nities served by the interstate branch or branches of the out-of-State bank; and

(F) the safe and sound operation and condition of the out-of-State bank.

(3) Branch closing procedure

(A) Notice required

Before exercising any authority under paragraph (1)(B)(i), the appropriate Federal banking agency shall issue to the bank a notice of the agency's intention to close an interstate branch or branches and shall schedule a hearing.

(B) Hearing

Section 1818(h) of this title shall apply to any proceeding brought under this paragraph.

(d) Application

This section shall apply with respect to any interstate branch established or acquired in a host State pursuant to this title[2] or any amendment made by this title[2] to any other provision of law.

(e) Definitions

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

(1) Appropriate Federal banking agency, bank, State, and State bank

The terms ''appropriate Federal banking agency'', ''bank'', ''State'', and ''State bank'' have the same meanings as in section 1813 of this title.

(2) Home State

The term ''home State'' means—

(A) in the case of a national bank, the State in which the main office of the bank is located; and

(B) in the case of a State bank, the State by which the bank is chartered.

(3) Host State

The term ''host State'' means a State in which a bank establishes a branch other than the home State of the bank.

(4) Interstate branch

The term ''interstate branch'' means a branch established pursuant to this title[2] or any amendment made by this title[2] to any other provision of law.

(5) Out-of-State bank

The term ''out-of-State bank'' means, with respect to any State, a bank the home State of which is another State and, for purposes of this section, includes a foreign bank, the home State of which is another State.

(Pub. L. 103–328, title I, § 109, Sept. 29, 1994, 108 Stat. 2362.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a), (d), and (e)(4), is title I of Pub. L. 103–328, Sept. 29, 1994, 108 Stat. 2339, which enacted this section and sections 43, 215a–1, and 1831u of this title, amended sections 30, 36, 215, 215a, 215b, 1462a, 1820, 1828, 1831a, 1831r–1, 1841, 1842, 1846, 2906, 3103 to 3105, and 3106a of this title and section 1927 of Title 7, Agriculture, enacted provisions set out as notes under sections 215, 1811, 1828, 3104, 3105, and 3107 of this title and section 1927 of Title 7, and amended provisions set out as a note under section 1811 of this title. For complete classification of this title to the Code, see Tables.

The Community Reinvestment Act of 1977, referred to in subsec. (c)(2)(D), is title VIII of Pub. L. 95–128, Oct. 12, 1977, 91 Stat. 1147, as amended, which is classified generally to chapter 30 (§ 2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

CODIFICATION

Section was enacted as part of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

[2] See References in Text note below.

CHAPTER 17—BANK HOLDING COMPANIES

Sec.
1841. Definitions.
1842. Acquisition of bank shares or assets.
(a) Prior approval of Board as necessary; exceptions; disposition, time extension; subsequent approval or disposition upon disapproval.
(b) Application for approval; notice to Comptroller of Currency or State authority; views and recommendations; disapproval; hearing; order of Board; nonaction deemed grant of application; procedure in emergencies or probable failures requiring immediate Board action and orders.
(c) Factors for consideration by Board.
(d) Interstate banking.
(e) Insured depository institution.
(f) Savings bank subsidiaries of bank holding companies.
(g) Mutual bank holding company.
1843. Interests in nonbanking organizations.
(a) Ownership or control of voting shares of any company not a bank; engagement in activities other than banking.
(b) Statement purporting to represent shares of any company except a bank or bank holding company.
(c) Exemptions.
(d) Exemption of company controlling one bank prior to July 1, 1968.
(e) Divestiture of nonexempt shares.
(f) Certain companies not treated as bank holding companies.
(g) Limitations on certain banks.
(h) Tying provisions.
(i) Acquisition of savings associations.
(j) Notice procedures for nonbanking activities.
1844. Administration.
(a) Registration of bank holding company.
(b) Regulations and orders.
(c) Reports required by Board; examinations; cost of examination.
(d) Reports to the Congress; recommendations.
(e) Termination of activities or ownership or control of nonbank subsidiaries constituting serious risk.
(f) Powers of Board respecting applications, examinations, or other proceedings.
1845. Repealed.
1846. Reservation of rights to States.
(a) In general.

Sec.
(b) State taxation authority not affected.
1847. Penalties.
(a) Criminal penalty.
(b) Civil money penalty.
(c) Notice under this section after separation from service.
(d) Penalty for failure to make reports.
1848. Judicial review.
1849. Saving provision.
(a) General rule.
(b) Antitrust review.
(c) Antitrust proceedings; Board and State banking agency as party; representation by counsel.
(d) Treatment of merger transactions consummated prior or subsequent to May 9, 1956, and not in litigation prior to July 1, 1966.
(e) Antitrust litigation; substantive law applicable to proceedings pending on or after July 1, 1966, with respect to merger transactions.
(f) ''Antitrust laws'' defined.
1850. Acquisition of subsidiary, nonbanking activity or business, and tying arrangement: Federal Reserve Board proceedings; application for authorization; competitor as party in interest and person aggrieved; judicial review.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 304, 619, 1467a, 1817, 1818, 1831k, 3101, 3105, 3106 of this title; title 15 section 80b–2; title 26 section 246A.

§ 1841. Definitions

(a)(1) Except as provided in paragraph (5) of this subsection, ''bank holding company'' means any company which has control over any bank or over any company that is or becomes a bank holding company by virtue of this chapter.

(2) Any company has control over a bank or over any company if—

(A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company;

(B) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or

(C) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

(3) For the purposes of any proceeding under paragraph (2)(C) of this subsection, there is a presumption that any company which directly or indirectly owns, controls, or has power to vote less than 5 per centum of any class of voting securities of a given bank or company does not have control over that bank or company.

(4) In any administrative or judicial proceeding under this chapter, other than a proceeding under paragraph (2)(C) of this subsection, a company may not be held to have had control over any given bank or company at any given time unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 per centum or more of any class of voting securities of the bank or company, or had already been found to have control in a proceeding under paragraph (2)(C).

(5) Notwithstanding any other provision of this subsection—

(A) No bank and no company owning or controlling voting shares of a bank is a bank holding company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraphs (2) and (3) of subsection (g) of this section. For the purpose of the preceding sentence, bank shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto; except that this limitation is applicable in the case of a bank or company acquiring such shares prior to December 31, 1970, only if the bank or company has the right consistent with its obligations under the instrument, agreement, or other arrangement establishing the fiduciary relationship to divest itself of such voting rights and fails to exercise that right to divest within a reasonable period not to exceed one year after December 31, 1970.

(B) No company is a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis.

(C) No company formed for the sole purpose of participating in a proxy solicitation is a bank holding company by virtue of its control of voting rights of shares acquired in the course of such solicitation.

(D) No company is a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The Board is authorized upon application by a company to extend, from time to time for not more than one year at a time, the two-year period referred to herein for disposing of any shares acquired by a company in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years.

(E) No company is a bank holding company by virtue of its ownership or control of any State-chartered bank or trust company which—

(i) is wholly owned by thrift institutions or savings banks; and

(ii) is restricted to accepting—

(I) deposits from thrift institutions or savings banks;

(II) deposits arising out of the corporate business of the thrift institutions or savings banks that own the bank or trust company; or

(III) deposits of public moneys.

(F) No trust company or mutual savings bank which is an insured bank under the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] is a bank holding company by virtue of its direct or indirect ownership or control of one bank located in the same State, if (i) such ownership or control existed on December 31,

1970, authorized by applicable State law, and (ii) the trust company or mutual savings bank does not after that date acquire an interest in any company that, together with any other interest it holds in that company, will exceed 5 per centum of any class of the voting shares of that company, except that this limitation shall not be applicable to investments of the trust company or mutual savings bank, direct and indirect, which are otherwise in accordance with the limitations applicable to national banks under section 24 of this title.

(6) For the purposes of this chapter, any successor to a bank holding company shall be deemed to be a bank holding company from the date on which the predecessor company became a bank holding company.

(b) ''Company'' means any corporation, partnership, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust but shall not include any corporation the majority of the shares of which are owned by the United States or by any State, and shall not include a qualified family partnership. ''Company covered in 1970'' means a company which becomes a bank holding company as a result of the enactment of the Bank Holding Company Act Amendments of 1970 and which would have been a bank holding company on June 30, 1968, if those amendments had been enacted on that date.

(c) BANK DEFINED.—For purposes of this chapter—

(1) IN GENERAL.—Except as provided in paragraph (2), the term ''bank'' means any of the following:

(A) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act [12 U.S.C. 1813(h)].

(B) An institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands which both—

(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and

(ii) is engaged in the business of making commercial loans.

(2) EXCEPTIONS.—The term ''bank'' does not include any of the following:

(A) A foreign bank which would be a bank within the meaning of paragraph (1) solely because such bank has an insured or uninsured branch in the United States.

(B) An insured institution (as defined in subsection (j) of this section).

(C) An organization that does not do business in the United States except as an incident to its activities outside the United States.

(D) An institution that functions solely in a trust or fiduciary capacity, if—

(i) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

(ii) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

(iii) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

(iv) such institution does not—

(I) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act [12 U.S.C. 248a]; or

(II) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act [12 U.S.C. 461(b)(7)].

(E) A credit union (as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)(iv)]).

(F) An institution, including an institution that accepts collateral for extensions of credit by holding deposits under $100,000, and by other means which—

(i) engages only in credit card operations;

(ii) does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others;

(iii) does not accept any savings or time deposit of less than $100,000;

(iv) maintains only one office that accepts deposits; and

(v) does not engage in the business of making commercial loans.

(G) An organization operating under section 25 or section 25(a)[1] of the Federal Reserve Act.

(H) An industrial loan company, industrial bank, or other similar institution which is—

(i) an institution organized under the laws of a State which, on March 5, 1987, had in effect or had under consideration in such State's legislature a statute which required or would require such institution to obtain insurance under the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.]—

(I) which does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties;

(II) which has total assets of less than $100,000,000; or

(III) the control of which is not acquired by any company after August 10, 1987; or

(ii) an institution which does not, directly, indirectly, or through an affiliate, engage in any activity in which it was not lawfully engaged as of March 5, 1987,

except that this subparagraph shall cease to apply to any institution which permits any

[1] See References in Text note below.

overdraft (including any intraday overdraft), or which incurs any such overdraft in such institution's account at a Federal Reserve bank, on behalf of an affiliate if such overdraft is not the result of an inadvertent computer or accounting error that is beyond the control of both the institution and the affiliate.

(I) The Investors Fiduciary Trust Company, located in Kansas City, Missouri, so long as such institution—

(i) engages only in trust, fiduciary, and agency activities in which it was lawfully engaged on March 5, 1987;

(ii) engages in such activities only at the same number of locations at which such activities were conducted on such date;

(iii) does not accept demand deposits other than demand deposits which are maintained by such institution in—

(I) a trust or fiduciary capacity;

(II) the institution's capacity as a custodian or as a paying, transfer, shareholder servicing, securities clearing, escrow, or dividend disbursing agent; or

(III) any capacity which is incidental to the trust or fiduciary activities of the institution;

(iv) does not engage in the business of making commercial loans;

(v) does not exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act [12 U.S.C. 461(b)(7)]; and

(vi) is not directly or indirectly controlled by any company other than a company which directly or indirectly controlled such institution on March 5, 1987.

(J) A savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act [12 U.S.C. 1813(g)]) which—

(i) is an insured bank (as defined in section 3(h) of such Act [12 U.S.C. 1813(h)]);

(ii) is a subsidiary of the Great Western Financial Corporation as a result of an approval in writing by the State bank supervisor of the State of New York before June 30, 1987;

(iii) meets or exceeds the investment requirements which an insured institution must meet in order to be a qualified thrift lender under section 1730a(*o*)[1] of this title; and

(iv) does not, directly, or through insurance products such savings bank receives from or provides to the Great Western Financial Corporation, engage in the sale or underwriting of insurance,

except that this subparagraph shall cease to apply with respect to such savings bank or any successor institution if any deposits of any other subsidiary or affiliate of the Great Western Financial Corporation which are subject to an assessment of an insurance premium under subsection (b) or (c) of section 1727[1] of this title are, directly or indirectly by any device whatsoever, transferred to or acquired by such savings bank or any successor institution which would have the effect of materially reducing such premium assessments. The exemption provided by this subparagraph shall cease to apply if Great Western Financial Corporation uses such savings bank or any successor institution as a vehicle to move such Corporation from Federal Savings and Loan Insurance Corporation insurance to Federal Deposit Insurance Corporation insurance.

(3) DISTRICT BANK.—The term ''District bank'' means any bank operating under the Code of Law for the District of Columbia.

(d) ''Subsidiary'', with respect to a specified bank holding company, means (1) any company 25 per centum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such bank holding company, or is held by it with power to vote; (2) any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or (3) any company with respect to the management of policies of which such bank holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the Board, after notice and opportunity for hearing.

(e) The term ''successor'' shall include any company which acquires directly or indirectly from a bank holding company shares of any bank, when and if the relationship between such company and the bank holding company is such that the transaction effects no substantial change in the control of the bank or beneficial ownership of such shares of such bank. The Board may, by regulation, further define the term ''successor'' to the extent necessary to prevent evasion of the purposes of this chapter.

(f) ''Board'' means the Board of Governors of the Federal Reserve System.

(g) For the purposes of this chapter—

(1) shares owned or controlled by any subsidiary of a bank holding company shall be deemed to be indirectly owned or controlled by such bank holding company; and

(2) shares held or controlled directly or indirectly by trustees for the benefit of (A) a company, (B) the shareholders or members of a company, or (C) the employees (whether exclusively or not) of a company, shall be deemed to be controlled by such company.

(h)(1) Except as provided by paragraph (2), the application of this chapter and of section 371c of this title shall not be affected by the fact that a transaction takes place wholly or partly outside the United States or that a company is organized or operates outside the United States.

(2) Except as provided in paragraph (3), the prohibitions of section 1843 of this title shall not apply to shares of any company organized under the laws of a foreign country (or to shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the business of the investor company) that is principally engaged in business outside the United States if such shares are held or acquired by a bank holding company organized under the laws of a foreign country that is principally engaged in the banking business outside the United States. For

the purpose of this subsection, the term ''section 2(h)(2) company'' means any company whose shares are held pursuant to this paragraph.

(3) Nothing in paragraph (2) authorizes a section 2(h)(2) company to engage in (or acquire or hold more than 5 percent of the outstanding shares of any class of voting securities of a company engaged in) any banking, securities, insurance, or other financial activities, as defined by the Board, in the United States. This paragraph does not prohibit a section 2(h)(2) company from holding shares that were lawfully acquired before August 10, 1987.

(4) No domestic office or subsidiary of a bank holding company or subsidiary thereof holding shares of a section 2(h)(2) company may extend credit to a domestic office or subsidiary of such section 2(h)(2) company on terms more favorable than those afforded similar borrowers in the United States.

(5) No domestic banking office or bank subsidiary of a bank holding company that controls a section 2(h)(2) company may offer or market products or services of such section 2(h)(2) company, or permit its products or services to be offered or marketed by or through such section 2(h)(2) company, unless such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date.

(i) THRIFT INSTITUTION.—For purposes of this chapter, the term ''thrift institution'' means—

(1) any domestic building and loan or savings and loan association;

(2) any cooperative bank without capital stock organized and operated for mutual purposes and without profit;

(3) any Federal savings bank; and

(4) any State-chartered savings bank the holding company of which is registered pursuant to section 1730a[2] of this title.

(j) DEFINITION OF SAVINGS ASSOCIATIONS AND RELATED TERM.—The term ''savings association'' or ''insured institution'' means—

(1) any Federal savings association or Federal savings bank;

(2) any building and loan association, savings and loan association, homestead association, or cooperative bank if such association or cooperative bank is a member of the Savings Association Insurance Fund; and

(3) any savings bank or cooperative bank which is deemed by the Director of the Office of Thrift Supervision to be a savings association under section 1467a(*l*) of this title.

(k) AFFILIATE.—For purposes of this chapter, the term ''affiliate'' means any company that controls, is controlled by, or is under common control with another company.

(*l*) SAVINGS BANK HOLDING COMPANY.—For purposes of this chapter, the term ''savings bank holding company'' means any company which controls one or more qualified savings banks if the aggregate total assets of such savings banks constitute, upon formation of the holding company and at all times thereafter, at least 70 percent of the total assets of such company.

(m) QUALIFIED SAVINGS BANK.—For purposes of this chapter, the term ''qualified savings bank''—

(1) means any savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act [12 U.S.C. 1813(g)]) which was organized on or before March 5, 1987; and

(2) includes any cooperative bank that is an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act [12 U.S.C. 1813(h)]) and any interim savings bank that is established to facilitate a corporate reorganization, or the formation of a holding company, involving a savings bank described in paragraph (1).

(n) INCORPORATED DEFINITIONS.—For purposes of this chapter, the terms ''insured depository institution'', ''appropriate Federal banking agency'', ''default'', ''in danger of default'', and ''State bank supervisor'' have the same meanings as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

(*o*) OTHER DEFINITIONS.—For purposes of this chapter, the following definitions shall apply:

(1) CAPITAL TERMS.—

(A) INSURED DEPOSITORY INSTITUTIONS.—With respect to insured depository institutions, the terms ''well capitalized'', ''adequately capitalized'', and ''undercapitalized'' have the same meanings as in section 38(b) of the Federal Deposit Insurance Act [12 U.S.C. 1831*o*(b)].

(B) BANK HOLDING COMPANY.—

(i) ADEQUATELY CAPITALIZED.—With respect to a bank holding company, the term ''adequately capitalized'' means a level of capitalization which meets or exceeds all applicable Federal regulatory capital standards.

(ii) WELL CAPITALIZED.—A bank holding company is ''well capitalized'' if it meets the required capital levels for well capitalized bank holding companies established by the Board.

(C) OTHER CAPITAL TERMS.—The terms ''Tier 1'' and ''risk-weighted assets'' have the meanings given those terms in the capital guidelines or regulations established by the Board for bank holding companies.

(2) ANTITRUST LAWS.—Except as provided in section 1849 of this title, the term ''antitrust laws''—

(A) has the same meaning as in subsection (a) of section 12 of title 15; and

(B) includes section 45 of title 15 to the extent that such section 45 relates to unfair methods of competition.

(3) BRANCH.—The term ''branch'' means a domestic branch (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]).

(4) HOME STATE.—The term ''home State'' means—

(A) with respect to a national bank, the State in which the main office of the bank is located;

(B) with respect to a State bank, the State by which the bank is chartered; and

(C) with respect to a bank holding company, the State in which the total deposits

[2] See References in Text note below.

of all banking subsidiaries of such company are the largest on the later of—

(i) July 1, 1966; or

(ii) the date on which the company becomes a bank holding company under this chapter.

(5) HOST STATE.—The term ''host State'' means—

(A) with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch; and

(B) with respect to a bank holding company, a State, other than the home State of the company, in which the company controls, or seeks to control, a bank subsidiary.

(6) OUT-OF-STATE BANK.—The term ''out-of-State bank'' means, with respect to any State, a bank whose home State is another State.

(7) OUT-OF-STATE BANK HOLDING COMPANY.—The term ''out-of-State bank holding company'' means, with respect to any State, a bank holding company whose home State is another State.

(8) LEAD INSURED DEPOSITORY INSTITUTIONS.—

(A) IN GENERAL.—The term ''lead insured depository institution'' means the largest insured depository institution controlled by the subject bank holding company at any time, based on a comparison of the average total risk-weighted assets controlled by each insured depository institution during the previous 12-month period.

(B) BRANCH OR AGENCY.—For purposes of this paragraph and section 1843(j)(4) of this title, the term ''insured depository institution'' includes any branch or agency operated in the United States by a foreign bank.

(9) WELL MANAGED.—The term ''well managed'' means—

(A) in the case of any company or depository institution which receives examinations, the achievement of—

(i) a CAMEL composite rating of 1 or 2 (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of such company or institution; and

(ii) at least a satisfactory rating for management, if such rating is given; or

(B) in the case of a company or depository institution that has not received an examination rating, the existence and use of managerial resources which the Board determines are satisfactory.

(10) QUALIFIED FAMILY PARTNERSHIP.—The term ''qualified family partnership'' means a general or limited partnership that the Board determines—

(A) does not directly control any bank, except through a registered bank holding company;

(B) does not control more than 1 registered bank holding company;

(C) does not engage in any business activity, except indirectly through ownership of other business entities;

(D) has no investments other than those permitted for a bank holding company pursuant to section 1843(c) of this title;

(E) is not obligated on any debt, either directly or as a guarantor;

(F) has partners, all of whom are either—

(i) individuals related to each other by blood, marriage (including former marriage), or adoption; or

(ii) trusts for the primary benefit of individuals related as described in clause (i); and

(G) has filed with the Board a statement that includes—

(i) the basis for the eligibility of the partnership under subparagraph (F);

(ii) a list of the existing activities and investments of the partnership;

(iii) a commitment to comply with this paragraph;

(iv) a commitment to comply with section 7 of the Federal Deposit Insurance Act [12 U.S.C. 1817] with respect to any acquisition of control of an insured depository institution occurring after September 30, 1996; and

(v) a commitment to be subject, to the same extent as if the qualified family partnership were a bank holding company—

(I) to examination by the Board to assure compliance with this paragraph; and

(II) to section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818].

(May 9, 1956, ch. 240, § 2, 70 Stat. 133; Pub. L. 89–485, §§ 1–6, July 1, 1966, 80 Stat. 236, 237; Pub. L. 91–607, title I, § 101, Dec. 31, 1970, 84 Stat. 1760; Pub. L. 95–188, title III, § 301(b), Nov. 16, 1977, 91 Stat. 1389; Pub. L. 95–369, § 8(e), Sept. 17, 1978, 92 Stat. 623; Pub. L. 97–320, title I, § 118(b), title III, § 333, title IV, § 404(d)(1), Oct. 15, 1982, 96 Stat. 1479, 1504, 1512; Pub. L. 100–86, title I, § 101(a), (e), title II, § 205(a), Aug. 10, 1987, 101 Stat. 554, 562, 584; Pub. L. 101–73, title VI, § 602(a), Aug. 9, 1989, 103 Stat. 409; Pub. L. 103–328, title I, § 101(c), Sept. 29, 1994, 108 Stat. 2341; Pub. L. 104–208, div. A, title II, §§ 2207, 2208(b), 2304(b), 2610, 2704(d)(17), Sept. 30, 1996, 110 Stat. 3009–406, 3009–408, 3009–425, 3009–475, 3009–495.)

AMENDMENT OF SUBSECTION (j)(2)

Pub. L. 104–208, div. A, title II, § 2704(c), (d)(17), Sept. 30, 1996, 110 Stat. 3009–487, 3009–495, provided that, effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, subsection (j)(2) of this section is amended by striking ''Savings Association Insurance Fund'' and inserting ''Deposit Insurance Fund''.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (4), (c), and (g) to (*o*), was in the original ''this Act'', meaning act May 9, 1956, ch. 240, 70 Stat. 133, as amended, known as the Bank Holding Company Act of 1956, which enacted this chapter and sections 1101 to 1103 of Title 26, Internal Revenue Code, and enacted provisions set out as notes under this section. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Federal Deposit Insurance Act, referred to in subsecs. (a)(5)(F) and (c)(2)(H)(i), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see

Short Title note set out under section 1811 of this title and Tables.

Enactment of the Bank Holding Company Act Amendments of 1970, referred to in subsec. (b), means enactment of Pub. L. 91–607, on Dec. 31, 1970. For classification of Pub. L. 91–607, see Short Title of 1970 Amendment note below.

Section 25 of the Federal Reserve Act, referred to in subsec. (c)(2)(G), is classified to subchapter I (§601 et seq.) of chapter 6 of this title. Section 25(a) of the Federal Reserve Act, which is classified to subchapter II (§611 et seq.) of chapter 6 of this title, was renumbered section 25A of that act by Pub. L. 102–242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281.

Sections 1727 and 1730a of this title, referred to in subsecs. (c)(2)(J) and (i)(4), were repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

A section 2(h)(2) company, referred to in subsec. (h)(3) to (5), is defined in subsec. (h)(2) of this section.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–208, §2610(1), inserted ", and shall not include a qualified family partnership" after "by any State".

Subsec. (c)(2)(F). Pub. L. 104–208, §2304(b), inserted ", including an institution that accepts collateral for extensions of credit by holding deposits under $100,000, and by other means" after "An institution" in introductory provisions.

Subsec. (g)(3). Pub. L. 104–208, §2207, struck out par. (3) which read as follows: "shares transferred after January 1, 1966, by any bank holding company (or by any company which, but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the Board, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee."

Subsec. (*o*)(1). Pub. L. 104–208, §2208(b)(1), added heading and text of par. (1) and struck out heading and text of former par. (1). Text read as follows: "The term 'adequately capitalized' means a level of capitalization which meets or exceeds all applicable Federal regulatory capital standards."

Subsec. (*o*)(8), (9). Pub. L. 104–208, §2208(b)(2), added pars. (8) and (9).

Subsec. (*o*)(10). Pub. L. 104–208, §2610(2), added par. (10).

1994—Subsecs. (n), (*o*). Pub. L. 103–328 added subsecs. (n) and (*o*).

1989—Subsec. (j). Pub. L. 101–73 amended subsec. (j) generally, substituting provisions defining "saving association" or "insured institution" for provisions defining "insured institution".

1987—Subsec. (a)(5)(E). Pub. L. 100–86, §101(e), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: "No company is a bank holding company by virtue of its ownership or control of any State chartered bank or trust company which is wholly owned by thrift institutions and which restricts itself to the acceptance of deposits from thrift institutions, deposits arising out of the corporate business of its owners, and deposits of public moneys."

Subsec. (c). Pub. L. 100–86, §101(a)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "'Bank' means any institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, except an institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation or an institution chartered by the Federal Home Loan Bank Board, which (1) accepts deposits that the depositor has a legal right to withdraw on demand, and (2) engages in the business of making commercial loans. Such term does not include any organization operating under section 25 or section 25 (a) of the Federal Reserve Act, or any organization which does not do business within the United States except as an incident to its activities outside the United States. 'District bank' means any bank organized or operating under the Code of Law for the District of Columbia. The term 'bank' also includes a State chartered bank or a national banking association which is owned exclusively (except to the extent directors' qualifying shares are required by law) by other depository institutions or by a bank holding company which is owned exclusively by other depository institutions and is organized to engage exclusively in providing services for other depository institutions and their officers, directors, and employees."

Subsec. (h)(2). Pub. L. 100–86, §205(a), added par. (2) and struck out former par. (2) which read as follows: "The prohibitions of section 1843 of this title shall not apply to shares of any company organized under the laws of a foreign country (or to shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the business of the investor company) that is principally engaged in business outside the United States if such shares are held or acquired by a bank holding company organized under the laws of a foreign country that is principally engaged in the banking business outside the United States, except that (1) such exempt foreign company (A) may engage in or hold shares of a company engaged in the business of underwriting, selling or distributing securities in the United States only to the extent that a bank holding company may do so under this chapter and under regulations or orders issued by the Board under this chapter, and (B) may engage in the United States in any banking or financial operations or types of activities permitted under section 1843(c)(8) of this title or in any order or regulation issued by the Board under such section only with the Board's prior approval under that section, and (2) no domestic office or subsidiary of a bank holding company or subsidiary thereof holding shares of such company may extend credit to a domestic office or subsidiary of such exempt company on terms more favorable than those afforded similar borrowers in the United States."

Subsec. (h)(3) to (5). Pub. L. 100–86, §205(a), added pars. (3) to (5).

Subsec. (i). Pub. L. 100–86, §101(a)(2), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: "The term 'thrift institution' means (1) a domestic building and loan or savings and loan association, (2) a cooperative bank without capital stock organized and operated for mutual purposes and without profit, (3) a mutual savings bank not having capital stock represented by shares or (4) a Federal savings bank."

Subsecs. (j) to (m). Pub. L. 100–86, §101(a)(3), added subsecs. (j) to (m).

1982—Subsec. (c). Pub. L. 97–320, §404(d)(1), inserted references to State chartered banks and national banking associations as being included in definition of "bank".

Pub. L. 97–320, §333, excepted from term "bank" an institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation or an institution chartered by the Federal Home Loan Bank Board.

Subsec. (i)(4). Pub. L. 97–320, §118(b), added cl. (4).

1978—Subsec. (h). Pub. L. 95–369 designated existing provisions as par. (1), substituted "Except as provided by paragraph (2), the application" for "The application"; struck out a proviso holding the prohibitions of section 1843 not applicable to shares of any company organized under the laws of a foreign country not doing business within the United States, if such shares are held or acquired by a bank holding company principally engaged in banking business outside the United States; and added par. (2).

1977—Subsec. (a)(5)(D). Pub. L. 95–188 authorized the Board to extend the time for disposition of acquired shares for not more than one year at a time and three years in the aggregate.

1970—Subsec. (a). Pub. L. 91–607, § 101(a), in revising the provisions, added par. (1) definition of bank holding company; incorporated provisions of former cl. (1) in provisions designated as par. (2)(A), inserting text respecting company acting through one or more other persons, substituting ''power to vote'' for ''holds with power to vote'' and provision for voting of any class of voting securities of the bank or company for prior provision for voting of voting shares of each of two or more banks; incorporated former provisions of former cl. (2) in provisions designated as par. (2)(B), providing for election of trustees and substituting bank or company for directors of each of two or more banks designated cl. (A) as par. (5)(A), inserting provision that acquisition of shares shall not be deemed acquisition of shares in a fiduciary capacity if the banks or company has sole discretionary authority to exercise voting rights with respect thereto, and making such limitation applicable to bank or company acquiring the shares prior to Dec. 31, 1970, where there is right of divestiture of voting rights and there is a failure to exercise that right within reasonable time not exceeding one year after Dec. 31, 1970; incorporated former cls. (B) and (C) in provisions designated as pars. (5)(B) and (C); added par. (5)(D) to (F); and designated concluding part of first sentence as par. (6), substituting ''from the date on which'' for ''from the date as of which''.

Subsec. (b). Pub. L. 91–607, § 101(b), redefined term ''company'' to include ''partnership'', which has been expressly excluded, and inserted definition of ''company covered in 1970''.

Subsec. (c). Pub. L. 91–607, § 101(c), redefined term ''bank'' to mean any institution organized under Federal, State, District of Columbia, etc., laws, designated existing provisions as cl. (1), added cl. (2), and excepted from exclusion from such term an organization which does business within the United States as an incident to its activities outside the United States.

Subsec. (d)(3). Pub. L. 91–607, § 101(d), added cl. (3).

Subsec. (i). Pub. L. 91–607, § 101(e), added subsec. (i).

1966—Subsec. (a). Pub. L. 89–485, § 1, struck out provision placing within the classification of bank holding company any company for the benefit of whose shareholders or members 25 per centum or more of the voting shares of each of two or more banks or a bank holding company is held by trustees, struck out provision exempting from classification as bank holding companies any companies that are registered under the Investment Company Act of 1940, and were so registered prior to May 15, 1955 (or which is affiliated with any such company in such manner as to constitute an affiliated company within the meaning of that Act), unless that company (or affiliated company), as the case may be, directly owns 25 per centum or more of the voting shares of each of two or more banks, struck out provision exempting from classification as bank holding companies any companies having 80 per centum or more of their total assets composed of holdings in the field of agriculture, substituted voting shares for shares in the description of the securities the ownership or control of which, in a fiduciary capacity, would be exempted from causing the formation of a bank holding company, added ''company'' to ''bank'' as the business entities eligible for the fiduciary ownership exemption, and inserted reference in the fiduciary ownership exemption to pars. (2) and (3) of subsec. (g) of this section.

Subsec. (b). Pub. L. 89–485, § 2, exempted from definition of ''company'' any trust which by its terms must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, and struck out the exemption formerly granted to nonprofit religious, charitable, and educational organizations.

Subsec. (c). Pub. L. 89–485, § 3, substituted ''any institution that accepts deposits that the depositor has a legal right to withdraw on demand'' for ''any national banking institution or any state bank, savings bank, or trust company'' in the definition of ''bank'' and extended the exemption for foreign banking corporations to include ''agreement'' foreign banking corporations under section 25 of the Federal Reserve Act.

Subsec. (d). Pub. L. 89–485, § 4, inserted provision relating to indirect ownership or control and the holding of power to vote to direct ownership or control as the methods by which the holding of 25 per centum or more of voting shares in a company will qualify that company as a subsidiary, and struck out provisions under which any company 25 per centum or more of whose voting shares are held by trustees for the benefit of the shareholders or members of a bank holding company qualifies as a subsidiary.

Subsec. (g). Pub. L. 89–485, §§ 5, 6, substituted provisions setting out treatment to be accorded shares owned or controlled by subsidiaries of bank holding companies, shares held or controlled by trustees for the benefit of companies, shareholders or members of companies, and employees of companies, and shares transferred after January 1, 1966, by bank holding companies to transferees that are indebted to the transferor or have one or more officers, directors, trustees, or beneficiaries in common with the transferor for provisions defining ''agriculture''.

Subsec. (h). Pub. L. 89–485, § 6, added subsec. (h).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2704(d)(17) of Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–328 effective at end of 1-year period beginning on Sept. 29, 1994, see section 101(e) of Pub. L. 103–328, set out as a note under section 1828 of this title.

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–418, title III, § 3401, Aug. 23, 1988, 102 Stat. 1384, provided that: ''This subtitle [subtitle E (§§ 3401, 3402) of title III of Pub. L. 100–418, amending section 1843 of this title] may be cited as the 'Export Trading Company Act Amendments of 1988'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–290, title II, § 201, Oct. 8, 1982, 96 Stat. 1235, provided that: ''This title [enacting section 635a–4 of this title, amending sections 372 and 1843 of this title, and enacting provisions set out as notes under section 1843 of this title] may be cited as the 'Bank Export Services Act'.''

SHORT TITLE OF 1970 AMENDMENT

Section 1 of Pub. L. 91–607 provided: ''That this Act [enacting chapter 22 (§ 1971 et seq.) and section 1850 of this title and sections 324b and 324c of former Title 31, Money and Finance, amending sections 1841 to 1843 and 1849 of this title and sections 324, 391 of former Title 31, repealing sections 316 and 458 of former Title 31, enacting provisions set out as notes under sections 317e and 391 of former Title 31, and amending provisions set out as a note under section 405a–1 of former Title 31] may be cited as the 'Bank Holding Company Act Amendments of 1970'.''

SHORT TITLE

Section 1 of act May 9, 1956, provided: ''That this Act [enacting this chapter and sections 1101 to 1103 of Title 26, Internal Revenue Code] may be cited as the 'Bank Holding Company Act of 1956'.''

SEPARABILITY

Section 12 of act May 9, 1956, provided that: ''If any provision of this Act [enacting this chapter and sections 1101 to 1103 of Title 26, Internal Revenue Code], or the application of such provision to any person or cir-

cumstance, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.''

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

TRANSITIONAL RULE FOR 1987 AMENDMENT

Section 101(h) of Pub. L. 100–86 provided that:

''(1) DELAY IN APPLICATION OF AMENDMENT TO CERTAIN INSTITUTIONS.—If—

''(A) on March 5, 1987, an institution was not a bank (as defined in section 2(c) of the Bank Holding Company Act of 1956 [12 U.S.C. 1841(c)]), as in effect on such date; and

''(B) any person which had a controlling interest in such institution on March 5, 1987, made a public announcement before such date that the transfer or other disposition of such person's controlling interest in such institution was being considered,

the institution shall not become a bank (for purposes of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.]) due to the amendment made to such section 2(c) by this section before the date on which such institution fails to meet any requirement of paragraph (2).

''(2) REQUIREMENTS FOR APPLICATION OF SUBSECTION.—This subsection shall not apply with respect to any institution described in paragraph (1) unless—

''(A) the transfer or other disposition of the controlling interest referred to in such paragraph is completed, or an agreement to make such transfer or other disposition is in effect (or is subject only to final approval by the appropriate Federal and State regulatory agencies), before the end of the 180-day period beginning on the date of the enactment of this title [Aug. 10, 1987];

''(B) a written notice by the person acquiring a controlling interest in such institution (pursuant to the transfer or other disposition described in subparagraph (A)) of such person's intention to operate such institution as an institution described in section 2(c)(2)(F) of the Bank Holding Company Act of 1956, as in effect after the enactment of this title is filed with the Board before the end of the 7-day period beginning on the later of the date of such transfer (or other disposition) or the date of the enactment of this title; and

''(C) the operation of such institution as an institution described in such section 2(c)(2)(F) begins before the end of the 180-day period beginning on the date the transfer (or other disposition) described in subparagraph (A) is completed.

''(3) CONTROLLING INTEREST.—For purposes of this subsection, a person has a controlling interest in any institution if such person controls—

''(A) such institution; or

''(B) any company which controls such institution, as determined in accordance with the provisions of subsections (b) and (g) of section 2 of the Bank Holding Company Act of 1956.''

MORATORIUM ON CERTAIN NONBANKING ACTIVITIES

Pub. L. 100–86, title II, §§201–203, Aug. 10, 1987, 101 Stat. 581–584, provided for the period of Mar. 6, 1987, to Mar. 1, 1988, a moratorium on certain nonbanking activities, including expansion of activities of foreign banks and authority of Federal banking agencies to authorize or allow certain security, insurance, or real estate activities.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 72, 248, 375b, 619, 1441a, 1467a, 1813, 1818, 1823, 1831*o*, 1831u, 1834a, 1842, 1843, 1971, 3101, 3102, 3106, 3401, 3413, 4702 of this title; title 7 section 2016; title 15 sections 78c, 1639; title 26 sections 304, 864.

§ 1842. Acquisition of bank shares or assets

(a) Prior approval of Board as necessary; exceptions; disposition, time extension; subsequent approval or disposition upon disapproval

It shall be unlawful, except with the prior approval of the Board, (1) for any action to be taken that causes any company to become a bank holding company; (2) for any action to be taken that causes a bank to become a subsidiary of a bank holding company; (3) for any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank; (4) for any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or (5) for any bank holding company to merge or consolidate with any other bank holding company. Notwithstanding the foregoing this prohibition shall not apply to (A) shares acquired by a bank, (i) in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 1841(b) of this title and except as provided in paragraphs (2) and (3) of section 1841(g) of this title, or (ii) in the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after May 9, 1956, in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired; (B) additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition; or (C) the acquisition, by a company, of control of a bank in a reorganization in which a person or group of persons exchanges their shares of the bank for shares of a newly formed bank holding company and receives after the reorganization substantially the same proportional share interest in the holding company as they held in the bank except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under State or Federal law if—

(i) immediately following the acquisition—

(I) the bank holding company meets the capital and other financial standards prescribed by the Board by regulation for such a bank holding company; and

(II) the bank is adequately capitalized (as defined in section 1831*o* of this title);

(ii) the holding company does not engage in any activities other than those of managing and controlling banks as a result of the reorganization;

(iii) the company provides 30 days prior notice to the Board and the Board does not object to such transaction during such 30-day period; and

(iv) the holding company will not acquire control of any additional bank as a result of the reorganization..[1]

The Board is authorized upon application by a bank to extend, from time to time for not more

[1] So in original.

than one year at a time, the two-year period referred to above for disposing of any shares acquired by a bank in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years. For the purpose of the preceding sentence, bank shares acquired after December 31, 1970, shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, but in such instances acquisitions may be made without prior approval of the Board if the Board, upon application filed within ninety days after the shares are acquired, approves retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within two years after issuance of the order of disapproval.

(b) Application for approval; notice to Comptroller of Currency or State authority; views and recommendations; disapproval; hearing; order of Board; nonaction deemed grant of application; procedure in emergencies or probable failures requiring immediate Board action and orders

(1) Notice and hearing requirements

Upon receiving from a company any application for approval under this section, the Board shall give notice to the Comptroller of the Currency, if the applicant company or any bank the voting shares or assets of which are sought to be required[2] is a national banking association or a District bank, or to the appropriate supervisory authority of the interested State, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a State bank, in order to provide for the submission of the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be. The views and recommendations shall be submitted within thirty calendar days of the date on which notice is given, or within ten calendar days of such date if the Board advises the Comptroller of the Currency or the State supervisory authority that an emergency exists requiring expeditious action. If the thirty-day notice period applies and if the Comptroller of the Currency or the State supervisory authority so notified by the Board disapproves the application in writing within this period, the Board shall forthwith give written notice of that fact to the applicant. Within three days after giving such notice to the applicant, the Board shall notify in writing the applicant and the disapproving authority of the date for commencement of a hearing by it on such application. Any such hearing shall be commenced not less than ten nor more than thirty days after the Board has given written notice to the applicant of the action of the disapproving authority. The length of any such hearing shall be determined by the Board, but it shall afford all interested parties a reasonable opportunity to testify at such hearing. At the conclusion thereof, the Board shall, by order, grant or deny the application on the basis of the record made at such hearing. In the event of the failure of the Board to act on any application for approval under this section within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. Notwithstanding any other provision of this subsection, if the Board finds that it must act immediately on any application for approval under this section in order to prevent the probable failure of a bank or bank holding company involved in a proposed acquisition, merger, or consolidation transaction, the Board may dispense with the notice requirements of this subsection, and if notice is given, the Board may request that the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be, be submitted immediately in any form or by any means acceptable to the Board. If the Board has found pursuant to this subsection either that an emergency exists requiring expeditious action or that it must act immediately to prevent probable failure, the Board may grant or deny any such application without a hearing notwithstanding any recommended disapproval by the appropriate supervisory authority.

(2) Waiver in case of bank in danger of closing

If the Board receives a certification described in section 1823(f)(8)(D)[3] of this title from the appropriate Federal or State chartering authority that a bank is in danger of closing, the Board may dispense with the notice and hearing requirements of paragraph (1) with respect to any application received by the Board relating to the acquisition of such bank, the bank holding company which controls such bank, or any other affiliated bank.

(c) Factors for consideration by Board

(1) Competitive factors

The Board shall not approve—

(A) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint or[4] trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in

[2] So in original. Probably should be "acquired".

[3] See References in Text note below.

[4] So in original. Probably should be "of".

meeting the convenience and needs of the community to be served.

(2) Banking and community factors

In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

(3) Supervisory factors

The Board shall disapprove any application under this section by any company if—

(A) the company fails to provide the Board with adequate assurances that the company will make available to the Board such information on the operations or activities of the company, and any affiliate of the company, as the Board determines to be appropriate to determine and enforce compliance with this chapter; or

(B) in the case of an application involving a foreign bank, the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.

(4) Treatment of certain bank stock loans

Notwithstanding any other provision of law, the Board shall not follow any practice or policy in the consideration of any application for the formation of a one-bank holding company if following such practice or policy would result in the rejection of such application solely because the transaction to form such one-bank holding company involves a bank stock loan which is for a period of not more than twenty-five years. The previous sentence shall not be construed to prohibit the Board from rejecting any application solely because the other financial arrangements are considered unsatisfactory. The Board shall consider transactions involving bank stock loans for the formation of a one-bank holding company having a maturity of twelve years or more on a case by case basis and no such transaction shall be approved if the Board believes the safety or soundness of the bank may be jeopardized.

(5) Managerial resources

Consideration of the managerial resources of a company or bank under paragraph (2) shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or bank.

(d) Interstate banking

(1) Approvals authorized

(A) Acquisition of banks

The Board may approve an application under this section by a bank holding company that is adequately capitalized and adequately managed to acquire control of, or acquire all or substantially all of the assets of, a bank located in a State other than the home State of such bank holding company, without regard to whether such transaction is prohibited under the law of any State.

(B) Preservation of State age laws

(i) In general

Notwithstanding subparagraph (A), the Board may not approve an application pursuant to such subparagraph that would have the effect of permitting an out-of-State bank holding company to acquire a bank in a host State that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State.

(ii) Special rule for State age laws specifying a period of more than 5 years

Notwithstanding clause (i), the Board may approve, pursuant to subparagraph (A), the acquisition of a bank that has been in existence for at least 5 years without regard to any longer minimum period of time specified in a statutory law of the host State.

(C) Shell banks

For purposes of this subsection, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, an existing bank shall be deemed to have been in existence for the same period of time as the bank to be acquired.

(D) Effect on State contingency laws

No provision of this subsection shall be construed as affecting the applicability of a State law that makes an acquisition of a bank contingent upon a requirement to hold a portion of such bank's assets available for call by a State-sponsored housing entity established pursuant to State law, if—

(i) the State law does not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or bank holding companies;

(ii) that State law was in effect as of September 29, 1994;

(iii) the Federal Deposit Insurance Corporation has not determined that compliance with such State law would result in an unacceptable risk to the appropriate deposit insurance fund; and

(iv) the appropriate Federal banking agency for such bank has not found that compliance with such State law would place the bank in an unsafe or unsound condition.

(2) Concentration limits

(A) Nationwide concentration limits

The Board may not approve an application pursuant to paragraph (1)(A) if the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the acquisition for which such application is filed would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) Statewide concentration limits other than with respect to initial entries

The Board may not approve an application pursuant to paragraph (1)(A) if—

(i) immediately before the consummation of the acquisition for which such application is filed, the applicant (including any insured depository institution affiliate of the applicant) controls any insured depository institution or any branch of an insured depository institution in the home State of any bank to be acquired or in any host State in which any such bank maintains a branch; and

(ii) the applicant (including all insured depository institutions which are affiliates of the applicant), upon consummation of the acquisition, would control 30 percent or more of the total amount of deposits of insured depository institutions in any such State.

(C) Effectiveness of State deposit caps

No provision of this subsection shall be construed as affecting the authority of any State to limit, by statute, regulation, or order, the percentage of the total amount of deposits of insured depository institutions in the State which may be held or controlled by any bank or bank holding company (including all insured depository institutions which are affiliates of the bank or bank holding company) to the extent the application of such limitation does not discriminate against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or holding companies.

(D) Exceptions to subparagraph (B)

The Board may approve an application pursuant to paragraph (1)(A) without regard to the applicability of subparagraph (B) with respect to any State if—

(i) there is a limitation described in subparagraph (C) in a State statute, regulation, or order which has the effect of permitting a bank or bank holding company (including all insured depository institutions which are affiliates of the bank or bank holding company) to control a greater percentage of total deposits of all insured depository institutions in the State than the percentage permitted under subparagraph (B); or

(ii) the acquisition is approved by the appropriate State bank supervisor of such State and the standard on which such approval is based does not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or holding companies.

(E) "Deposit" defined

For purposes of this paragraph, the term ''deposit'' has the same meaning as in section 1813(*l*) of this title.

(3) Community reinvestment compliance

In determining whether to approve an application under paragraph (1)(A), the Board shall—

(A) comply with the responsibilities of the Board regarding such application under section 2903 of this title; and

(B) take into account the applicant's record of compliance with applicable State community reinvestment laws.

(4) Applicability of antitrust laws

No provision of this subsection shall be construed as affecting—

(A) the applicability of the antitrust laws; or

(B) the applicability, if any, of any State law which is similar to the antitrust laws.

(5) Exception for banks in default or in danger of default

The Board may approve an application pursuant to paragraph (1)(A) which involves—

(A) an acquisition of 1 or more banks in default or in danger of default; or

(B) an acquisition with respect to which assistance is provided under section 1823(c) of this title;

without regard to subparagraph (B) or (D) of paragraph (1) or paragraph (2) or (3).

(e) Insured depository institution

Every bank that is a holding company and every bank that is a subsidiary of such a company shall become and remain an insured depository institution as defined in section 1813 of this title.

(f) Savings bank subsidiaries of bank holding companies

(1) In general

Notwithstanding any other provision of this chapter (other than paragraphs (2) and (3)), any qualified savings bank which is a subsidiary of a bank holding company may engage, directly or through a subsidiary, in any activity in which such savings bank may engage (as a State chartered savings bank) pursuant to express, incidental, or implied powers under any statute or regulation, or under any judicial interpretation of any law, of the State in which such savings bank is located.

(2) Insurance activities

Except as provided in paragraph (3), any insurance activities of any qualified savings bank which is a subsidiary of a bank holding company shall be limited to insurance activities allowed under section 1843(c)(8) of this title.

(3) Savings bank life insurance

Any qualified savings bank permitted, as of March 5, 1987, to engage in the sale or underwriting of savings bank life insurance may sell or underwrite such insurance after such savings bank is a subsidiary of a bank holding company if—

(A) the savings bank is located in the State of Connecticut, Massachusetts, or New York;

(B) such activity is expressly authorized by the law of the State in which such savings bank is located;

(C) the savings bank retains its character as a savings bank;

(D) such activity is carried out by the savings bank directly and not by—

(i) any subsidiary or affiliate of the savings bank; or

(ii) the bank holding company which controls such savings bank;

(E) such activity is carried out by the savings bank in accordance with any residency

or employment limitations set forth in the savings bank life insurance statute in effect on March 5, 1987, in the State in which such bank is located; and

(F) such activity is otherwise carried out in the same manner as savings bank life insurance activity is carried out in the State in which such bank is located by savings banks which are not subsidiaries of any bank holding company registered under this chapter.

(4) Subsection shall cease to apply under certain circumstances

If any company which is not a savings bank or a savings bank holding company acquires control of a qualified savings bank, such savings bank shall cease to engage in any activity authorized under paragraph (1) or (3) before the end of the 2-year period beginning on the date such company acquires control, unless such activity is otherwise authorized pursuant to this chapter.

(5) Special asset aggregation rule for purposes of paragraph (3)

For the sole purpose of determining whether a qualified savings bank may continue to sell and underwrite savings bank life insurance in accordance with this subsection after control of such savings bank is acquired by a bank holding company, the assets of any other bank affiliated with, or under contract to affiliate with, such savings bank as of March 5, 1987, shall be treated as assets of the savings bank in determining whether such bank holding company is a savings bank holding company.

(g) Mutual bank holding company

(1) Establishment

Notwithstanding any provision of Federal law other than this chapter, a savings bank or cooperative bank operating in mutual form may reorganize so as to form a holding company.

(2) Regulation

A corporation organized as a holding company under this subsection shall be regulated on the same terms and be subject to the same limitations as any other holding company which controls a savings bank.

(May 9, 1956, ch. 240, § 3, 70 Stat. 134; Pub. L. 89–485, § 7, July 1, 1966, 80 Stat. 237; Pub. L. 91–607, title I, § 102, Dec. 31, 1970, 84 Stat. 1763; Pub. L. 95–188, title III, §§ 301(a), 302, Nov. 16, 1977, 91 Stat. 1388, 1389; Pub. L. 96–221, title VII, §§ 712(b), (c), 713, Mar. 31, 1980, 94 Stat. 189, 190; Pub. L. 97–320, title I, §§ 118(c), 141(a)(4), title IV, § 404(d)(2), Oct. 15, 1982, 96 Stat. 1479, 1489, 1512; Pub. L. 100–86, title I, §§ 101(d), 107(b), title V, §§ 502(h)(1), 509(a), Aug. 10, 1987, 101 Stat. 561, 579, 628, 635; Pub. L. 101–73, title VI, § 602(b), Aug. 9, 1989, 103 Stat. 409; Pub. L. 102–242, title II, §§ 202(d), 210, Dec. 19, 1991, 105 Stat. 2290, 2298; Pub. L. 103–325, title III, §§ 319(a), 322(c)(1), Sept. 23, 1994, 108 Stat. 2224, 2227; Pub. L. 103–328, title I, § 101(a), Sept. 29, 1994, 108 Stat. 2339.)

REFERENCES IN TEXT

Section 1823(f)(8)(D) of this title, referred to in subsec. (b)(2), which defined ''bank in danger of closing'', was repealed by Pub. L. 101–73, title II, § 217(5)(H), Aug. 9, 1989, 103 Stat. 257.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–325, § 319(a), substituted ''(B)'' for ''or (B)'' and added subpar. (C).

Subsec. (d). Pub. L. 103–328 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''Notwithstanding any other provision of this section, no application (except an application filed as a result of a transaction authorized under section 1823(f) of this title) shall be approved under this section which will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside the State in which the operations of such bank holding company's banking subsidiaries were principally conducted on July 1, 1966, or the date on which such company became a bank holding company, whichever is later, unless the acquisition of such shares or assets of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located, by language to that effect and not merely by implication. For the purposes of this section, the State in which the operations of a bank holding company's subsidiaries are principally conducted is that State in which total deposits of all such banking subsidiaries are largest.''

Subsec. (e). Pub. L. 103–325, § 322(c)(1), struck out after first sentence ''This subsection does not apply to a bank described in the last sentence of section 1841(c) of this title.''

1991—Subsec. (c). Pub. L. 102–242, § 202(d), inserted heading, inserted par. (1) designation and heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, inserted par. (2) designation and heading, added par. (3), and inserted par. (4) designation and heading.

Subsec. (c)(5). Pub. L. 102–242, § 210, added par. (5).

1989—Subsec. (e). Pub. L. 101–73, which directed the substitution of ''an insured depository institution as defined in section 1813 of this title'' for ''an insured bank as defined in section 1813(h) of this title'', was executed by making the substitution for ''an insured bank as such term is defined in section 1813(h) of this title'', as the probable intent of Congress.

1987—Pub. L. 100–86, § 509(a), repealed Pub. L. 97–320, § 141. See 1982 Amendment note below.

Subsec. (b). Pub. L. 100–86, § 502(h)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (f). Pub. L. 100–86, § 101(d), added subsec. (f).

Subsec. (g). Pub. L. 100–86, § 107(b), added subsec. (g).

1982—Subsec. (d). Pub. L. 97–320, § 118(c), inserted ''(except an application filed as a result of a transaction authorized under section 1823(f) of this title)'' after ''no application''.

Pub. L. 97–320, § 141(a)(4), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 118 of Pub. L. 97–320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100–86, § 509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out under section 1464 of this title.

Subsec. (e). Pub. L. 97–320, § 404(d)(2), inserted ''This subsection does not apply to a bank described in the last sentence of section 1841(c) of this title.''

1980—Subsec. (c). Pub. L. 96–221, § 713, inserted provisions relating to applications for the formation of one-bank holding companies.

Subsec. (d). Pub. L. 96–221, § 712(b), (c), temporarily designated existing provisions as par. (1) and added par. (2). See Termination Date of 1980 Amendment note set out below.

1977—Subsec. (a). Pub. L. 95–188, § 301(a), authorized the Board to extend the time for disposition of acquired shares for not more than one year at a time and three years in the aggregate.

Subsec. (b). Pub. L. 95–188, § 302, inserted provision for alternative submission of views and recommendations within ten calendar days of the date on which notice is given if the Board advises the appropriate supervisory authority that an emergency exists requiring expeditious action, substituted ''shall, by order,'' for ''shall by order'' and inserted provisions respecting procedure in emergencies or probable failures requiring immediate Board action and orders.

1970—Subsec. (a). Pub. L. 91–607, § 102(1), inserted provision deeming acquisition of bank shares after Dec. 31, 1970, as not being in good faith in a fiduciary capacity if acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, and provision for subsequent approval of retention of acquired shares upon application filed within 90 days of acquisition and disposition of shares or sole discretionary voting rights within two years after order in an event of disapproval.

Subsec. (b). Pub. L. 91–607, § 102(2), inserted provision deeming an application for approval as granted where Board has not acted on application within 91 day period beginning on date of submission to Board of complete record on application.

Subsec. (e). Pub. L. 91–607, § 102(3), added subsec. (e).

1966—Subsec. (a). Pub. L. 89–485, § 7(a), (b), expanded the list of acts requiring prior approval of the Board by including therein any action that causes a bank to become a subsidiary of a bank holding company and substituted provisions excepting shares that are held under a trust that constitutes a company as defined in section 1841(b) of this title and excepting shares as provided in pars. (2) and (3) of section 1841(g) of this title from the effect of the clause lifting the requirements of prior Board approved in the case of shares acquired by a bank in good faith in a fiduciary capacity for provisions excepting shares held for the benefit of the shareholders of a bank from the effect of the clause.

Subsec. (c). Pub. L. 89–485, § 7(c), inserted provision prohibiting any acquisition, merger, or consolidation that would result in a monopoly or would further any combination or conspiracy to monopolize the banking business in any part of the United States or would substantially lessen competition or in any manner be in restraint of trade unless the public interest clearly outweighed the anticompetitive effects and substituted provisions requiring the Board to take into consideration the financial and managerial resources and future prospects of the company or bank concerned and the convenience and needs of the community to be served for provisions requiring the Board to take into consideration the financial history of the company or bank concerned, its prospects, the character of its management, the needs of the community, and the public interest.

Subsec. (d). Pub. L. 89–485, § 7(d), substituted provisions restricting expansion to state in which the operations of the bank holding company's banking subsidiaries were principally conducted, defined, as that state in which total deposits of all such banking subsidiaries were largest, on July 1, 1966, or the date on which the company became a bank holding company, whichever is later, for provisions restricting expansion to state in which the holding company maintains its principal office and place of business or in which it conducts its principal operations.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–328 effective at end of 1-year period beginning on Sept. 29, 1994, see section 101(e) of Pub. L. 103–328, set out as a note under section 1828 of this title.

TERMINATION DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 repealed on Oct. 1, 1981, see section 712(c) of Pub. L. 96–221, set out as a note under section 27 of this title.

EXTENSION OF EMERGENCY ACQUISITION AND NET WORTH GUARANTEE PROVISIONS OF PUB. L. 97–320

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect before Aug. 10, 1987, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had been made before such date, see section 509(c) of Pub. L. 100–86, set out as a note under section 1464 of this title.

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day before Oct. 8, 1986, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had taken effect before such date, see section 1(c) of Pub. L. 99–452, set out as a note under section 1464 of this title.

Section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day after Aug. 27, 1986, applicable as if included in Pub. L. 97–320 on Oct. 15, 1982, with no amendment made by such section to any other provision of law to be deemed to have taken effect before Aug. 27, 1986, and any such provision of law to be in effect as if no such amendment had taken effect before Aug. 27, 1986, see section 1(c) of Pub. L. 99–400, set out as a note under section 1464 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 619, 1815, 1817, 1823, 1843, 1849, 1850, 2902, 3103, 3105 of this title; title 15 sections 18a, 77c.

§ 1843. Interests in nonbanking organizations

(a) Ownership or control of voting shares of any company not a bank; engagement in activities other than banking

Except as otherwise provided in this chapter, no bank holding company shall—

(1) after May 9, 1956, acquire direct or indirect ownership or control of any voting shares of any company which is not a bank, or

(2) after two years from the date as of which it becomes a bank holding company, or in the case of a company which has been continuously affiliated since May 15, 1955, with a company which was registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], prior to May 15, 1955, in such a manner as to constitute an affiliated company within the meaning of that Act, after December 31, 1978, or, in the case of any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on December 31, 1970, after December 31, 1980, retain direct or indirect ownership or control of any voting shares of any company which is not a bank or bank holding company or engage in any activities other than (A) those of banking or of managing or controlling banks and other subsidiaries authorized under this chapter or of furnishing services to or performing services for its subsidiaries, and (B) those permitted under paragraph (8) of subsection (c) of this section subject to all the conditions specified in such paragraph or in any order or regulation issued by the Board under such paragraph: *Provided*, That a company covered in 1970 may also engage in those activities in which directly or through a subsidiary (i) it was lawfully engaged on June 30, 1968 (or on a

date subsequent to June 30, 1968 in the case of activities carried on as the result of the acquisition by such company or subsidiary, pursuant to a binding written contract entered into on or before June 30, 1968, of another company engaged in such activities at the time of the acquisition), and (ii) it has been continuously engaged since June 30, 1968 (or such subsequent date). The Board by order, after opportunity for hearing, may terminate the authority conferred by the preceding proviso on any company to engage directly or through a subsidiary in any activity otherwise permitted by that proviso if it determines, having due regard to the purposes of this chapter, that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices; and in the case of any such company controlling a bank having bank assets in excess of $60,000,000 on or after December 31, 1970, the Board shall determine, within two years after such date (or, if later, within two years after the date on which the bank assets first exceed $60,000,000), whether the authority conferred by the preceding proviso with respect to such company should be terminated as provided in this sentence. Nothing in this paragraph shall be construed to authorize any bank holding company referred to in the preceding proviso, or any subsidiary thereof, to engage in activities authorized by that proviso through the acquisition, pursuant to a contract entered into after June 30, 1968, of any interest in or the assets of a going concern engaged in such activities. Any company which is authorized to engage in any activity pursuant to the preceding proviso or subsection (d) of this section but, as a result of action of the Board, is required to terminate such activity may (notwithstanding any otherwise applicable time limit prescribed in this paragraph) retain the ownership or control of shares in any company carrying on such activity for a period of ten years from the date on which its authority was so terminated by the Board. Notwithstanding any other provision of this paragraph, if any company that became a bank holding company as a result of the enactment of the Competitive Equality Amendments of 1987 acquired, between March 5, 1987, and August 10, 1987, an institution that became a bank as a result of the enactment of such Amendments, that company shall, upon enactment of such Amendments, immediately come into compliance with the requirements of this chapter.

The Board is authorized, upon application by a bank holding company, to extend the two year period referred to in paragraph (2) above from time to time as to such bank holding company for not more than one year at a time, if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall in the aggregate exceed three years. Notwithstanding any other provision of this chapter, the period ending December 31, 1980, referred to in paragraph (2) above, may be extended by the Board of Governors to December 31, 1984, but only for the divestiture by a bank holding company of real estate or interests in real estate lawfully acquired for investment or development. In making its decision whether to grant such extension, the Board shall consider whether the company has made a good faith effort to divest such interests and whether such extension is necessary to avert substantial loss to the company.

(b) Statement purporting to represent shares of any company except a bank or bank holding company

After two years from May 9, 1956, no certificate evidencing shares of any bank holding company shall bear any statement purporting to represent shares of any other company except a bank or a bank holding company, nor shall the ownership, sale, or transfer of shares of any bank holding company be conditioned in any manner whatsoever upon the ownership, sale, or transfer of shares of any other company except a bank or a bank holding company.

(c) Exemptions

The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of title 26, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors; and such prohibitions shall not, with respect to any other bank holding company, apply to—

(1) shares of any company engaged or to be engaged solely in one or more of the following activities: (A) holding or operating properties used wholly or substantially by any banking subsidiary of such bank holding company in the operations of such banking subsidiary or acquired for such future use; or (B) conducting a safe deposit business; or (C) furnishing services to or performing services for such bank holding company or its banking subsidiaries; or (D) liquidating assets acquired from such bank holding company or its banking subsidiaries or acquired from any other source prior to May 9, 1956, or the date on which such company became a bank holding company, whichever is later;

(2) shares acquired by a bank holding company or any of its subsidiaries in satisfaction of a debt previously contracted in good faith, but such shares shall be disposed of within a period of two years from the date on which they were acquired, except that the Board is authorized upon application by such bank holding company to extend such period of two years from time to time as to such holding company if, in its judgment, such an extension would not be detrimental to the public interest, and, in the case of a bank holding company which has not disposed of such shares within 5 years after the date on which such shares were acquired, the Board may, upon the application of such company, grant additional

exemptions if, in the judgment of the Board, such extension would not be detrimental to the public interest and, either the bank holding company has made a good faith attempt to dispose of such shares during such 5-year period, or the disposal of such shares during such 5-year period would have been detrimental to the company, except that the aggregate duration of such extensions shall not extend beyond 10 years after the date on which such shares were acquired;

(3) shares acquired by such bank holding company from any of its subsidiaries which subsidiary has been requested to dispose of such shares by any Federal or State authority having statutory power to examine such subsidiary, but such bank holding company shall dispose of such shares within a period of two years from the date on which they were acquired;

(4) shares held or acquired by a bank in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 1841(b) of this title and except as provided in paragraphs (2) and (3) of section 1841(g) of this title;

(5) shares which are of the kinds and amounts eligible for investment by national banking associations under the provisions of section 24 of this title;

(6) shares of any company which do not include more than 5 per centum of the outstanding voting shares of such company;

(7) shares of an investment company which is not a bank holding company and which is not engaged in any business other than investing in securities, which securities do not include more than 5 per centum of the outstanding voting shares of any company;

(8) shares of any company the activities of which the Board after due notice (and opportunity for hearing in the case of an acquisition of a savings association) has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, but for purposes of this subsection it is not closely related to banking or managing or controlling banks for a bank holding company to provide insurance as a principal, agent, or broker except (A) where the insurance is limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death, disability, or involuntary unemployment of the debtor; (B) in the case of a finance company which is a subsidiary of a bank holding company, where the insurance is also limited to assuring repayment of the outstanding balance on an extension of credit in the event of loss or damage to any property used as collateral on such extention[1] of credit and, during the period beginning on October 15, 1982, and ending on December 31, 1982, such extension of credit is not more than $10,000 ($25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) and for any given year after 1982, such extension of credit is not more than an amount equal to $10,000 ($25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) increased by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published monthly by the Bureau of Labor Statistics for the period beginning on January 1, 1982, and ending on December 31 of the year preceding the year in which such extension of credit is made; (C) any insurance agency activity in a place that (i) has a population not exceeding five thousand (as shown by the last preceding decennial census), or (ii) the bank holding company, after notice and opportunity for a hearing, demonstrates has inadequate insurance agency facilities; (D) any insurance agency activity which was engaged in by the bank holding company or any of its subsidiaries on May 1, 1982, or which the Board approved for such company or any of its subsidiaries on or before May 1, 1982, including (i) sales of insurance at new locations of the same bank holding company or the same subsidiary or subsidiaries with respect to which insurance was sold on May 1, 1982, or approved to be sold on or before May 1, 1982, if such new locations are confined to the State in which the principal place of business of the bank holding company is located, any State or States immediately adjacent to such State, and any State or States in which insurance activities were conducted by the bank holding company or any of its subsidiaries on May 1, 1982, or were approved to be conducted by the bank holding company or any of its subsidiaries on or before May 1, 1982, and (ii) sales of insurance coverages which may become available after May 1, 1982, so long as those coverages insure against the same types of risks as, or are otherwise functionally equivalent to, coverages sold on May 1, 1982, or approved to be sold on or before May 1, 1982 (for purposes of this subparagraph, activities engaged in or approved by the Board on May 1, 1982, shall include activities carried on subsequent to that date as the result of an application to engage in such activities pending on May 1, 1982, and approved subsequent to that date or of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition); (E) any insurance activity where the activity is limited solely to supervising on behalf of insurance underwriters the activities of retail insurance agents who sell (i) fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the bank holding company or any of its subsidiaries, and (ii) group insurance that protects the employees of the bank holding company or any of its subsidiaries; (F) any insurance agency activity engaged in by a bank holding company, or any of its subsidiaries, which bank holding company has total assets of $50,000,000 or less: *Provided, however*, That

[1] So in original. Probably should be ''extension''.

such a bank holding company and its subsidiaries may not engage in the sale of life insurance or annuities except as provided in subparagraph (A), (B), or (C); or (G) where the activity is performed, or shares of the company involved are owned, directly, or indirectly, by a bank holding company which is registered with the Board of Governors of the Federal Reserve System and which, prior to January 1, 1971, was engaged, directly or indirectly, in insurance agency activities as a consequence of approval by the Board prior to January 1, 1971. In determining whether a particular activity is a proper incident to banking or managing or controlling banks the Board shall consider whether its performance by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. In orders and regulations under this subsection, the Board may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of a going concern. Notwithstanding any other provision of this chapter, if the Board finds that an emergency exists which requires the Board to act immediately on any application under this subsection involving a thrift institution, and the primary Federal regulator of such institution concurs in such finding, the Board may dispense with the notice and hearing requirement of this subsection and the Board may approve or deny any such application without notice or hearing. If an application is filed under this paragraph in connection with an application to make an acquisition pursuant to section 13(f) of the Federal Deposit Insurance Act [12 U.S.C. 1823(f)], the Board may dispense with the notice and hearing requirement of this paragraph and the Board may approve or deny the application under this paragraph without notice or hearing. If an application described in the preceding sentence is approved, the Board shall publish in the Federal Register, not later than 7 days after such approval is granted, the order approving the application and a description of the nonbanking activities involved in the acquisition;

(9) shares held or activities conducted by any company organized under the laws of a foreign country the greater part of whose business is conducted outside the United States, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this chapter and would be in the public interest;

(10) shares lawfully acquired and owned prior to May 9, 1956, by a bank which is a bank holding company, or by any of its wholly owned subsidiaries;

(11) shares owned directly or indirectly by a company covered in 1970 in a company which does not engage in any activities other than those in which the bank holding company, or its subsidiaries, may engage by virtue of this section, but nothing in this paragraph authorizes any bank holding company, or subsidiary thereof, to acquire any interest in or the assets of any going concern (except pursuant to a binding written contract entered into before June 30, 1968, or pursuant to another provision of this chapter) other than one which was a subsidiary on June 30, 1968;

(12) shares retained or acquired, or activities engaged in, by any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on December 31, 1970, or by any subsidiary thereof, if such company—

(A) within the applicable time limits prescribed in subsection (a)(2) of this section (i) ceases to be a bank holding company, or (ii) ceases to retain direct or indirect ownership or control of those shares and to engage in those activities not authorized under this section; and

(B) complies with such other conditions as the Board may by regulation or order prescribe;

(13) shares of, or activities conducted by, any company which does no business in the United States except as an incident to its international or foreign business, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this chapter and would be in the public interest; or

(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

(ii) The period for disapproval may be extended for such additional thirty-day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

(iv) The Board may disapprove any proposed investment only if—

(I) such disapproval is necessary to prevent unsafe or unsound banking practices,

undue concentration of resources, decreased or unfair competition, or conflicts of interest;

(II) the Board finds that such investment would affect the financial or managerial resources of a bank holding company to an extent which is likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company, or

(III) the bank holding company fails to furnish the information required under clause (iii).

(v) LEVERAGE.—The Board may not disapprove any proposed investment solely on the basis of the anticipated or proposed asset-to-equity ratio of the export trading company with respect to which such investment is proposed, unless the anticipated or proposed annual average asset-to-equity ratio is greater than 20-to-1.

(vi) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

(vii) A proposed investment may be made prior to the expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

(B)(i) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

(ii) No provision of any other Federal law in effect on October 1, 1982, relating specifically to collateral requirements shall apply with respect to any such extension of credit.

(iii) No bank holding company or subsidiary of such company which invests in an export trading company may extend credit to such export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(C) For purposes of this paragraph, an export trading company—

(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental product modification including repackaging, reassembling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodity contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

(E) Notwithstanding any other provision of law, an Edge Act corporation, organized under section 25(a)[2] of the Federal Reserve Act (12 U.S.C. 611–631), which is a subsidiary of a bank holding company, or an agreement corporation, operating subject to section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.], which is a subsidiary of a bank holding company, may invest directly and indirectly in the aggregate up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of a corporation not engaged in banking) in the voting stock of other evidences of ownership in one or more export trading companies.

(F) For purposes of this paragraph—

(i) the term ''export trading company'' means a company which does business under the laws of the United States or any State, which is exclusively engaged in activities related to international trade, and which is organized and operated principally for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services.[3]

(ii) the term ''export trade services'' includes, but is not limited to, consulting, international market research, advertising, marketing, insurance (other than acting as principal, agent or broker in the sale of insurance on risks resident or located, or activities performed, in the United States, except for insurance covering the transportation of cargo from any point of origin in the United States to a point of final destination outside the United States), product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States;

(iii) the term ''bank holding company'' shall include a bank which (I) is organized

[2] See References in Text note below.

[3] So in original. The period probably should be a semicolon.

solely to do business with other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank, owning stock in a bank described in this clause that invests in an export trading company, shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

(iv) the term ''extension of credit'' shall have the same meaning given such term in the fourth paragraph of section 371c of this title.

(G) DETERMINATION OF STATUS AS EXPORT TRADING COMPANY.—

(i) TIME PERIOD REQUIREMENTS.—For purposes of determining whether an export trading company is operated principally for the purposes described in subparagraph (F)(i)—

(I) the operations of such company during the 2-year period beginning on the date such company commences operations shall not be taken into account in making any such determination; and

(II) not less than 4 consecutive years of operations of such company (not including any portion of the period referred to in subclause (I)) shall be taken into account in making any such determination.

(ii) EXPORT REVENUE REQUIREMENTS.—A company shall not be treated as operated principally for the purposes described in subparagraph (F)(i) unless—

(I) the revenues of such company from the export, or facilitating the export, of goods or services produced in the United States exceed the revenues of such company from the import, or facilitating the import, into the United States of goods or services produced outside the United States; and

(II) at least ⅓ of such company's total revenues are revenues from the export, or facilitating the export, of goods or services produced in the United States by persons not affiliated with such company.

(H) INVENTORY.—

(i) NO GENERAL LIMITATION.—The Board may not prescribe by regulation any maximum dollar amount limitation on the value of goods which an export trading company may maintain in inventory at any time.

(ii) SPECIFIC LIMITATION BY ORDER.—Notwithstanding clause (i), the Board may issue an order establishing a maximum dollar amount limitation on the value of goods which a particular export trading company may maintain in inventory at any time (after such company has been operating for a reasonable period of time) if the Board finds that, under the facts and circumstances, such limitation is necessary to prevent risks that would affect the financial or managerial resources of an investor bank holding company to an extent which would be likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company.

The Board shall include in its annual report to the Congress a description and a statement of the reasons for approval of each activity approved by it by order or regulation under such paragraph during the period covered by the report.

(d) Exemption of company controlling one bank prior to July 1, 1968

To the extent that such action would not be substantially at variance with the purposes of this chapter and subject to such conditions as it considers necessary to protect the public interest, the Board by order, after opportunity for hearing, may grant exemptions from the provisions of this section to any bank holding company which controlled one bank prior to July 1, 1968, and has not thereafter acquired the control of any other bank in order (1) to avoid disrupting business relationships that have existed over a long period of years without adversely affecting the banks or communities involved, or (2) to avoid forced sales of small locally owned banks to purchasers not similarly representative of community interests, or (3) to allow retention of banks that are so small in relation to the holding company's total interests and so small in relation to the banking market to be served as to minimize the likelihood that the bank's powers to grant or deny credit may be influenced by a desire to further the holding company's other interests.

(e) Divestiture of nonexempt shares

With respect to shares which were not subject to the prohibitions of this section as originally enacted by reason of any exemption with respect thereto but which were made subject to such prohibitions by the subsequent repeal of such exemption, no bank holding company shall retain direct or indirect ownership or control of such shares after five years from the date of the repeal of such exemption, except as provided in paragraph (2) of subsection (a) of this section. Any bank holding company subject to such five-year limitation on the retention of nonbanking assets shall endeavor to divest itself of such shares promptly and such bank holding company shall report its progress in such divestiture to the Board two years after repeal of the exemption applicable to it and annually thereafter.

(f) Certain companies not treated as bank holding companies

(1) In general

Except as provided in paragraph (9), any company which—

(A) on March 5, 1987, controlled an institution which became a bank as a result of the enactment of the Competitive Equality Amendments of 1987; and

(B) was not a bank holding company on the day before August 10, 1987,

shall not be treated as a bank holding company for purposes of this chapter solely by vir-

tue of such company's control of such institution.

(2) Loss of exemption

Paragraph (1) shall cease to apply to any company described in such paragraph if—

(A) such company directly or indirectly—

(i) acquires control of an additional bank or an insured institution (other than an insured institution described in paragraph (10) or (12) of this subsection) after March 5, 1987; or

(ii) acquires control of more than 5 percent of the shares or assets of an additional bank or a savings association other than—

(I) shares held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

(II) shares held by any person as a bona fide fiduciary solely for the benefit of employees of either the company described in paragraph (1) or any subsidiary of that company and the beneficiaries of those employees;

(III) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(IV) shares held in an account solely for trading purposes;

(V) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(VI) loans or other accounts receivable acquired in the normal course of business;

(VII) shares or assets acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;

(VIII) shares or assets of a savings association described in paragraph (10) or (12) of this subsection;

(IX) shares of a savings association held by any insurance company, as defined in section 80a–2(a)(17) of title 15, except as provided in paragraph (11); and

(X) shares issued in a qualified stock issuance under section 1467a(q) of this title;

except that the aggregate amount of shares held under this clause (other than under subclauses (I), (II), (III), (IV), (V), and (VIII)) may not exceed 15 percent of all outstanding shares or of the voting power of a savings association; or

(B) any bank subsidiary of such company fails to comply with the restrictions contained in paragraph (3)(B).

(3) Limitation on banks controlled by paragraph (1) companies

(A) Findings

The Congress finds that banks controlled by companies referred to in paragraph (1) may, because of relationships with affiliates, be involved in conflicts of interest, concentration of resources, or other effects adverse to bank safety and soundness, and may also be able to compete unfairly against banks controlled by bank holding companies by combining banking services with financial services not permissible for bank holding companies. The purpose of this paragraph is to minimize any such potential adverse effects or inequities by temporarily restricting the activities of banks controlled by companies referred to in paragraph (1) until such time as the Congress has enacted proposals to allow, with appropriate safeguards, all banks or bank holding companies to compete on a more equal basis with banks controlled by companies referred to in paragraph (1) or, alternatively, proposals to permanently restrict the activities of banks controlled by companies referred to in paragraph (1).

(B) Limitations

Until such time as the Congress has taken action pursuant to subparagraph (A), a bank controlled by a company described in paragraph (1) shall not—

(i) engage in any activity in which such bank was not lawfully engaged as of March 5, 1987;

(ii) offer or market products or services of an affiliate that are not permissible for bank holding companies to provide under subsection (c)(8) of this section, or permit its products or services to be offered or marketed in connection with products and services of an affiliate, unless—

(I) the Board, by regulation, has determined such products and services are permissible for bank holding companies to provide under subsection (c)(8) of this section;

(II) such products and services are described in section 377 of this title and the Board, by regulation, has permitted bank holding companies to offer or market such products or services, but has prohibited bank holding companies and their affiliates from principally engaging in the offering or marketing of such products or services; or

(III) such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date; or

(iii) after August 10, 1987, permit any overdraft (including an intraday overdraft), or incur any such overdraft in such bank's account at a Federal Reserve bank, on behalf of an affiliate, other than an overdraft described in subparagraph (C).

(C) Permissible overdrafts described

For purposes of subparagraph (B)(iii), an overdraft is described in this subparagraph if—

(i) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate; or

(ii) such overdraft—

(I) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

(II) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system.

(4) Divestiture in case of loss of exemption

If any company described in paragraph (1) loses the exemption provided under such paragraph by operation of paragraph (2), such company shall divest control of each bank it controls within 180 days after such company becomes a bank holding company due to the loss of such exemption.

(5) Subsection ceases to apply under certain circumstances

This subsection shall cease to apply to any company described in paragraph (1) if such company—

(A) registers as a bank holding company under section 1844(a) of this title;

(B) immediately upon such registration, complies with all of the requirements of this chapter, and regulations prescribed by the Board pursuant to this chapter, including the nonbanking restrictions of this section; and

(C) does not, at the time of such registration, control banks in more than one State, the acquisition of which would be prohibited by section 1842(d) of this title if an application for such acquisition by such company were filed under section 1842(a) of this title.

(6) Information requirement

Each company described in paragraph (1) shall, within 60 days after August 10, 1987, provide the Board with the name and address of such company, the name and address of each bank such company controls, and a description of each such bank's activities.

(7) Examination

The Board may, from time to time, examine a company described in paragraph (1), or a bank controlled by such company, or require reports under oath from appropriate officers or directors of such company or bank solely for purposes of assuring compliance with the provisions of this subsection and enforcing such compliance.

(8) Enforcement

(A) In general

In addition to any other power of the Board, the Board may enforce compliance with the provisions of this chapter which are applicable to any company described in paragraph (1), and any bank controlled by such company, under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] and such company or bank shall be subject to such section (for such purposes) in the same manner and to the same extent as if such company or bank were a State member insured bank.

(B) Application of other act

Any violation of this chapter by any company described in paragraph (1), and any bank controlled by such company, may also be treated as a violation of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] for purposes of subparagraph (A).

(C) No effect on other authority

No provision of this paragraph shall be construed as limiting any authority of the Comptroller of the Currency or the Federal Deposit Insurance Corporation.

(9) Tying provisions

A company described in paragraph (1) shall be—

(A) treated as a bank holding company for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 [12 U.S.C. 1971 et seq.] and section 22(h) of the Federal Reserve Act [12 U.S.C. 375b] and any regulation prescribed under any such section; and

(B) subject to the restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 [12 U.S.C. 1971 et seq.], in connection with any transaction involving the products or services of such company or affiliate and those of a bank affiliate, as if such company or affiliate were a bank and such bank were a subsidiary of a bank holding company.

(10) Exemption unaffected by certain emergency acquisitions

For purposes of clauses (i) and (ii)(VIII) of paragraph (2)(A), an insured institution is described in this paragraph if—

(A) the insured institution was acquired (or any shares or assets of such institution were acquired) by a company described in paragraph (1) in an acquisition under section 1730a(m)[4] of this title or section 13(k) of the Federal Deposit Insurance Act [12 U.S.C. 1823(k)]; and

(B) either—

(i) the insured institution is located in a State in which such company controlled a bank on March 5, 1987; or

(ii) the insured institution has total assets of $500,000,000 or more at the time of such acquisition.

(11) Shares held by insurance affiliates

Shares described in clause (ii)(IX) of paragraph (2)(A) shall not be excluded for purposes of clause (ii) of such paragraph if—

(A) all shares held under such clause (ii)(IX) by all insurance company affiliates of such savings association in the aggregate exceed 5 percent of all outstanding shares or of the voting power of the savings association; or

(B) such shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association.

[4] See References in Text note below.

(12) Exemption unaffected by certain other acquisitions

For purposes of clauses (i) and (ii)(VIII) of paragraph (2)(A), an insured institution is described in this paragraph if the insured institution was acquired (or any shares or assets of such institution were acquired) by a company described in paragraph (1)—

(A) from the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision, in any capacity; or

(B) in an acquisition in which the insured institution has been found to be in danger of default (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) by the appropriate Federal or State authority.

(13) Special rule relating to shares acquired in a qualified stock issuance

A company described in paragraph (1) that holds shares issued in a qualified stock issuance pursuant to section 1467a(q) of this title by any savings association or savings and loan holding company (neither of which is a subsidiary) shall not be deemed to control such savings association or savings and loan holding company solely because such company holds such shares unless—

(A) the company fails to comply with any requirement or condition imposed by paragraph (2)(A)(ii)(X) or section 1467a(q) of this title with respect to such shares; or

(B) the shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company.

(g) Limitations on certain banks

(1) In general

Notwithstanding any other provision of this section (other than the last sentence of subsection (a)(2) of this section), a bank holding company which controls an institution that became a bank as a result of the enactment of the Competitive Equality Amendments of 1987 may retain control of such institution if such institution does not—

(A) engage in any activity after August 10, 1987, which would have caused such institution to be a bank (as defined in section 1841(c) of this title, as in effect before such date) if such activities had been engaged in before such date; or

(B) increase the number of locations from which such institution conducts business after March 5, 1987.

(2) Limitations cease to apply under certain circumstances

The limitations contained in paragraph (1) shall cease to apply to a bank described in such paragraph at such time as the acquisition of such bank, by the bank holding company referred to in such paragraph, would not be prohibited under section 1842(d) of this title if—

(A) an application for such acquisition were filed under section 1842(a) of this title; and

(B) such bank were treated as an additional bank (under section 1842(d) of this title).

(h) Tying provisions

(1) Applicable to certain exempt institutions and parent companies

An institution described in subparagraph (D), (F), (G), (H), (I), or (J) of section 1841(c)(2) of this title shall be treated as a bank, and a company that controls such an institution shall be treated as a bank holding company, for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 [12 U.S.C. 1971 et seq.] and section 22(h) of the Federal Reserve Act [12 U.S.C. 375b] and any regulation prescribed under any such section.

(2) Applicable with respect to certain transactions

A company that controls an institution described in subparagraph (D), (F), (G), (H), (I), or (J) of section 1841(c)(2) of this title and any of such company's other affiliates, shall be subject to the tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 [12 U.S.C. 1971 et seq.] in connection with any transaction involving the products or services of such company or affiliate and those of such institution, as if such company or affiliate were a bank and such institution were a subsidiary of a bank holding company.

(i) Acquisition of savings associations

(1) In general

The Board may approve an application by any bank holding company under subsection (c)(8) of this section to acquire any savings association in accordance with the requirements and limitations of this section.

(2) Prohibition on tandem restrictions

In approving an application by a bank holding company to acquire a savings association, the Board shall not impose any restriction on transactions between the savings association and its holding company affiliates, except as required under sections 371c and 371c–1 of this title or any other applicable law.

(3) Acquisition of insolvent savings associations

(A) In general

Notwithstanding any other provision of this chapter, any qualified savings association which became a federally chartered stock company in December of 1986 and which is acquired by any bank holding company without Federal financial assistance after June 1, 1991, and before March 1, 1992, and any subsidiary of any such association, may after such acquisition continue to engage within the home State of the qualified savings association in insurance agency activities in which any Federal savings association (or any subsidiary thereof) may engage in accordance with the Home Owners' Loan Act [12 U.S.C. 1461 et seq.] and regulations pursuant to such Act if the qualified savings association or subsidiary thereof was continuously engaged in such activity from June 1, 1991, to the date of the acquisition.

(B) "Qualified savings association" defined

For purposes of this paragraph, the term ''qualified savings association'' means any savings association that—

(i) was chartered or organized as a savings association before June 1, 1991;

(ii) had, immediately before the acquisition of such association by the bank holding company referred to in subparagraph (A), negative tangible capital and total insured deposits in excess of $3,000,000,000; and

(iii) will meet all applicable regulatory capital requirements as a result of such acquisition.

(4) Solicitation of views

(A) Notice to Director

Upon receiving any application or notice by a bank holding company to acquire, directly or indirectly, a savings association under subsection (c)(8) of this section, the Board shall solicit comments and recommendations from the Director with respect to such acquisition.

(B) Comment period

The comments and recommendations of the Director under subparagraph (A) with respect to any acquisition subject to such subparagraph shall be transmitted to the Board not later than 30 days after the receipt by the Director of the notice relating to such acquisition (or such shorter period as the Board may specify if the Board advises the Director that an emergency exists that requires expeditious action).

(5) Examination

(A) Scope

The Board shall consult with the Director, as appropriate, in establishing the scope of an examination by the Board of a bank holding company that directly or indirectly controls a savings association.

(B) Access to inspection reports

Upon the request of the Director, the Board shall furnish the Director with a copy of any inspection report, additional examination materials, or supervisory information relating to any bank holding company that directly or indirectly controls a savings association.

(6) Coordination of enforcement efforts

The Board and the Director shall cooperate in any enforcement action against any bank holding company that controls a savings association, if the relevant conduct involves such association.

(7) "Director" defined

For purposes of this section, the term ''Director'' means the Director of the Office of Thrift Supervision.

(j) Notice procedures for nonbanking activities

(1) General notice procedure

(A) Notice requirement

Except as provided in paragraph (3), no bank holding company may engage in any nonbanking activity or acquire or retain ownership or control of the shares of a company engaged in activities based on subsection (c)(8) or (a)(2) of this section without providing the Board with written notice of the proposed transaction or activity at least 60 days before the transaction or activity is proposed to occur or commence.

(B) Contents of notice

The notice submitted to the Board shall contain such information as the Board shall prescribe by regulation or by specific request in connection with a particular notice.

(C) Procedure for agency action

(i) Notice of disapproval

Any notice filed under this subsection shall be deemed to be approved by the Board unless, before the end of the 60-day period beginning on the date the Board receives a complete notice under subparagraph (A), the Board issues an order disapproving the transaction or activity and setting forth the reasons for disapproval.

(ii) Extension of period

The Board may extend the 60-day period referred to in clause (i) for an additional 30 days. The Board may further extend the period with the agreement of the bank holding company submitting the notice pursuant to this subsection.

(iii) Determination of period in case of public hearing

In the event a hearing is requested or the Board determines that a hearing is warranted, the Board may extend the notice period provided in this subsection for such time as is reasonably necessary to conduct a hearing and to evaluate the hearing record. Such extension shall not exceed the 91-day period beginning on the date that the hearing record is complete.

(D) Approval before end of period

(i) In general

Any transaction or activity may commence before the expiration of any period for disapproval established under this paragraph if the Board issues a written notice of approval.

(ii) Shorter periods by regulation

The Board may prescribe regulations which provide for a shorter notice period with respect to particular activities or transactions.

(E) Extension of period

In the case of any notice to engage in, or to acquire or retain ownership or control of shares of any company engaged in, any activity pursuant to subsection (c)(8) or (a)(2) of this section that has not been previously approved by regulation, the Board may extend the notice period under this subsection for an additional 90 days. The Board may further extend the period with the agreement of the bank holding company submitting the notice pursuant to this subsection.

(2) General standards for review

(A) Criteria

In connection with a notice under this subsection, the Board shall consider whether

performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(B) Grounds for disapproval

The Board may deny any proposed transaction or activity for which notice has been submitted pursuant to this subsection if the bank holding company submitting such notice neglects, fails, or refuses to furnish the Board all the information required by the Board.

(C) Conditional action

Nothing in this subsection limits the authority of the Board to impose conditions in connection with an action under this section.

(3) No notice required for certain transactions

No notice under paragraph (1) of this subsection or under subsection (c)(8) or (a)(2)(B) of this section is required for a proposal by a bank holding company to engage in any activity or acquire the shares or assets of any company, other than an insured depository institution, if the proposal qualifies under paragraph (4).

(4) Criteria for statutory approval

A proposal qualifies under this paragraph if all of the following criteria are met:

(A) Financial criteria

Both before and immediately after the proposed transaction—

(i) the acquiring bank holding company is well capitalized;

(ii) the lead insured depository institution of such holding company is well capitalized;

(iii) well capitalized insured depository institutions control at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company; and

(iv) no insured depository institution controlled by such holding company is undercapitalized.

(B) Managerial criteria

(i) Well managed

At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institutions that control at least 90 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company are well managed.

(ii) Limitation on poorly managed institutions

Except as provided in paragraph (6), no insured depository institution controlled by the acquiring bank holding company has received 1 of the 2 lowest composite ratings at the later of the institution's most recent examination or subsequent review.

(C) Activities permissible

Following consummation of the proposal, the bank holding company engages directly or through a subsidiary solely in—

(i) activities that are permissible under subsection (c)(8) of this section, as determined by the Board by regulation or order thereunder, subject to all of the restrictions, terms, and conditions of such subsection and such regulation or order; and

(ii) such other activities as are otherwise permissible under this section, subject to the restrictions, terms and conditions, including any prior notice or approval requirements, provided in this section.

(D) Size of acquisition

(i) Asset size

The book value of the total assets to be acquired does not exceed 10 percent of the consolidated total risk-weighted assets of the acquiring bank holding company.

(ii) Consideration

The gross consideration to be paid for the securities or assets does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company.

(E) Notice not otherwise warranted

For proposals described in paragraph (5)(B), the Board has not, before the conclusion of the period provided in paragraph (5)(B), advised the bank holding company that a notice under paragraph (1) is required.

(F) Compliance criterion

During the 12-month period ending on the date on which the bank holding company proposes to commence an activity or acquisition, no administrative enforcement action has been commenced, and no cease and desist order has been issued pursuant to section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], against the bank holding company or any depository institution subsidiary of the holding company, and no such enforcement action, order, or other administrative enforcement proceeding is pending as of such date.

(5) Notification

(A) Commencement of activities approved by rule

A bank holding company that qualifies under paragraph (4) and that proposes to engage de novo, directly or through a subsidiary, in any activity that is permissible under subsection (c)(8) of this section, as determined by the Board by regulation, may commence that activity without prior notice to the Board and must provide written notification to the Board not later than 10 business days after commencing the activity.

(B) Activities permitted by order and acquisitions

(i) In general

At least 12 business days before commencing any activity pursuant to para-

graph (3) (other than an activity described in subparagraph (A) of this paragraph) or acquiring shares or assets of any company pursuant to paragraph (3), the bank holding company shall provide written notice of the proposal to the Board, unless the Board determines that no notice or a shorter notice period is appropriate.

(ii) Description of activities and terms

A notification under this subparagraph shall include a description of the proposed activities and the terms of any proposed acquisition.

(6) Recently acquired institutions

Any insured depository institution which has been acquired by a bank holding company during the 12-month period preceding the date on which the company proposes to commence an activity or acquisition pursuant to paragraph (3) may be excluded for purposes of paragraph (4)(B)(ii) if—

(A) the bank holding company has developed a plan for the institution to restore the capital and management of the institution which is acceptable to the appropriate Federal banking agency; and

(B) all such insured depository institutions represent, in the aggregate, less than 10 percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the bank holding company.

(7) Adjustment of percentages

The Board may, by regulation, adjust the percentages and the manner in which the percentages of insured depository institutions are calculated under paragraph (4)(B)(i), (4)(D), or (6)(B) if the Board determines that any such adjustment is consistent with safety and soundness and the purposes of this chapter.

(May 9, 1956, ch. 240, §4, 70 Stat. 135; Pub. L. 89–485, §8, July 1, 1966, 80 Stat. 238; Pub. L. 91–607, title I, §103, Dec. 31, 1970, 84 Stat. 1763; Pub. L. 95–188, title III, §301(c), Nov. 16, 1977, 91 Stat. 1389; Pub. L. 95–630, title I, §112, Nov. 10, 1978, 92 Stat. 3671; Pub. L. 96–221, title VII, §701(b), Mar. 31, 1980, 94 Stat. 186; Pub. L. 97–290, title II, §203, Oct. 8, 1982, 96 Stat. 1236; Pub. L. 97–320, title I, §§118(a), 141(a)(4), title IV, §433(b), title VI, §601, Oct. 15, 1982, 96 Stat. 1479, 1489, 1527, 1536; Pub. L. 97–457, §30, Jan. 12, 1983, 96 Stat. 2511; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–86, title I, §101(b), (c), title V, §§502(h)(2), 509(a), Aug. 10, 1987, 101 Stat. 557, 628, 635; Pub. L. 100–418, title III, §3402, Aug. 23, 1988, 102 Stat. 1384; Pub. L. 101–73, title VI, §§601(a), 603, 604(b), title XII, §1219, Aug. 9, 1989, 103 Stat. 408, 409, 411, 546; Pub. L. 102–242, title IV, §461, Dec. 19, 1991, 105 Stat. 2384; Pub. L. 102–550, title XVI, §1606(h)(1), Oct. 28, 1992, 106 Stat. 4089; Pub. L. 103–325, title III, §346, Sept. 23, 1994, 108 Stat. 2239; Pub. L. 104–208, div. A, title II, §§2203(d), 2208(a), 2215, 2304(a), 2612, Sept. 30, 1996, 110 Stat. 3009–404, 3009–406, 3009–413, 3009–425, 3009–476.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(2), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

Enactment of the Bank Holding Company Act Amendments of 1970, referred to in subsecs. (a)(2) and (c)(12), means enactment of Pub. L. 91–607 on Dec. 31, 1970. For classification of Pub. L. 91–607, see Short Title of 1970 Amendment note set out under section 1841 of this title.

Enactment of the Competitive Equality Amendments of 1987, referred to in subsecs. (a)(2), (f)(1)(A), and (g)(1), means enactment of title I of Pub. L. 100–86, Aug. 10, 1987, 101 Stat. 554. For classification of title I of Pub. L. 100–86, see Short Title of 1987 Amendment note set out under section 226 of this title and Tables.

Section 25(a) of the Federal Reserve Act (12 U.S.C. 611–631), referred to in subsec. (c)(14)(E), which is popularly known as the Edge Act, and which is classified to subchapter II (§611 et seq.) of chapter 6 of this title, was renumbered section 25A of that act by Pub. L. 102–242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§601 et seq.) of chapter 6 of this title.

The Federal Deposit Insurance Act, referred to in subsec. (f)(8)(B), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

Section 106 of the Bank Holding Company Act Amendments of 1970, referred to in subsecs. (f)(9)(A) and (h), is Pub. L. 91–607, title I, §106, Dec. 31, 1970, 84 Stat. 1766, as amended, which is classified generally to chapter 22 (§1971 et seq.) of this title.

Section 1730a of this title, referred to in subsec. (f)(10)(A), was repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

The Home Owners' Loan Act, referred to in subsec. (i)(3)(A), is act June 13, 1933, ch. 64, 48 Stat. 128, as amended, which is classified generally to chapter 12 (§1461 et seq.) of this title. For complete classification of this Act to the Code, see section 1461 of this title and Tables.

AMENDMENTS

1996—Subsec. (c)(2). Pub. L. 104–208, §2215, struck out "for not more than one year at a time" before "if, in its judgment," and substituted "and, in the case of a bank holding company which has not disposed of such shares within 5 years after the date on which such shares were acquired, the Board may, upon the application of such company, grant additional exemptions if, in the judgment of the Board, such extension would not be detrimental to the public interest and, either the bank holding company has made a good faith attempt to dispose of such shares during such 5-year period, or the disposal of such shares during such 5-year period would have been detrimental to the company, except that the aggregate duration of such extensions shall not extend beyond 10 years" for "but no such extensions shall extend beyond a date five years".

Subsec. (c)(8). Pub. L. 104–208, §2612, substituted "(and opportunity for hearing in the case of an acquisition of a savings association)" for "and opportunity for hearing".

Subsec. (f)(3)(B)(iv). Pub. L. 104–208, §2304(a), struck out cl. (iv) which read as follows: "increase its assets at an annual rate of more than 7 percent during any 12-month period beginning after the end of the 1-year period beginning on August 10, 1987."

Subsec. (i)(4) to (7). Pub. L. 104–208, §2203(d), added pars. (4) to (7).

Subsec. (j)(1)(A). Pub. L. 104–208, §2208(a)(1), substituted "Except as provided in paragraph (3), no" for "No".

Subsec. (j)(3) to (7). Pub. L. 104–208, §2208(a)(2), added pars. (3) to (7).

1994—Subsec. (c). Pub. L. 103–325, §346(2), struck out before last sentence "In the event of the failure of the

Board to act on any application for an order under paragraph (8) of this subsection within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted.''

Subsec. (j). Pub. L. 103–325, § 346(1), added subsec. (j).

1992—Subsec. (i)(3). Pub. L. 102–550, § 1606(h)(1), amended directory language of Pub. L. 102–242, § 461. See 1991 Amendment note below.

1991—Subsec. (i)(3). Pub. L. 102–242, § 461, as amended by Pub. L. 102–550, § 1606(h)(1), added par. (3).

1989—Subsec. (f)(2)(A)(i). Pub. L. 101–73, § 604(b)(2), inserted reference to par. (12).

Subsec. (f)(2)(A)(ii). Pub. L. 101–73, § 603(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''acquires control of more than 5 percent of the shares or assets of an additional bank or an insured institution other than—

''(I) shares acquired in a bona fide fiduciary capacity;

''(II) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

''(III) shares held in an account solely for trading purposes;

''(IV) loans or other accounts receivable acquired in the normal course of business; and

''(V) shares or assets of an insured institution described in paragraph (10) of this subsection; or''.

Subsec. (f)(3)(B)(ii). Pub. L. 101–73, § 1219, added cl. (ii) and struck out former cl. (ii) which read as follows: ''offer or market products or services of an affiliate that are not permissible for bank holding companies to provide under subsection (c)(8) of this section, or permit its products or services to be offered or marketed by or through an affiliate (other than an affiliate that engages only in activities permissible for bank holding companies under subsection (c)(8) of this section), unless such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date;''.

Subsec. (f)(10). Pub. L. 101–73, § 603(b)(1), substituted ''and (ii)(VIII)'' for ''and (ii)(V)'', and in subpar. (A) inserted reference to section 13(k) of the Federal Deposit Insurance Act.

Subsec. (f)(11). Pub. L. 101–73, § 603(b)(2), added par. (11).

Subsec. (f)(12), (13). Pub. L. 101–73, § 604(b)(1), added pars. (12) and (13).

Subsec. (i). Pub. L. 101–73, § 601(a), added subsec. (i).

1988—Subsec. (c)(14)(A). Pub. L. 100–418, § 3402(b), added cl. (v) and redesignated former cls. (v) and (vi) as (vi) and (vii), respectively.

Subsec. (c)(14)(G). Pub. L. 100–418, § 3402(a), added subpar. (G).

Subsec. (c)(14)(H). Pub. L. 100–418, § 3402(c), added subpar. (H).

1987—Pub. L. 100–86, § 509(a), repealed Pub. L. 97–320, § 141. See 1982 Amendment note below.

Subsec. (a)(2). Pub. L. 100–86, § 101(b), inserted at end ''Notwithstanding any other provision of this paragraph, if any company that became a bank holding company as a result of the enactment of the Competitive Equality Amendments of 1987 acquired, between March 5, 1987, and August 10, 1987, an institution that became a bank as a result of the enactment of such Amendments, that company shall, upon enactment of such Amendments, immediately come into compliance with the requirements of this chapter.''

Subsec. (c)(8). Pub. L. 100–86, § 502(h)(2), struck out semicolon at end and substituted a period and following sentences: ''If an application is filed under this paragraph in connection with an application to make an acquisition pursuant to section 13(f) of the Federal Deposit Insurance Act, the Board may dispense with the notice and hearing requirement of this paragraph and the Board may approve or deny the application under this paragraph without notice or hearing. If an application described in the preceding sentence is approved, the Board shall publish in the Federal Register, not later than 7 days after such approval is granted, the order approving the application and a description of the nonbanking activities involved in the acquisition;''.

Subsecs. (f) to (h). Pub. L. 100–86, § 101(c), added subsecs. (f) to (h).

1986—Subsec. (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1983—Subsec. (c)(8)(F). Pub. L. 97–457, § 30(1), inserted proviso that such a bank holding company and its subsidiaries may not engage in sale of life insurance or annuities except as provided in subparagraph (A), (B), or (C).

Subsec. (c)(8)(G). Pub. L. 97–457, § 30(2), struck out proviso that such bank holding company and its subsidiaries may not engage in sale of life insurance or annuities except as provided in subparagraph (A), (B), or (C).

1982—Subsec. (a). Pub. L. 97–320, § 433(b), substituted ''December 31, 1984'' for ''December 31, 1982''.

Subsec. (c)(8). Pub. L. 97–320, §§ 118(a), 601, inserted specification that providing insurance is not being closely related to banking or managing or controlling banks for purposes of this subsection, exceptions thereto in cls. (A) through (G), and the subsequent proviso relating to the sale of life insurance or annuities, and inserted provisions relating to dispensation from the notice and hearing requirement in the event of an emergency.

Pub. L. 97–320, § 141(a)(4), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 118 of Pub. L. 97–320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100–86, § 509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out under section 1464 of this title.

Subsec. (c)(14). Pub. L. 97–290 added par. (14).

1980—Subsec. (a). Pub. L. 96–221 inserted provisions relating to extension of period ending Dec. 31, 1980, to Dec. 31, 1982.

1978—Subsec. (c). Pub. L. 95–630 substituted ''The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of title 26, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred'' for ''The prohibitions in this section shall not apply to any bank holding company which is (i) a labor, agricultural, or horticultural organization and which is exempt from taxation under section 501 of title 26''.

1977—Subsec. (c)(2). Pub. L. 95–188 substituted ''shares acquired by a bank holding company or any of its subsidiaries in satisfaction of a debt previously contracted in good faith, but such shares shall be disposed of within a period of two years'' for ''shares acquired by a bank in satisfaction of a debt previously contracted in good faith, but such bank shall dispose of such shares within a period of two years''.

1970—Subsec. (a). Pub. L. 91–607, § 103(1), (2), in par. (2) of first sentence, inserted provision respecting prohibition in the case of a company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, after Dec. 31, 1980, substituted ''engage in any activities'' for ''engage in any business'', designated existing provisions as cl. (A), substituting therein ''and other subsidiaries authorized under this chapter or of furnishing services to or performing services for its subsidiaries'' for ''or of furnishing services to or performing services for any bank of which it owns or controls 25 per centum or more of the voting shares'', added cl. (B) and provisions respecting activities of a company covered in 1970, and termination of authority for engaging in the activities, au-

thorization of bank holding company to engage in activities through acquisition of interest in or assets of a going concern engaged in the activities, and retention for period of ten years ownership or control of shares in a company carrying on the activity, where the activity of the company has been terminated; and, in second sentence substituted ''two year period'' for ''period'', respectively.

Subsec. (c). Pub. L. 91–607, § 103(3), (6), designated existing provisions of text preceding par. (1) as cl. (i) and added cl. (2), and inserted concluding text following par. (13) deeming an application under par. (8) as granted upon failure of Board to act within prescribed period and requiring the Board in the report to Congress to include a description and a statement of reasons for approval of each activity under par. (8), respectively.

Subsec. (c)(8). Pub. L. 91–607, § 103(4), inserted provisions respecting criteria to be used for determining whether particular activity is proper incident to banking and provision for differentiation by orders and regulations between de novo activities and going concern activities, deleted description of company activities as being of a financial, fiduciary, or insurance nature, specific language respecting determination on basis of record made at the hearing, and provision respecting the close relationship of the activities making it unnecessary for prohibitions of this section to apply in order to carry out the purposes of this chapter, substituted ''opportunity for hearing'' for ''hearing'', and provided for determination by regulation.

Subsec. (c)(9). Pub. L. 91–607, § 103(5), extended exemption to company activities, substituted provision respecting conduct of greater part of company's business; outside the United States for prior provision respecting engaging principally in the banking business outside the United States, and conditioned exemption on Board determination by regulation or order that the exemption would not be substantially at variance with the purposes of this chapter and would be in the public interest.

Subsec. (c)(11) to (13). Pub. L. 91–607, § 103(6), added pars. (11) to (13).

Subsecs. (d), (e). Pub. L. 91–607, § 103(7), added subsec. (d) and redesignated former subsec. (d) as (e).

1966—Subsec. (a). Pub. L. 89–485, § 8(a), extended until December 31, 1978, the deadline for divestiture by bank holding companies of their nonbanking interests in the case of any company that has been continuously affiliated since May 15, 1955, with a company which was registered under the Investment Company Act of 1940, prior to May 15, 1955, in such a manner as to constitute an affiliated company within the meaning of that Act.

Subsec. (c). Pub. L. 89–485, § 8(b), limited the exception granted companies engaged in liquidating assets acquired by the bank holding company by requiring that, to qualify for the exception, the company be engaged solely in liquidating assets acquired from the holding company and its banks or from another source before it became subject to this chapter and not merely engaged in the general liquidating business with only a part of its operations performed for the holding company system, authorized the grant of one year extensions up to a total of three years to the two year period allowed for the disposal of shares acquired by a bank in satisfaction of a debt previously contracted in good faith, substituted reference, in par. (4), to shares held under a trust that constitutes a company as defined in section 1841(b) and except as provided in pars. (2) and (3) of section 1841(g) of this title for reference to shares held for the benefit of the shareholders of a bank holding company or any of its subsidiaries, and eliminated the requirement that, in order to qualify for the exemption allowing a bank holding company to hold shares in a nonbanking company, the shares do not exceed 5 per centum of the holding company's assets in value.

Subsec. (d). Pub. L. 89–485, § 8(c), added subsec. (d).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

SHORT TITLE OF 1982 AMENDMENT

For short title of title II of Pub. L. 97–290 as the ''Bank Export Services Act'', see Short Title of 1982 Amendment note set out under section 1841 of this title.

MODIFICATION OF PRIOR APPROVALS

Section 601(b) of Pub. L. 101–73 provided that: ''If the Board of Governors of the Federal Reserve System, in approving an application by a bank holding company to acquire a savings association, imposed any restriction that would have been prohibited under section 4(i)(2) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(i)(2)] (as added by subsection (a) of this section) if that section had been in effect when the application was approved, the Board shall modify that approval in a manner consistent with that section.''

EXTENSION OF EMERGENCY ACQUISITION AND NET WORTH GUARANTEE PROVISIONS OF PUB. L. 97–320

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect before Aug. 10, 1987, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had been made before such date, see section 509(c) of Pub. L. 100–86, set out as a note under section 1464 of this title.

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day before Oct. 8, 1986, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had taken effect before such date, see section 1(c) of Pub. L. 99–452, set out as a note under section 1464 of this title.

Section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day after Aug. 27, 1986, applicable as if included in Pub. L. 97–320 on Oct. 15, 1982, with no amendment made by such section to any other provision of law to be deemed to have taken effect before Aug. 27, 1986, and any such provision of law to be in effect as if no such amendment had taken effect before Aug. 27, 1986, see section 1(c) of Pub. L. 99–400, set out as a note under section 1464 of this title.

BANK EXPORT SERVICES

Section 202 of Pub. L. 97–290 provided that: ''The Congress hereby declares that it is the purpose of this title [enacting section 635a–4 of this title, amending sections 372 and 1843 of this title, and enacting provisions set out as notes under section 1843 of this title] to provide for meaningful and effective participation by bank holding companies, bankers' banks, and Edge Act [12 U.S.C. 611 et seq.] corporations, in the financing and development of export trading companies in the United States. In furtherance of such purpose, the Congress intends that, in implementing its authority under section 4(c)(14) of the Bank Holding Company Act of 1956 [subsec. (c)(14) of this section] the Board of Governors of the Federal Reserve System should pursue regulatory policies that—

''(1) provide for the establishment of export trading companies with powers sufficiently broad to enable them to complete with similar foreign-owned institutions in the United States and abroad;

''(2) afford to United States commerce, industry, and agriculture, especially small- and medium-size firms, a means of exporting at all times;

''(3) foster the participation by regional and smaller banks in the development of export trading companies; and

''(4) facilitate the formation of joint venture export trading companies between bank holding companies and nonbank firms that provide for the efficient combination of complementary trade and financing services designed to create export trading companies that can handle all of an exporting company's needs.''

REPORT TO CONGRESS BY FEDERAL RESERVE BOARD REGARDING CHANGES IN FINANCING OF UNITED STATES EXPORTS

Section 205 of Pub. L. 97–290 required Federal Reserve Board, within two years after Oct. 8, 1982, to report to Congress its recommendations with respect to implementation of this section, on any changes in United States law to facilitate financing of United States exports, and on effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in United States.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 371c, 635a–4, 1467a, 1815, 1841, 1842, 1850, 1864, 1972, 3105, 3106, 3401 of this title; title 15 section 18a.

§ 1844. Administration

(a) Registration of bank holding company

Within one hundred and eighty days after May 9, 1956, or within one hundred and eighty days after becoming a bank holding company, whichever is later, each bank holding company shall register with the Board on forms prescribed by the Board, which shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry out the purposes of this chapter. The Board may, in its discretion, extend the time within which a bank holding company shall register and file the requisite information.

(b) Regulations and orders

The Board is authorized to issue such regulations and orders as may be necessary to enable it to administer and carry out the purposes of this chapter and prevent evasions thereof.

(c) Reports required by Board; examinations; cost of examination

The Board from time to time may require reports under oath to keep it informed as to whether the provisions of this chapter and such regulations and orders issued thereunder have been complied with; and the Board may make examinations of each bank holding company and each subsidiary thereof, the cost of which shall be assessed against, and paid by, such holding company. The Board shall, as far as possible, use the report of examinations made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this section.

(d) Reports to the Congress; recommendations

Before the expiration of two years following May 9, 1956, and each year thereafter in the Board's annual report to the Congress, the Board shall report to the Congress the results of the administration of this chapter, stating what, if any, substantial difficulties have been encountered in carrying out the purposes of this chapter, and any recommendations as to changes in the law which in the opinion of the Board would be desirable.

(e) Termination of activities or ownership or control of nonbank subsidiaries constituting serious risk

(1) Notwithstanding any other provision of this chapter, the Board may, whenever it has reasonable cause to believe that the continuation by a bank holding company of any activity or of ownership or control of any of its nonbank subsidiaries, other than a nonbank subsidiary of a bank, constitutes a serious risk to the financial safety, soundness, or stability of a bank holding company subsidiary bank and is inconsistent with sound banking principles or with the purposes of this chapter or with the Financial Institutions Supervisory Act of 1966, order the bank holding company or any such nonbank subsidiaries, after due notice and opportunity for hearing, and after considering the views of the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank or the Federal Deposit Insurance Corporation and the appropriate State supervisory authority in the case of an insured nonmember bank, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its ownership or control of any such subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the bank holding company. Such distribution shall be pro rata with respect to all of the shareholders of the distributing bank holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

(2) The Board may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the holding company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith, but except as provided in section 1848 of this title, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(f) Powers of Board respecting applications, examinations, or other proceedings

In the course of or in connection with an application, examination, investigation or other proceeding under this chapter, the Board, or any member or designated representative thereof, including any person designated to conduct any hearing under this chapter, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and the Board is empowered to make rules and regulations to effectuate the purposes of this subsection. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory

or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any party to proceedings under this chapter may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted or where the witness resides or carries on business, for the enforcement of any subpena or subpena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any service required under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide. Any court having jurisdiction of any proceeding instituted under this subsection may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpena of the Board, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year or both.

(May 9, 1956, ch. 240, § 5, 70 Stat. 137; Pub. L. 95–630, title I, §§ 105(a), 106(b), Nov. 10, 1978, 92 Stat. 3646, 3648.)

REFERENCES IN TEXT

The Financial Institutions Supervisory Act of 1966, referred to in subsec. (e), is Pub. L. 89–695, Oct. 16, 1966, 80 Stat. 1028. For complete classification of this Act to the Code, see Short Title of 1966 Amendment note set out under section 1464 of this title and Tables.

AMENDMENTS

1978—Subsec. (e). Pub. L. 95–630, § 105(a), added subsec. (e).

Subsec. (f). Pub. L. 95–630, § 106(b), added subsec. (f).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1843 of this title; title 7 section 6f.

§ 1845. Repealed. Pub. L. 89–485, § 9, July 1, 1966, 80 Stat. 240

Section, act May 9, 1956, ch. 240, § 6, 70 Stat. 137, prohibited any subsidiary bank from lending to or investing in its parent holding company or a fellow subsidiary bank. See section 371c of this title.

§ 1846. Reservation of rights to States

(a) In general

No provision of this chapter shall be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to companies, banks, bank holding companies, and subsidiaries thereof.

(b) State taxation authority not affected

No provision of this chapter shall be construed as affecting the authority of any State or political subdivision of any State to adopt, apply, or administer any tax or method of taxation to any bank, bank holding company, or foreign bank, or any affiliate of any bank, bank holding company, or foreign bank, to the extent that such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law.

(May 9, 1956, ch. 240, § 7, 70 Stat. 138; Pub. L. 100–86, title I, § 101(f), Aug. 10, 1987, 101 Stat. 563; Pub. L. 103–328, title I, § 101(b), Sept. 29, 1994, 108 Stat. 2341.)

AMENDMENTS

1994—Pub. L. 103–328 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1987—Pub. L. 100–86 substituted "No provision of this chapter shall" for "The enactment by the Congress of this chapter shall not" and inserted "companies," before "banks,".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–328 effective at end of 1-year period beginning on Sept. 29, 1994, see section 101(e) of Pub. L. 103–328, set out as a note under section 1828 of this title.

§ 1847. Penalties

(a) Criminal penalty

(1) Whoever knowingly violates any provision of this chapter or, being a company, violates any regulation or order issued by the Board under this chapter, shall be imprisoned not more than 1 year, fined not more than $100,000 per day for each day during which the violation continues, or both.

(2) Whoever, with the intent to deceive, defraud, or profit significantly, knowingly violates any provision of this chapter shall be imprisoned not more than 5 years, fined not more than $1,000,000 per day for each day during which the violation continues, or both.

Every officer, director, agent, and employee of a bank holding company shall be subject to the same penalties for false entries in any book, report, or statement of such bank holding company as are applicable to officers, directors, agents, and employees of member banks for false entries in any books, reports, or statements of member banks under section 1005 of title 18.

(b) Civil money penalty

(1) Penalty

Any company which violates, and any individual who participates in a violation of, any provision of this chapter, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation continues.

(2) Assessment; etc.

Any penalty imposed under paragraph (1) may be assessed and collected by the Board in

the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(3) Hearing

The company or other person against whom any penalty is assessed under this subsection shall be afforded an agency hearing if such association or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this subsection.

(4) Disbursement

All penalties collected under authority of this subsection shall be deposited into the Treasury.

(5) "Violate" defined

For purposes of this section, the term ''violate'' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(6) Regulations

The Board shall prescribe regulations establishing such procedures as may be necessary to carry out this subsection.

(c) Notice under this section after separation from service

The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to a bank holding company (including a separation caused by the deregistration of such a company) shall not affect the jurisdiction and authority of the Board to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such holding company (whether such date occurs before, on, or after August 9, 1989).

(d) Penalty for failure to make reports

(1) First tier

Any company which—

(A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error—

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

(ii) submits or publishes any false or misleading report or information; or

(B) inadvertently transmits or publishes any report which is minimally late,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The company shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late.

(2) Second tier

Any company which—

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

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

in a manner not described in paragraph (1) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

(3) Third tier

Notwithstanding paragraph (2), if any company knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the Board may, in its discretion, assess a penalty of not more than $1,000,000 or 1 percent of total assets of such company, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(4) Assessment; etc.

Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Board in the manner provided in subsection (b) of this section (for penalties imposed under such subsection) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

(5) Hearing

Any company against which any penalty is assessed under this subsection shall be afforded an agency hearing if such company submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this subsection.

(May 9, 1956, ch. 240, § 8, 70 Stat. 138; Pub. L. 95–630, title I, § 106(a), Nov. 10, 1978, 92 Stat. 3647; Pub. L. 97–320, title IV, § 424(a), (d)(4), Oct. 15, 1982, 96 Stat. 1522, 1523; Pub. L. 101–73, title IX, §§ 905(i), 907(j), 911(e), Aug. 9, 1989, 103 Stat. 461, 475, 481.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–73, § 907(j)(1), substituted heading and pars. (1) and (2) for first two sentences which read as follows: ''Any company which willfully violates any provision of this chapter, or any regulation or order issued by the Board pursuant thereto, shall upon conviction be fined not more than $1,000 for each day during which the violation continues. Any individual who willfully participates in a violation of any provision of this chapter shall upon conviction be fined not more than $10,000 or imprisoned not more than one year, or both.''

Subsec. (b). Pub. L. 101–73, § 907(j)(2), added headings and amended text generally. Prior to amendment, subsec. (b) read as follows:

''(1) Any company which violates or any individual who participates in a violation of any provision of this

chapter, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues: *Provided*, That the Board may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Board by written notice. As used in the section, the term 'violates' includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

''(2) In determining the amount of the penalty the Board shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the company or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

''(3) The company or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in section 1848 of this title. If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

''(4) If any company or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Board, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

''(5) The Board shall promulgate regulations establishing procedures necessary to implement this subsection.

''(6) All penalties collected under authority of this subsection shall be covered into the Treasury of the United States.''

Subsec. (c). Pub. L. 101–73, § 905(i), added subsec. (c).

Subsec. (d). Pub. L. 101–73, § 911(e), added subsec. (d).

1982—Subsec. (b)(1). Pub. L. 97–320 inserted proviso giving the Board discretionary authority to compromise, etc., any civil money penalty imposed under this subsection, and substituted ''may be assessed'' for ''shall be assessed''.

1978—Pub. L. 95–630 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 907(j) of Pub. L. 101–73 applicable to conduct engaged in after Aug. 9, 1989, except that increased maximum penalties of $5,000 and $25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(*l*) of Pub. L. 101–73, set out as a note under section 93 of this title.

Amendment by section 911(e) of Pub. L. 101–73 applicable with respect to reports filed or required to be filed after Aug. 9, 1989, see section 911(i) of Pub. L. 101–73, set out as a note under section 161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630, relating to imposition of civil penalties, applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95–630, set out as a note under section 93 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 sections 78*o*–5, 78q.

§ 1848. Judicial review

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

(May 9, 1956, ch. 240, § 9, 70 Stat. 138; Pub. L. 85–791, § 34, Aug. 28, 1958, 72 Stat. 951; Pub. L. 89–485, § 10, July 1, 1966, 80 Stat. 240.)

AMENDMENTS

1966—Pub. L. 89–485 reduced from 60 to 30 days the period allowed for the filing of a petition to obtain judicial review of a Board order.

1958—Pub. L. 85–791 substituted, in second sentence, ''transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of title 28'' for ''served upon the Board, and thereupon the Board shall certify and file in the court a transcript of the record made before the Board'', and in third sentence, ''such petition'' for ''the transcript''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1844, 1850 of this title.

§ 1849. Saving provision

(a) General rule

Nothing herein contained shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding pending or hereafter instituted on account of any prohibited antitrust or monopolistic act, action, or conduct, except as specifically provided in this section.

(b) Antitrust review

(1) In general

The Board shall immediately notify the Attorney General of any approval by it pursuant to section 1842 of this title of a proposed acquisition, merger, or consolidation transaction. If the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any such transaction, the transaction may be consummated immediately upon approval by the Board. If the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission

of views and recommendations within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Board. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board or, if the Board has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the Board with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 1842 of this title shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 1842 of this title might be consummated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction approved pursuant to section 1842 of this title on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of title 15, the standards applied by the court shall be identical with those that the Board is directed to apply under section 1842 of this title. Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 1842 of this title in compliance with this chapter and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of title 15, but nothing in this chapter shall exempt any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

(2) Section 1823(f) cases

(A) If—

(i) the Federal Deposit Insurance Corporation learns that a bank insured by such Corporation is in danger of closing; and

(ii) the Corporation is considering assisting the acquisition of such bank and its affiliated banks by another bank or holding company under section 1823(f) of this title and such acquisition is subject to the approval of the Board under section 1842 of this title;

the Corporation shall immediately notify the Board of such facts.

(B) Upon receipt of notice from the Federal Deposit Insurance Corporation under subparagraph (A) or at such earlier time as deemed appropriate by the Board, the Board shall immediately notify the Attorney General of the United States of the facts concerning the possible acquisition.

(C) Within 5 days of receiving notice under subparagraph (B), the Attorney General shall notify the Board in writing of the Attorney General's preliminary finding as to the consistency of the possible acquisition with the antitrust laws.

(D) The Board may reduce or eliminate the post-approval waiting period established under paragraph (1) for an acquisition to which this paragraph applies, except that such period may not be eliminated or reduced to less than 5 days without the concurrence of the Attorney General.

(c) Antitrust proceedings; Board and State banking agency as party; representation by counsel

In any action brought under the antitrust laws arising out of any acquisition, merger, or consolidation transaction approved by the Board under section 1842 of this title, the Board and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel.

(d) Treatment of merger transactions consummated prior or subsequent to May 9, 1956, and not in litigation prior to July 1, 1966

Any acquisition, merger, or consolidation of the kind described in section 1842(a) of this title which was consummated at any time prior or subsequent to May 9, 1956, and as to which no litigation was initiated by the Attorney General prior to July 1, 1966, shall be conclusively presumed not to have been in violation of any antitrust laws other than section 2 of title 15.

(e) Antitrust litigation; substantive law applicable to proceedings pending on or after July 1, 1966, with respect to merger transactions

Any court having pending before it on or after July 1, 1966, any litigation initiated under the antitrust laws by the Attorney General with respect to any acquisition, merger, or consolidation of the kind described in section 1842(a) of this title shall apply the substantive rule of law set forth in section 1842 of this title.

(f) "Antitrust laws" defined

For the purposes of this section, the term ''antitrust laws'' means the Act of July 2, 1890 (the Sherman Antitrust Act), the Act of October 15, 1914 (the Clayton Act), and any other Acts in pari materia.

(May 9, 1956, ch. 240, § 11, 70 Stat. 146; Pub. L. 89–485, § 11, July 1, 1966, 80 Stat. 240; Pub. L. 91–607, title I, § 104, Dec. 31, 1970, 84 Stat. 1766; Pub. L. 95–188, title III, § 303, Nov. 16, 1977, 91 Stat. 1390; Pub. L. 100–86, title V, § 502(h)(3), Aug. 10, 1987, 101 Stat. 628; Pub. L. 103–325, title III, § 321(a), Sept. 23, 1994, 108 Stat. 2226.)

REFERENCES IN TEXT

Act of July 2, 1890 (the Sherman Antitrust Act), referred to in subsec. (f), is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 15, 1914 (the Clayton Act), referred to in subsec. (f), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103–325 inserted before period at end of fourth sentence ''or, if the Board has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the Board with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval''.

1987—Subsec. (b). Pub. L. 100–86 designated existing provisions as par. (1) and added par. (2).

1977—Subsec. (b). Pub. L. 95–188 authorized a proposed acquisition, merger, or consolidation transaction to be consummated immediately upon approval by the Board where the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any such transaction; prohibited a transaction from being consummated before the fifth calendar day after the date of approval by the Board where the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days; continued for all other cases the thirty day waiting period after date of approval by the Board for consummation of the transaction; and substituted provision for commencement of stay actions prior to the earliest time at which the transaction approval under section 1842 of this title might be consummated for prior provision for commencement of such stay actions within the thirty-day waiting period.

1970—Subsec. (b). Pub. L. 91–607, § 104(a), substituted ''section 1842 of this title'' for ''this chapter'' where appearing first two times, and inserted ''approved under section 1842 of this title'' in second sentence before ''shall be commended'' and in last sentence before ''in compliance with this chapter''.

Subsec. (c). Pub. L. 91–607, § 104(b), substituted ''under section 1842 of this title'' for ''pursuant to this chapter''.

1966—Pub. L. 89–485 designated existing provisions as subsec. (a), inserted ''except as specifically provided in this section'', and added subsecs. (b) to (f).

§ 1850. Acquisition of subsidiary, nonbanking activity or business, and tying arrangement: Federal Reserve Board proceedings; application for authorization; competitor as party in interest and person aggrieved; judicial review

With respect to any proceeding before the Federal Reserve Board wherein an applicant seeks authority to acquire a subsidiary which is a bank under section 1842 of his title, to engage directly or indirectly in a nonbanking activity pursuant to section 1843 of this title, or to engage in an activity otherwise prohibited under chapter 22 of this title, a party who would become a competitor of the applicant or subsidiary thereof by virtue of the applicant's or its subsidiary's acquisition, entry into the business involved, or activity, shall have the right to be a party in interest in the proceeding and, in the event of an adverse order of the Board, shall have the right as an aggrieved party to obtain judicial review thereof as provided in section 1848 of this title or as otherwise provided by law. (Pub. L. 91–607, title I, § 105, Dec. 31, 1970, 84 Stat. 1766.)

CODIFICATION

Section was enacted as part of the Bank Holding Company Act Amendments of 1970, and not as part of the Bank Holding Company Act of 1956 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1841, 3106 of this title.

CHAPTER 18—BANK SERVICE COMPANIES

Sec.
1861. Short title and definitions.
(a) Short title.
(b) Definitions.
1862. Amount of investment in bank service company.
1863. Permissible bank service company activities for depository institutions.
1864. Permissible bank service company activities for other persons.
(a) Services permissible other than taking deposits.
(b) Services to be performed in State where shareholders or members are located.
(c) Performance where State bank is shareholder or member.
(d) Performance where national bank is shareholder or member.
(e) Performance where State bank and national bank are shareholders or members.
(f) Geographic location.
1865. Prior approval for investments in bank service companies.
(a) Approval of Federal banking agency.
(b) Approval of Board.
(c) Considerations in determining approval.
(d) Failure to act on application for approval.
1866. Services to nonstockholders or nonmembers.
1867. Regulation and examination of bank service companies.
(a) Principal investor.
(b) Applicability of section 1818 of this title.
(c) Services performed by contract or otherwise.
(d) Issuance of regulations and orders.

§ 1861. Short title and definitions

(a) Short title

This chapter may be cited as the ''Bank Service Company Act''.

(b) Definitions

For the purpose of this chapter—

(1) the term ''appropriate Federal banking agency'' shall have the meaning provided in section 1813(q) of this title;

(2) the term ''bank service company'' means—

(A) any corporation—

(i) which is organized to perform services authorized by this chapter; and

(ii) all of the capital stock of which is owned by 1 or more insured banks; and

(B) any limited liability company—

(i) which is organized to perform services authorized by this chapter; and