsibilities, have the following powers and duties:

(1) MEETINGS-

(A) IN GENERAL- Conduct meetings of the board of directors at least once every 3 months, which meetings shall be open to the public, unless 2/3 of the directors present vote to adjourn into executive session.

(B) EXECUTIVE SESSION- The only matters which may be discussed in executive session are personnel actions, potential or pending civil or criminal proceedings involving the Association, and material which would result in an unwarranted invasion of personal privacy if discussed in open sessions.

(2) CONDUCT ANNUAL MEETING- Conduct an annual delegate meeting.

(3) MINUTES AND FINANCIAL RECORDS- Keep minutes, financial records, and other records which shall reflect the acts and transactions of the board of directors.

(4) AUDITS- Cause the Association's financial books to be audited by a qualified certified public accountant at least once each fiscal year.

- (5) **PREPARE STATEMENTS AND REPORTS-** Prepare quarterly statements and an annual report indicating the substantive activities and financial operations of the Association.
- (6) **APPROVAL OF BYLAWS-** Approve the bylaws of the Association consistent with the requirements of this Act. All rules approved by the delegates pursuant to the provisions of this Act shall be incorporated in the bylaws.
- (7) **MAKE DOCUMENTS AVAILABLE TO PUBLIC-** Make available to the public any of the following documents prepared by or filed with the Association within the preceding 5 years:
 - (A) Minutes of the meetings of the board of directors.
 - (B) Any director's, executive director's, or candidate's financial statement and any candidate's statement.
 - (C) The annual report of the Association.
- (f) **ELECTION OF OFFICERS-**
 - (1) **REQUIRED OFFICERS-** At the first regular meeting of the board of directors at which a majority of its members are present subsequent to the installation of new directors following each annual election, the board shall elect by majority vote of directors present and voting and from among the directors a president, vice-president, secretary, and treasurer.
 - (2) **ADDITIONAL OFFICERS-** The board shall also have the power to elect a comptroller and such other officers as the board of directors deems necessary.
- (g) **EXECUTIVE DIRECTOR-**
 - (1) **IN GENERAL-** The board of directors shall hire and supervise an executive director for the Association.
 - (2) **DUTIES OF EXECUTIVE DIRECTOR-** The executive director shall implement the policies established by the board of directors, employ and discharge Association employees, and manage the offices, facilities, and employees of the Association.
 - (3) **ELIGIBILITY STANDARDS-** Any applicant for the position of executive director and each executive director shall satisfy the requirements for director eligibility established by subsections (d), (e), and (f) of section 13.
- (h) **NO COMPENSATION FOR ASSOCIATION DIRECTORS-** No Association director may receive any compensation for such director's services but shall be reimbursed for wages actually lost in an amount not to exceed \$160 per day and for necessary expenses, including travel expenses incurred in the discharge of duties.
- (i) **BONDING REQUIREMENT FOR STAFF-** Any director or staff person eligible to receive, handle, or disburse funds on behalf of the Association shall be bonded. The cost of such bonds shall be paid for by the Association.
- (j) **ANNUAL FINANCIAL STATEMENTS OF DIRECTORS-** Each director and the executive director shall file annually with the board of directors a director's financial statement which shall include the same information required in section 13(b).

SEC. 11. ELECTIONS OF DELEGATES.

- (a) **VOTING STANDARD-** Each member of the Association shall be entitled to cast 1 vote for a candidate for a delegate to represent such member's district. Voting shall be by secret mail ballot.
- (b) **ELIGIBILITY STANDARDS FOR NOMINATION AS A DELEGATE-** To qualify for nomination as a candidate for election as a delegate of the Association, an individual shall--
- (1) be a member of the Association and a resident of the election district which such individual seeks to represent;
 - (2) submit to the Association, not less than 60 days and not more than 120 days before the election, a nomination petition signed by at least 25 Association members from the election district which such individual seeks to represent;
 - (3) submit to the Association the statements required by section 13; and
 - (4) satisfy all other requirements of this Act and any applicable bylaws of the Association.
- (c) **DISTRIBUTION OF ELECTION MATERIAL-**
- (1) **IN GENERAL-** The Association shall mail to each member the following documents concerning duly nominated candidates for election as a delegate:
 - (A) An official ballot listing all such candidates from the member's election district.
 - (B) The candidate's statement required by section 13(a) for each such candidate from the member's election district.
 - (2) **SUMMARY AND COSTS-** The delegate summaries shall have a uniform format and shall provide information on the same characteristics for each candidate. The costs for all mailings described in this subsection shall be borne by the Association.
- (d) **LIMITATION ON CAMPAIGN EXPENDITURES-** No candidate for election as a delegate or director shall incur campaign expenditures for any such election in an amount greater than the amount determined by multiplying the number of members in the candidate's election district by 150 percent of the cost of postage for a 1-ounce 1st class mailing.
- (e) **LIMITATION ON USE OF CAMPAIGN CONTRIBUTIONS-** No candidate for election as a delegate or to the board of directors may use any campaign contribution for any purpose other than campaign expenditures. Any unused contributions shall be donated to the Association not later than 60 days after the election.
- (f) **LIMITATION ON AMOUNT OF CAMPAIGN CONTRIBUTIONS-** No candidate for election as a delegate shall accept more than \$250 in campaign contributions from any 1 contributor in any election.
- (g) **PROHIBITION ON ACCEPTANCE OF CERTAIN CONTRIBUTIONS-** A candidate for election as a delegate may not accept political action committee contributions.

SEC. 12. ELECTIONS OF DIRECTORS.

- (a) Election of the Board of Directors-
- (1) **REGULAR ELECTION PROCEDURES-**

(A) 1 DELEGATE-1 VOTE- Each delegate shall cast 1 vote for 1 candidate for the board of directors.

(B) TOP 17 CANDIDATES BECOME DIRECTORS- The 17 candidates receiving the largest number of votes shall become the directors.

(2) RUNOFF ELECTION-

(A) IN GENERAL- In the event of a tie involving the 17th position on the board of directors, a runoff election shall be conducted.

(B) VOTING AND CANDIDATE ELIGIBILITY- Any delegate may vote for 1 candidate in the runoff election, and only those nominees involved in the tie that included the 17th position shall be eligible for the runoff election.

(b) ELIGIBILITY STANDARDS FOR THE BOARD OF DIRECTORS- To qualify for nomination as a candidate for election to the board of directors, an individual shall--

(1) be a delegate; and

(2) be nominated by 25 other delegates.

(c) APPLICABILITY TO ALL BOARD ELECTIONS- The requirements of this section shall apply to the first election of directors conducted by the interim board of directors pursuant to section 8 as well as to all subsequent elections.

SEC. 13. QUALIFICATIONS.

(a) CANDIDATE'S STATEMENT-

(1) STATEMENT REQUIRED- Any person seeking nomination as a candidate for election as a delegate or to the board of directors shall file with the Association, no less than 60 days and no more than 120 days prior to the election, a candidate's statement.

(2) CONTENTS- The contents of a candidate's statement may not contain false statements and the Association may, by bylaw or interim board of directors' procedure, impose a uniform limitation on the length of all candidate's statements.

(b) FINANCIAL STATEMENT-

(1) STATEMENT REQUIRED- Any person seeking nomination as a candidate for election as a delegate or director shall file with the Association, not less than 60 days and not more than 120 days before the election, a financial statement and shall affirm in writing, that the information in the statement is true and complete.

(2) CONTENTS- Each candidate's financial statement shall include the following information for the candidate and the immediate family of the candidate:

(A) PRECEDING 3 YEARS' INCOME- Income during each of the preceding 3 years (including income derived from salary, commissions, real estate holdings, and financial assets) itemized by type of source, identity of source, and amount.

(B) PRECEDING 5 YEAR'S BUSINESS AND FINANCIAL RELATIONSHIPS- A detailed list of any business or financial relationships during the preceding 5 years with any financial service provider or organization of financial service providers, including any attorney, legislative agent, officer, or director relationship;

(C) CURRENT AND PRECEDING 5 YEARS' CORPORATE POSITIONS- A list of all corporate and organizational directorships or other offices and all fiduciary relationships currently held or held at any time during the preceding 5 years.

(D) INVESTMENTS OF \$3,000 OR MORE IN ANY CORPORATION- A list of all corporations in which the candidate holds securities worth \$3,000 or more at current market value and the dollar value of each such holding.

(E) OBLIGATIONS OF \$3,000 OR MORE TO ANY CREDITOR- A list of all creditors to whom outstanding debt of \$3,000 or more is owed and the dollar amount of each such debt.

(F) OTHER INFORMATION- Such other information as the board of directors may require by bylaw.

(c) AFFIRMATION OF TRUTH OF STATEMENTS- Each candidate for election as a delegate or director shall affirm in writing, that the information in such candidate's financial statement is true and complete and that the candidate has complied with all the campaign contribution and campaign expenditure requirements of this Act and any such bylaws of the Association. Each candidate shall furnish the board of directors with such information regarding campaign contributions and expenditures as the board may request.

(d) INELIGIBILITY OF INTERIM DIRECTORS AND STAFF DURING 1ST ELECTION- No interim director shall be eligible for election as a delegate or director during the 1st election. The executive director and other Association staff persons, including interim staff persons, shall not be eligible for election as a delegate or director while serving as executive director or staff person or for 1 year after such service is terminated.

(e) INELIGIBILITY OF DELEGATES AND DIRECTORS TO HOLD OTHER PUBLIC OFFICE- No delegate or director shall hold any elective Federal, State, or local office or be a candidate for such office, or be appointed to hold such office, unless such appointee receives no compensation other than reimbursement of expenses.

(f) INELIGIBILITY OF OFFICERS, DIRECTORS, EMPLOYEES, AND SHAREHOLDERS OF FINANCIAL SERVICE PROVIDERS- Any director, officer, or employee of a financial service provider, any person who owns common stock or other securities of financial service providers in an aggregate amount in excess of \$10,000, any agent, consultant, attorney, or accountant for a financial service provider, and any member of the immediate family of any such person shall be ineligible to be a delegate or a director.

(g) INELIGIBILITY OF OFFICERS AND EMPLOYEES OF FEDERAL OR STATE DEPOSITORY INSTITUTION REGULATORY AGENCIES- No officer or employee of any State or Federal agency that regulates depository institutions or any member of the immediate family of any such officer or employee shall be eligible to be a delegate or a director.

SEC. 14. BALLOT ISSUES.

(a) PROCEDURE FOR OBTAINING MEMBERSHIP VOTE ON ISSUES- Issues may be placed on a ballot for vote by the general membership if--

- (1) a majority of the board of directors votes to place an issue before the membership for vote;
 - (2) a petition is received by the board of directors which--
 - (A) contains the valid signatures of at least 20 percent of the members in any district or at least 1 percent of the total membership; and
 - (B) requests that an issue be placed on a ballot is received by the board of directors; or
 - (3) a majority of the delegates vote to place an issue before the membership for a vote.
- (b) PROCEDURES FOR CONDUCTING VOTE ON ISSUES-
- (1) TIME FOR ELECTION- Upon certification of a vote of the directors or delegates which meets the requirements of paragraph (1) or (3) of subsection (a) or the receipt of a petition which meets the requirement of subsection (a)(2), the board of directors shall place the issue on a special ballot and schedule a date for a vote on the issue to be held within 2 months after receipt of the certification or petition.
 - (2) MAIL BALLOT- The board of directors shall send or have sent by mail to each member, not later than 30 days after receipt of a petition or certification pursuant to this section, an official ballot containing the issue for membership vote.
 - (3) VOTE CAST BY RETURN MAIL- Each member may cast a vote regarding the ballot issue by returning the ballot, properly marked, to the head office of the Association the date and time fixed for the balloting pursuant to this subsection.
 - (4) SECRET BALLOT- Voting shall be by secret ballot.
 - (5) VOTE TALLY- The board of directors shall tally votes with all reasonable speed and inform the membership and delegates promptly of the outcome of the vote.

SEC. 15. ACCESS TO MEMBER MAILINGS.

The board of directors shall provide any Association member free access through Association mailings to the Association's membership for Association purposes, but shall not disclose the identity of Association members. No person shall use any list of members of the Association, or any part of such list, for purposes other than the conduct of business of the Association as prescribed in this Act. No person shall disclose any such list or part thereof to any other individual who the person has reason to believe does not intend to use it for the lawful purposes described in this Act.

SEC. 16. PENALTIES.

A violation of any provision of this Act by a regulated financial institution or officer, employee, or agent of any such institution shall be subject to a civil penalty of not more than \$10,000 for each violation to be levied by the Federal Deposit Insurance Corporation.

SEC. 17. DISSOLUTION.

If, after the end of the 3-year period beginning on the date the Association is incorporated, the Association's membership remains below 5,000 members during any 1-year period, the board of directors of the Association shall dissolve the Association. Upon the termination, dissolution, or winding up of the Association in any manner or for any reason, voluntary or involuntary, its assets, if any, remaining after the payment or provision for payment of all liabilities of the Association shall be distributed to, and only to, 1 or more charitable organizations. No part of the income or assets of the Association shall inure to any of its members, directors, or officers, or be distributed to any of them during the life of the Association or upon its dissolution. At the time of dissolution, any unexpended funds appropriated by Congress for the establishment of the organization shall be returned to the United States Treasury.

SEC. 18. RELATIONSHIP TO EXISTING LAW.

Nothing in this Act shall be construed to limit the right of any individual or group of individuals to initiate, intervene in, or otherwise participate in any proceeding before a regulatory agency or court, nor to relieve any regulatory agency, court, or other public body of any obligation, or affect its discretion to permit intervention or participation by a consumer or group or class of consumers or citizens in any proceeding or activity.

END

107th CONGRESS
2d Session
S. 3143

To provide for the establishment of the Consumer and Shareholder Protection Association, and for other purposes.

IN THE SENATE OF THE UNITED STATES

October 17, 2002

Mr. WELLSTONE introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide for the establishment of the Consumer and Shareholder Protection Association, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the `Consumer and Shareholder Protection Association Act of 2002'.

(b) TABLE OF CONTENTS- The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Policy.
- Sec. 4. Definitions.
- Sec. 5. Establishment of the Association.
- Sec. 6. Authorization of appropriations and allotments of grants.
- Sec. 7. Mission, duties, and powers of the Association.
- Sec. 8. Interim board.
- Sec. 9. Insert and notice provisions.
- Sec. 10. Board of directors.
- Sec. 11. Election of directors.
- Sec. 12. Qualifications.
- Sec. 13. Ballot issues.
- Sec. 14. Access to member mailings.
- Sec. 15. Prohibited acts.
- Sec. 16. Penalties.

- Sec. 17. Administrative enforcement.
- Sec. 18. Dissolution.
- Sec. 19. Relationship to existing law.
- Sec. 20. Construction.
- Sec. 21. Severability.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS- The Congress finds that--

- (1) scandals involving deceptive and fraudulent business practices have brought public confidence in the integrity and fairness of many of the Nation's largest corporations to an all-time low and threaten the basic strengths of the United States economic system;
- (2) contributing to the loss of public confidence are perceptions of inadequate oversight and insufficient independence between corporations and their regulators;
- (3) the collapse of major corporations resulting from fraudulent practices has caused the loss of hundreds of billions of dollars of lifetime savings in 401(k) plans, pensions, and investor portfolios;
- (4) resources available for representation of consumers and shareholders need to be expanded so that citizens can better monitor the performance of Federal agencies that regulate corporations and participate in the public debate concerning the oversight of these corporations;
- (5) the Federal Government has a substantial interest in the creation of a public-purpose, democratically controlled, self-funded, nationwide membership association of consumers and shareholders to enhance their representation and to effectively combat corporate fraud; and
- (6) the requirement that informational and statutory inserts be included in the mailings of entities subject to this Act is essential to the creation, maintenance, and funding of such an association.

(b) PURPOSES- The purposes of this Act are--

- (1) to establish a public-purpose, nonprofit, democratically controlled, membership Association of consumers and shareholders;
- (2) to give the Association a mandate to inform and represent consumers, shareholders, and the public interest, and to further the effective and vigorous oversight of corporate entities;
- (3) to establish democratic rules of governance for the Association;
- (4) to require any entity subject to this Act to periodically include inserts concerning the Association within their statements and billings to consumers; and
- (5) to prescribe the text and format of such insert.

SEC. 3. POLICY.

The policy of Congress is that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this Act, of an orderly procedure for

developing and financing (through the use of statutory inserts) the creation of the Consumer and Shareholder Protection Association.

SEC. 4. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

- (1) ASSOCIATION- The term `Association' means the Consumer and Shareholder Protection Association established in accordance with this Act.
- (2) ASSOCIATION DIRECTOR- The terms `Association director' and `director' mean any person duly elected or appointed to the Association board of directors pursuant to this Act, except where the context otherwise requires.
- (3) COMMISSION- The term `Commission' means the Federal Trade Commission.
- (4) CONSUMER- The term `consumer' means any person who uses, purchases, leases, or acquires any real or personal property, tangible or intangible goods, services, or credit.
- (5) ENTITY SUBJECT TO THIS ACT- The term `entity subject to this Act' means--
 - (A) any company that--
 - (i) is required to file periodic reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)); and
 - (ii) has revenues during its last fiscal year of greater than \$1,200,000,000; and
 - (B) any insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).
- (6) INSERT CARRIER- The term `insert carrier' includes--
 - (A) any deposit account statement which--
 - (i) indicates the balance on a deposit account; or
 - (ii) involves an outstanding deposit account contract or agreement between an

insured depository institution and a customer of such institution; and

- (B) any proxy statement required to be provided to a shareholder in accordance with the securities laws (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).

- (7) MEMBER- The term `member' means any person who meets the requirements for membership in the Association, as set forth in section 4.
- (8) REGULATORY AGENCY- The term `regulatory agency' means any governmental office, agency, department, or commission of the Federal Government, which regulates, monitors, directs, or governs publicly traded corporations, financial services, or consumer transactions.
- (9) REGULATORY PROCEEDING- The term `regulatory proceeding' means any rulemaking, adjudication, or ancillary proceeding conducted by any

governmental office, agency, department, or commission at the Federal, State, or local level, which affects any entity subject to this Act.

(10) STATUTORY INSERT- The term `statutory insert' means any digital or printed statement, card, or envelope and statement combination, or a statement, application, and preaddressed business reply envelope used by the Association to solicit information and contributions or membership fees from consumers and shareholders and explain the purpose, history, nature, activities, achievements, and membership criteria of the Association.

SEC. 5. ESTABLISHMENT OF THE ASSOCIATION.

(a) CHARTER- There is authorized to be established a nonprofit corporation by the interim board of directors to be known as the `Consumer and Shareholder Protection Association'. The Association shall be subject to the provisions of this Act, and, to the extent consistent with this Act, to the District of Columbia Nonprofit Corporations Act. The main office of the Association shall be located in Washington, D.C.

(b) NONGOVERNMENTAL STATUS- The Association shall be a private corporation and shall not, for any purpose, be considered to be a department, agency, or instrumentality of the United States Government. An officer or employee of the corporation shall not, for any purpose, be considered to be an officer or employee of the Federal Government.

(c) REGIONAL AND LOCAL OFFICES- The Association may establish regional offices as needed, in any of the several States.

(d) BYLAWS- Except as provided in this Act and in the District of Columbia Nonprofit Corporations Act, the affairs of the Association shall be regulated as determined in the bylaws of the Association.

(e) NONPROFIT, NONSTOCK STATUS- The Association chartered under this section--

(1) shall be a nonprofit corporation; and

(2) may not issue any shares of stock or other securities or pay any dividends.

(f) MEMBERSHIP- The membership of the Association shall consist solely of individuals who--

(1) are 16 years of age or older; and

(2) have contributed the required annual membership fee to the Association.

(g) MEMBERSHIP FEE-

(1) INITIAL FEE- Until the end of the 180-day period beginning on the date of the first election of directors, the annual membership fee of the Association shall be \$10.

(2) PERMANENT MEMBERSHIP FEES DETERMINED BY BOARD OF DIRECTORS- After the end of the 180-day period referred to in subsection (e), the Association may, by vote of the board of directors, alter the annual membership fee. The board of directors shall adopt a reduced fee structure, offering reduced-cost membership fees for low-income populations and senior citizens.

(h) POLITICAL CONTRIBUTIONS PROHIBITED- The Association shall not make any contributions to any political candidate or party, or to any national or State political committee, as defined in section 301 of the Federal Election Campaign Act of 1971 (2

U.S.C. 431), or participate in or intervene in any political campaign on behalf of or in opposition to any candidate for public office.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS AND ALLOTMENTS OF GRANTS.

There is authorized to be appropriated to the Federal Trade Commission, for the purpose of establishing the Association, \$5,000,000 for the fiscal year ending 1 year after the date of enactment of this Act.

SEC. 7. MISSION, DUTIES, AND POWERS OF THE ASSOCIATION.

(a) MISSION- The Association shall advance the rights and remedies available to consumers and shareholders with respect to financial services, securities investments, insurance, and consumer credit, by developing initiatives to--

(1) improve the flow of accurate information from entities subject to this Act to consumers and shareholders;

(2) increase the independence of the management of entities subject to this Act; and

(3) empower and represent the shareholders of entities subject to this Act, by educating shareholders about options for more democratic voting procedures and broader review authority.

(b) DUTIES- The duties of the Association shall be--

(1) to inform, educate, and advise consumers and shareholders about the actions of entities subject to this Act;

(2) to represent and promote the interests of consumers collectively, and, when necessary, to negotiate on behalf of consumers and shareholders with entities subject to this Act;

(3) to take affirmative measures to encourage membership by low- and moderate-income and minority consumers, and to disseminate information and advice to consumers;

(4) to inform, insofar as possible, consumers about the mission of the Association, including the procedures for obtaining membership in the Association;

(5) to provide consumers and shareholders with information about how corporate initiatives will affect them;

(6) to monitor the availability and quality of financial or shareholder services to low- and moderate-income constituencies and the elderly; and

(7) to develop data to assist shareholders and consumers in making informed decisions in the marketplace.

(c) POWERS- In addition to the rights and powers provided by other provisions of this Act, the Association shall--

(1) represent the interests of consumers in general before Federal regulatory agencies, legislative bodies, the courts, and in other public forums;

(2) initiate, to intervene as a party, or otherwise participate on behalf of consumers or shareholders in any regulatory proceeding which the Association reasonably determines may affect their interests;

- (3) sue on behalf of any member, group of members, or all members of the Association for judicial relief, including damages, in any court of competent jurisdiction in regard to any consumer or shareholder matter; and
- (4) conduct, support, and assist research, surveys, and investigations in consumer matters.

(d) **STANDING-** The Association shall be deemed to have an interest sufficient to obtain judicial review or enforcement in any court of competent jurisdiction of any regulatory decision or other regulatory action which the Association reasonably determines may affect the interest of consumers and shareholders, pursuant to this Act.

SEC. 8. INTERIM BOARD.

(a) **ESTABLISHMENT OF INTERIM BOARD-** Members of the interim board of directors of the Association shall be appointed not later than 6 months after the date of enactment of this Act, as follows:

- (1) 3 members shall be appointed by the President of the United States.
- (2) 3 members shall be appointed by the Speaker of the House of Representatives.
- (3) 3 members shall be appointed by the President Pro Tempore of the Senate.
- (4) 1 member shall be appointed by the Minority Leader of the House of Representatives.
- (5) 1 member shall be appointed by the Minority Leader of the Senate.

(b) **MEMBER CRITERIA-** Individuals considered for appointment to the interim board shall, to the extent possible, represent different regions of the United States, and represent categories of citizens' organizations including--

- (1) consumer groups;
- (2) institutional shareholder groups;
- (3) labor unions;
- (4) civil rights groups;
- (5) neighborhood groups;
- (6) elderly groups; and
- (7) organizations representing low-income persons.

(c) **ELIGIBILITY-** To qualify for nomination or appointment as an interim director of the Association representing a designated category of citizens' organizations, an individual shall be an active officer, employee, or member of a citizens' organization within such category or previously have been an officer or employee of 1 or more such citizens' organizations within such category for a cumulative period of at least 2 years.

(d) **DUTIES OF INTERIM BOARD-** The interim board of directors of the Association shall--

- (1) not later than 60 days after the date of appointment of all members, incorporate the Association under the laws of the District of Columbia, subject to the provisions and limitations of this Act;
- (2) manage the affairs of the Association until the first elected board of directors takes office;
- (3) inform the public of the existence, nature, and purpose of the Association, and encourage such persons to join the Association, participate in its activities, and contribute to the Association;

- (4) adopt procedures and standards, consistent with the requirements of this Act, for the nomination and election of the first elected board of directors of the Association;
 - (5) make all necessary preparations for the first election of the board of directors of the Association, oversee the election campaign, and tally the votes; and
 - (6) employ such interim staff as the interim board of directors deem necessary to carry out their responsibilities under this Act.
- (e) **APPLICABILITY OF CERTAIN OTHER PROVISIONS OF THIS ACT-** Members of the interim board of directors shall be subject to the requirements of the applicable provisions of this Act.
- (f) **LIMITATION ON AUTHORITY TO APPEAR BEFORE OTHER BODIES-** The interim board of directors shall not engage in representation or intervention on behalf of consumers, except to the extent necessary to maintain or exercise the powers granted and the duties imposed upon interim directors by this Act.
- (g) **CONDUCT FIRST GENERAL ELECTION-**
- (1) **IN GENERAL-** Once the membership of the Association reaches 50,000, or within 18 months of the date of the appointment of the last interim director, whichever occurs first, the interim board of directors shall set a date for the first general election of the board of directors, and shall promptly notify each member of the Association.
 - (2) **TIMELY ELECTION REQUIREMENT-** The date set for the election shall be not more than 90 days after notification under paragraph (1).

SEC. 9. STATUTORY INSERTS.

- (a) **INCLUSION IN STATEMENTS OF ENTITIES SUBJECT TO THIS ACT-**
- (1) **IN GENERAL-** Entities subject to this Act shall include, or cause its agent to include, a statutory insert or an Association insert in 4 mailings to its shareholders and customers each year, and in any proxy statement sent to shareholders.
 - (2) **STATUTORY INSERT-** The Association shall have the right to have statutory inserts included in the mailings to the customers and shareholders of each entity subject to this Act once each calendar

quarter. The Association may also require entities subject to this Act to send the information contained in the statutory insert to consumers and shareholders once each year via electronic e-mail or other electronic means. The Association shall only pay the reasonable incremental costs of the electronic distribution of such information.

- (3) **ASSOCIATION INSERTS-**
 - (A) **IN GENERAL-** In addition, the Association shall have the right to have included in the mailings referred to in paragraph (2) once each calendar quarter, an insert that it prepares and furnishes to any institution required to carry a statutory insert.
 - (B) **LIMITATION-** An insert furnished by the Association shall be limited to--

(i) soliciting information and contributions or membership fees from consumers; and

(ii) explaining--

(I) the purpose, history, nature, activities, and achievements of the Association;

(II) that the Association membership is open to any resident of the United States who is 16 years of age;

(III) that the Association is not connected to any entity subject to this Act;

(IV) that the Association is a nonprofit association directed by its consumer members;

(V) the procedure for contributing to or becoming a member of the Association; and

(VI) the yearly membership fee.

(b) FTC OVERSIGHT- Any entity subject to this Act may, if it believes that the contents of an insert are false or misleading, submit the insert to the Commission for review. The Commission shall review the insert and make a determination promptly, but in no event later than 21 calendar days after receipt of the insert. The Commission may disapprove the insert for mailing if it finds that the insert is false or misleading, or contains information not permitted by this section.

(c) CONTENT OF STATUTORY INSERTS- Each statutory insert required by this Act shall contain--

(1) a statement of the following information:

`The Consumer and Shareholder Protection Association is a consumer and shareholder membership organization established under Federal law to inform and represent consumers.

`The Association will work on behalf of consumers and shareholders to prevent corporate fraud and deceptive business practices, and to ensure the protection of retirement funds and investments.

`The Association provides consumers with information and advice on a range of consumer issues.

`The Association also represents consumers before regulatory agencies and legislative bodies.

`The Association is a democratically controlled consumer membership organization.

`Although the Association has been established under Federal law, as a consumer membership organization, the Association is primarily supported by membership fees, not public funds. Thus the Consumer and Shareholder Protection Association depends on its membership base for funding to undertake its information and representation activities.

`Anyone who is 16 years of age or older may become a member of the Association by paying the annual membership fee. The amount of the annual membership fee is \$XX.

`You may become a member simply by filling out the attached application and mailing it and the membership fee to the Consumer and Shareholder Protection Association in the attached preaddressed envelope.';

(2) an application for Association membership, which requests the applicant's name and address, and indicates the annual membership fee; and

- (3) a preaddressed business reply envelope for mailing the application and membership fee to the Association.
- (d) OTHER REQUIREMENTS APPLICABLE TO STATUTORY INSERTS- With respect to a statutory insert required by this Act--
 - (1) the statement, application, and preaddressed business reply envelope specified in subsection (c) shall be presented to the customer as a single document (except that the document may be separable into different parts by tearing along perforated lines);
 - (2) the statement and application shall be printed in at least 10-point type; and
 - (3) the Association shall pay the cost of printing and placement of the statutory insert in all appropriate mailings, but shall not pay any postage costs if the insert weighs less than 0.35 ounces.

SEC. 10. BOARD OF DIRECTORS.

- (a) MANAGEMENT OF ASSOCIATION- The affairs of the Association shall be managed by a board of directors, which shall be elected by the members of the Association in accordance with the provisions of section 7. The board of directors shall consist of 17 members. Twelve directors shall constitute a quorum.
- (b) ONE-PERSON ONE-VOTE- Each director shall have one vote on the board of directors.
- (c) TERMS OF OFFICE- The term of office for a director shall be 3 years, except as provided otherwise in this Act, and no director shall serve more than 2 consecutive terms.
- (d) POWERS AND DUTIES OF BOARD- The board of directors, shall, in addition to its other responsibilities under this Act--
 - (1) conduct meetings of the board of directors at least once every 6 months, which shall be open to the public, unless the board of directors by a 2/3 majority votes to adjourn into executive session;
 - (2) limit matters discussed in executive session only to personnel actions, potential or pending civil or criminal proceedings involving the Association, and material which would result in an unwarranted invasion of personal privacy if discussed in open sessions;
 - (3) keep minutes, financial records, and other records which shall reflect the acts and transactions of the board of directors;
 - (4) cause the financial books of the Association to be audited by a qualified certified public accountant at least once each fiscal year;
 - (5) prepare quarterly statements and an annual report indicating the substantive activities and financial operations of the Association;
 - (6) approve the bylaws of the Association, consistent with the requirements of this Act;
 - (7) make available to the public and include on the Association's web page, documents prepared by or filed with the Association within the preceding 5 years, including--
 - (A) minutes of the board of directors meeting;
 - (B) directors' or executive directors' financial statements;
 - (C) candidates' financial statements; and

(D) candidates' statements; and

(8) conduct 3 mailings each year to the membership of the Association, to inform the membership about the work of the Association and to conduct the business of the Association.

(e) ELECTION OF OFFICERS- At the first regular meeting of the board of directors at which a majority of its members are present, subsequent to the installation of new directors following each annual election, the board shall elect by majority vote of directors present and voting, and from among the directors, a president, a vice president, a secretary, and a treasurer. The board may also elect a comptroller and such other officers as it deems necessary.

(f) EXECUTIVE DIRECTOR OF ASSOCIATION-

(1) IN GENERAL- The board of directors shall hire and supervise an executive director for the Association.

(2) DUTIES OF EXECUTIVE DIRECTOR- The executive director shall implement the policies established by the board of directors, employ and discharge Association employees, and manage the offices, facilities, and employees of the Association.

(3) ELIGIBILITY STANDARDS- Any applicant for the position of executive director, and each executive director, shall satisfy the requirements for director eligibility established by this Act.

(4) TERM LIMIT- The executive director shall only be eligible to serve as an employee of the Association for 6 consecutive years. After such 6-year term, the executive director shall be prohibited from serving as an agent, consultant, attorney, accountant, or subcontractor for the Association, and shall be ineligible to receive any monetary compensation from the Association.

(g) NO COMPENSATION FOR ASSOCIATION DIRECTORS- A member of the board of directors of the Association may not receive any compensation for his or her services as a director, but shall be reimbursed for wages actually lost in an amount not to exceed \$160 per day, and for necessary expenses including travel expenses incurred in the discharge of Association duties.

(h) BONDING REQUIREMENT FOR STAFF- Any director or staff of the Association eligible to receive, handle, or disburse funds on behalf of the Association shall be bonded. The cost of such bonds shall be paid for by the Association.

(i) ANNUAL FINANCIAL STATEMENTS OF DIRECTORS- Each director and the executive director of the Association shall file annually with the board of directors a director's financial statement, which shall include the same information required in section 102 of title 5, United States Code.

(j) ANNUAL MEETINGS-

(1) IN GENERAL- An annual meeting of members of the Association shall be held in the month of January, on a date and at a place within the United States to be determined by the board of directors at least 6 months in advance of the meeting.

(2) AGENDA- Items may be placed on the annual meeting agenda--

(A) by request of any director, not less than 10 days and not more than 4 months in advance of the date of such meeting; and

(B) by petition containing the valid signatures of at least 1 percent of the total membership of the Association, which petition shall be filed with the board of directors not less than 10 days and not more than 4 months in advance of the date of such meeting.

(3) NOTICE OF AGENDA- The executive director shall present proposed agenda items to the membership through its regular mailings.

(4) PUBLIC MEETINGS- The annual meeting of Association members shall be open to the public, except that seating preference shall be given to Association members. Association members shall be given a reasonable opportunity at such meetings to present comments, criticisms, and suggestions concerning the Association.

(5) MINUTES- Complete minutes of the annual meetings shall be kept and distributed to all depository libraries in the United States and placed on the Association's webpage.

(k) VACANCY- In the event that a board member position becomes vacant, the board of directors shall install the person having the highest vote total in the last election who was not elected to the board. If this is impossible, the board of directors, by vote of not less than 2/3 of all directors, shall appoint a successor within 60 days for the remainder of the current term. The person appointed by the board of directors shall meet all qualifications for board members.

(l) RECALL-

(1) IN GENERAL- Upon receipt by the president of the board of directors of a petition to recall any director with the valid signatures of at least 5 percent of the members, the president shall call an election, to be held not less than 4 months and not more than 6 months after receipt of the petition, for the purpose of selecting a director.

(2) LIMITATIONS- No petition to recall a director under paragraph (1) may be filed within 6

months of his or her election. An election pursuant to the filing of a recall petition shall be conducted in accordance with the provisions of this Act. A director recalled may become a candidate in the election triggered by the filing of the recall petition. The director recalled shall continue to serve until the installment in office of his or her successor, or until his or her reelection. The election triggered by the filing of a recall petition shall be conducted via one of the Association's quarterly mailings.

SEC. 11. PROCEDURES FOR ELECTION OF DIRECTORS.

(a) ELECTION OF THE BOARD OF DIRECTORS- Each Association member shall cast not more than 17 votes, and may distribute them among candidates in any manner that the member chooses, including casting more than 1 vote for a candidate. The 17 candidates receiving the most votes shall be elected. There shall be no runoff. Ties shall be broken by lot.

(b) ELIGIBILITY STANDARDS FOR THE BOARD OF DIRECTORS- To qualify for nomination as a candidate for election to the board of directors of the Association, a person must--

- (1) be a member of the Association;
- (2) be nominated by 100 or more other members; and
- (3) to the extent possible, represent the categories of citizens' organizations, including--

- (A) consumer groups;
- (B) institutional shareholder groups;
- (C) labor unions;
- (D) civil rights groups;
- (E) neighborhood groups;
- (F) elderly groups; and
- (G) organizations representing low-income persons.

(c) **APPLICABILITY TO ALL BOARD ELECTIONS-** The requirements of this section shall apply to the first election of directors conducted by the interim board of directors pursuant to section 7, as well as to all subsequent elections.

SEC. 12. QUALIFICATIONS.

(a) **CANDIDATE'S STATEMENT-** Any person seeking nomination as a candidate for election to the board of directors of the Association shall file a candidate statement with the Association, not less than 60 days and not more than 120 days prior to the election. The contents of a candidate statement may not contain false statements, and the Association may, by bylaw or interim board of directors' procedure, impose a uniform limitation on the length of all candidate statements.

(b) **FINANCIAL STATEMENT-** Any person seeking nomination as a candidate for election to the board of directors shall file with the Association, not less than 60 days and not more than 120 days prior to the election, a report containing the information required by section 102 of title 5, United States Code.

(c) **INELIGIBILITY OF INTERIM DIRECTORS AND STAFF DURING FIRST ELECTION-** No interim director shall be eligible for election to the board of directors during the first election following the appointment of the interim directors. The executive director and other Association staff persons, including interim staff persons, shall not be eligible for election to the board of directors while serving in the capacity of executive director or staff person, or for 1 year after such service is concluded.

(d) **INELIGIBILITY OF DIRECTORS TO HOLD OTHER PUBLIC OFFICE-** No director shall hold any elective Federal, State, or local office, or be a candidate for such office, or be appointed to hold such office, unless such appointee receives no compensation other than reimbursement of expenses.

(e) **INELIGIBILITY OF OFFICERS, DIRECTORS OF AN ENTITY SUBJECT TO THIS ACT-** No present director, officer, agent, consultant, attorney, or accountant for any entity subject to this Act, or member of the immediate family of such persons, shall be eligible to be a director of the Association.

(f) **INELIGIBILITY OF OFFICERS AND EMPLOYEES OF AGENCIES-** No officer or employee of any Federal, State, or local agency that regulates any entity subject to this Act shall be eligible to be a director of the Association.

SEC. 13. BALLOT ISSUES.

Issues may be placed on a ballot for vote by the general membership, provided a majority of the board votes to place an issue before the membership for vote. The rules and procedures for placing an issue before the membership for a vote shall be developed by the Commission.

SEC. 14. LIMITS ON ACCESS TO MEMBER MAILINGS.

No person may use any list of members of the Association, or any part of such list, for purposes other than the conduct of the business of the Association, as prescribed in this Act. The board of directors shall, however, develop criteria for providing Association member access through Association mailings to the Association's membership for Association purposes only. No person shall disclose any such list or part thereof to another person, unless there is substantial reason to believe that such list or part thereof is intended to be used for the lawful purposes described in this Act.

SEC. 15. PROHIBITED ACTS.

(a) ENTITIES SUBJECT TO THIS ACT- No entity subject to this Act or officer, employee, or agent of any entity subject to this Act may interfere or threaten to interfere with or cause any interference with the utility service of, or penalize or threaten to penalize or cause to be penalized, any person who contributes to the Association or participates in any of its activities, in retribution for such contribution or participation.
(b) GENERAL PROHIBITION- No person may act with intent to prevent, interfere with, or hinder the activities permitted under this Act.

SEC. 16. PENALTIES.

A violation of any provision of this Act by an entity subject to this Act or officer, employee, or agent thereof or of the Association shall be subject to a civil penalty of not more than \$10,000 for each violation, to be levied by the Commission.

SEC. 17. ADMINISTRATIVE ENFORCEMENT.

Compliance with the provisions of this Act shall be enforced by the Commission in the same manner and with the same power and authority as the Commission has under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

SEC. 18. DISSOLUTION OF THE ASSOCIATION.

If, at the end of the 3-year period beginning on the date on which the Association is incorporated, the Association's membership remains below 25,000 members during any 1-year period, the board of directors of the Association shall dissolve the Association. Upon the termination, dissolution, or winding up of the Association in any manner or for any reason, voluntary or involuntary, its assets, if any, remaining after the payment or provision for payment of all liabilities of the Association shall be distributed to, and only to, 1 or more charitable organizations. No part of the income or assets of the Association

shall inure to any of its members, directors, or officers, or be distributed to any such person during the life of the Association or upon its dissolution , except in payment of a legal obligation owed to such person. At the time of dissolution, any unexpended funds appropriated by Congress for the establishment of the Association shall be returned to the United States Treasury.

SEC. 19. RELATIONSHIP TO EXISTING LAW.

Nothing in this Act shall be construed to limit the right of any individual or group of individuals to initiate, intervene in, or otherwise participate in any proceeding before a regulatory agency or court, nor to relieve any regulatory agency, court, or other public body of any obligation, or affect its discretion to permit intervention or participation by a consumer or group or class of consumers or citizens in any proceeding or activity.

SEC. 20. CONSTRUCTION.

The provisions of this Act shall be construed in such a manner as best to enable the Association to effectively represent and protect the interests of consumers and shareholders.

SEC. 21. SEVERABILITY.

If any provision of this Act shall be declared invalid, the other provisions of this Act shall remain in effect.

END