Approved March 23, 1984
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS.

The meeting was called to order by Sen. Neil H. Arasmith at
Chairperson

9:00 a.m./~~p.m.~~ on March 22, 1984 in room 529-S of the Capitol.

All members were present except:

Senators Hess and Harder - Excused

Committee staff present:

Bill Wolff, Legislative Research
Bruce Kinzie, Revisor of Statutes

Conferees appearing before the committee:

Jim Maag, Kansas Bankers Association
Marsha Johnson, Southgate Bank, Prairie Village, Ks.
Chuck Raplinger, United Missouri Bank
John Wurth, Securities Commissioner
Craig Stancliffe, Securities Commissioner's office

The minutes of March 21 were approved.

The hearing began on HB 2758 dealing with bank investments. Jim Maag of the Kansas Bankers Association gave testimony in support of the bill. (See Attachment I.) He introduced Marsha Johnson of the Southgate Bank to give testimony on new subsection (20) which allows state chartered banks to engage in financial future contracts, forward replacement contracts, and standby contracts on United States government and agencies securities. She gave a brief history of futures contracts and said that they allow financial adjustments to be made to keep up with changes in the market which is necessary for the continued growth and profitablility of the banking business in a volatile and highly competitive market. Upon conclusion of her testimony, she handed out copies of statistics relating to futures. (See Attachment II.) She introduced Chuck Raplinger of the United Missouri Bank to elaborate on financial futures.

Mr. Raplinger explained that his bank began using financial futures in 1978 to reduce interest rate risks. It is a tool to transfer the risk to the person willing to accept that risk. It is an attempt to freeze the current market level to extend it for a period of time. A disciplined approach makes hedging a success for his bank. He defined hedging as action taken to protect against unseen interest rate changes, the philosophy behind this being that in order to protect themselves against adverse changes, they are willing to give up possible gains. The key to hedging is finding the correlation between interest rates and possible future fluctuations in interest rates. He referred to the chart passed out earlier to demonstrate that hedging is an attempt to smooth out the variance in interest rates by using futures to attempt to lock in today's levels when the liabilities are reissued.

In response to Sen. Werts' request that he define the three terms for contracts in the bill, Mr. Rapinger defined each as follows: (1) Future contracts are committments to buy or sell a specific quantity at a later date. (2) Forward replacement contracts differ from futures contracts in that they are not on an organized exchange, no margins are posted on them, and the contracts are set up between two individuals. (3) Standby contracts are similar to forward replacement contracts but are subject to a standby letter of approval at any time.

Sen. Karr began an inquiry as to how a bank examiner would be able to examine or trace forward replacement contracts and standby contracts which might affect the stability of the bank. A lengthy discussion followed with the conclusion that the Bank Commissioner would set up minimal guidelines to prevent banks from investing in a manner which would be dangerous to its stability.

Before the hearing on HB 2758 was concluded, Mr. Maag commented that the Bank Commissioner has seen the amendments to the bill and that this same authority was granted to savings and loan associations last session.

MINUTES OF THE SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS,

room 529-S, Statehouse, at 9:00 a.m./~~p.m.~~ on March 22, 1984

The hearing began on HB 2759 concerning bank service corporations. Jim Maag gave testimony in support of the bill. (See Attachment III.)

Mr. Maag was in agreement with Sen. McCray's statement that Section 6 puts a cap on investments and added that this brings state banks in conformity with federal banks. Sen. McCray said that he would like to offer an amendment to Section 6 saying that any investment which exceeds four percent of its assets would be put in community development projects.

The chairman began the hearing on SB 859 dealing with exemptions from securities registration requirements for the sale of oil and gas. John Wurth, Securities Commissioner, appeared in support of the bill saying that the bill is necessary to clear up confusion as to if the issuer can use this exemption. Wording has been reinserted on line 81 to insure this exemption can be used by the issuer.

Craig Stancliff of the Securities Commissioner's office explained further that this action is necessary to correct an error made when the original statute was drafted. The error was not noticed before printing. The confusion resulted because the wording was put in the wrong place making it a self-killing provision. The hearing on SB 859 was concluded.

The meeting was adjourned.

COMMERCIAL AND FINANCIAL INSTITUTIONS

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
3/22/84	Ron Smith	Topeka	KBA
	John Peterson	Topeka	KAEL
	Craig Stanciffe	Topeka	Securities Comm.
	Tobin Shand	Dodge City	KCUL
	Jerd Wright	Topeka	KCUL
	John Spurgeon	Lawrence	Budget
	Anderson Chandler	Topeka	KBA
	Chuck Raptiejes	Kansas City	United Missouri Bank
	Marsha Johnson	Prairie Village, Ks.	Southgate Bank
	Jim Maag	Topeka	KBA

SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

TESTIMONY ON HB 2758

BY

KANSAS BANKERS ASSOCIATION

MARCH 22, 1984

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 22, 1984

TO: Senate Committee on Commercial and Financial Institutions

RE: HB 2758--Investment authority for state chartered banks

Mr. Chairman and members of the committee:

We appreciate the opportunity to appear before the committee and discuss the amendments to K.S.A. 1983 Supp. 9-1101 as contained in HB 2758. K.S.A. 9-1101 is that section of the banking code of the state of Kansas which grants state chartered banks their investment powers. HB 2758 would add four additional subsections to this section of the code so that state chartered banks might have the same powers of investment as those granted to nationally chartered banks. These amendments are necessary as a result of actions taken by the United States Congress and federal regulatory agencies in recent years.

New subsection (18) of HB 2758 would allow state chartered banks to buy, hold and sell mortgages, stock, obligations and other securities of the Federal Home Loan Mortgage Corporation ("Freddie Mac"). State chartered banks have had this authority since 1979, but under federal law such authority for these investments will expire by 1985 unless affirmative action is taken by the appropriate state legisltures. The investment in Freddie Mac participation certificates by Kansas banks has proven to be a sound investment practice and as of November 1982, Kansas banks owned 115 Freddie Mac participation certificates totalling $26.5 million. This represents about 8.06% of all investments in Freddie Mac paper in Kansas by all investor types. Thus, we respectfully request that the legislature grant state chartered banks the authority to continue to invest in these securities.

New subsection (19) would allow state chartered banks of Kansas to buy, hold and sell obligations or securities of the Studen Loan Marketing Association ("Sallie Mae"). This association is a stockholder owned corporation established by the Higher Education Act of 1965 to provide liquidity primarily through secondary market and warehousing activities for originators of loan made under federal student loan programs. Sallie Mae is authorized to purchase, wareshouse, sell, offer participations or pooled interest in, or otherwise deal in student loans and make commitments for any of the foregoing. Sallie Mae obtains funds for its operations primarily from the sale of its debt obligations. Sallie Mae issues to investors a variety of non-guarantee debt obligations, including discount notes in fixed and floating rate notes. As noted earlier, the authority to invest in Sallie Mae obligations is already granted to national banks and we believe similar authority should be provided for Kansas state chartered banks.

Office of Executive Vice President • 707 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444

New subsection (20) of HB 2758 allows state chartered banks to engage in financial future contracts, forward replacement contracts and standby contracts on United States government and agencies securities. Such authority would be subject to rules and regulations as might be prescribed by the State Banking Commissioner in order to promote safe and sound banking practices. Again, such authority currently exists for nationally chartered banks in Kansas.

New subsection (21) of HB 2758 would grant to Kansas state chartered banks, the authority to acquire and sell shares in an open-end investment company registered with the SEC and of a privately owned offered company sponsored by an affiliated bank the assets of which consist solely of securities which may be purchased by the bank for its own account. Such shares may be purchased without limit if the assets of the company may consist solely of the obligations which are eligible for purchase by the bank without limit. If the assets of the company include securities which may be purchased by banks subject to limitation such shares may be purchased subject to the limitation applicable to purchase of such securities. Investment in such shares is subject to rules and regulations as State Bank Commissioner may adopt safe and sound banking practices. Such authority was granted to national banks by the Comptroller of the Currency on December 15, 1983. We believe the establishment of this authority would be beneficial to the state banks of Kansas because of the flexibility, liquidity, and the ease of investing on a short-term basis.

Thank you, Mr. Chairman, for the opportunity to appear on HB 2758 and we respectfully request that the committee give favorable consideration to this important legislation for Kansas state chartered banks.

James S. Maag
Director of Research

FEDERAL HOME LOAN MORTGAGE CORPORATION

The Federal Home Loan Mortgage Corporation is a corporate instrumentality of the United States created pursuant to an Act of Congress (Title III of the Emergency Home Finance Act of 1970, as amended, 12 U.S.C. §§ 1451-1459, the "FHLMC Act") on July 24, 1970. The Corporation was established primarily for the purpose of increasing the availability of mortgage credit for the financing of urgently needed housing. It seeks to provide an enhanced degree of liquidity for residential mortgage investments primarily by assisting in the development of secondary markets for conventional mortgages.

The principal activity of the Corporation currently consists of the purchase of first lien conventional mortgages or participation interests in such mortgages and the resale of the mortgages so purchased in the form of mortgage securities, primarily Mortgage Participation Certificates ("PCs"). PCs, which represent undivided interests in groups of conventional mortgages purchased by the Corporation, provide for monthly pass-through of principal and interest based on collections with respect to the underlying mortgages. The Corporation guarantees to PC holders timely payment of interest at the certificate rate and the ultimate collection of principal. In 1981 the Corporation initiated the Guarantor Program under which the Corporation purchases mortgages from sellers in exchange for PCs representing interests in the mortgages so purchased. In late 1981 and throughout 1982, transactions under the Guarantor Program resulted in a significant increase in the volume of the Corporation's mortgage purchase and PC sales activity. At December 31, 1982 approximately $41.2 billion of PCs were outstanding, including approximately $23.6 billion attributable to the Guarantor Program.

At particular points in time the Corporation's statutory and structural relationship with the federal government may cause it to conduct its mortgage purchase and financing activities in ways different from those which might otherwise be pursued, and from time to time this could have an adverse effect on the Corporation's results of operations. Further, the FHLMC Act and other federal legislation bearing on the Corporation may be amended in a fashion that could materially affect the scope and results of the Corporation's activities and operations.

Neither the United States nor any agency or instrumentality of the United States nor any Federal Home Loan Bank is obligated, either directly or indirectly, to fund the mortgage purchase and financing activities of the Corporation. For a more complete description of the Corporation and its activities, see "Business."

The principal office of the Corporation is located at 1776 G Street, N.W., Washington, D.C. 20006 (telephone 202/789-4700). It has established five regions for administrative purposes, with offices located in Arlington, Virginia; Atlanta, Georgia; Chicago, Illinois; Dallas, Texas and Los Angeles, California.

SUMMARY OF INFORMATION RELATING TO THE CORPORATION

The following summary is qualified in its entirety by the detailed information and financial statements appearing elsewhere herein.

The Federal Home Loan Mortgage Corporation

The Corporation is a corporate instrumentality of the United States created pursuant to an Act of Congress. The principal activity of the Corporation consists of the purchase of first lien conventional residential mortgages or participation interests in such mortgages from mortgage lending institutions and the resale of the mortgages so purchased in the form of guaranteed mortgage participation securities. To minimize interest rate risk the Corporation generally matches its purchases of mortgages and sales of mortgage participation securities. Mortgages retained by the Corporation are financed with debt and equity capital.

Selected Financial Data

	December 31,				
	1982	1981	1980	1979	1978
	(thousands of dollars)				
Mortgage Data:					
Mortgage Securities	$42,952,361	$19,897,363	$16,962,234	$15,315,979	$12,016,759
Mortgages Retained	4,732,877	5,237,260	5,056,356	4,051,621	3,090,767
Income Statement Data:					
Income from total portfolio	697,855	626,453	493,052	384,562	293,681
Net interest margin	107,180	69,514	76,526	72,997	51,203
Net income	59,928	30,904	33,586	35,610	25,391
Balance Sheet Data:					
Total assets	6,035,924	6,326,122	5,478,394	4,648,066	3,697,126
Total liabilities	5,270,340	5,875,992	5,057,168	4,260,426	3,345,096
Total subordinated borrowings and stockholders' equity	765,584	450,130	421,226	387,640	352,030

LEGAL INVESTMENT STATUS OF FHLMC OBLIGATIONS AND STOCK

Currently, Section 306(e) of the Federal Home Loan Corporation Act authorizes any investor to purchase, hold or invest in Federal Home Loan Mortgage Corporation debt obligations or other securities to the same extent as U.S. government obligations. The legal investment status conferred by Section 306(e) of the Charter Act upon Freddie Mac securities will expire on June 30, 1985, unless states' officials take affirmative administrative or legislative action, as required by applicable state statute, to grant legal investment status to Freddie Mac securities. Prior to the sunset of this provision in the corporation's Charter Act, the Mortgage Corporation seeks to assure that its debt obligations, PCs, and preferred stock will remain lawful investments for all investors, including state chartered banks, after the June 30, 1985 sunset date. While other investors may also be affected by the anticipated sunset, this background paper focuses specifically on state chartered savings and commercial banks since, in a number of jurisdictions, Freddie Mac debt obligations and securities may become unlawful investments for these financial institutions. Federally chartered institutions are unaffected by the sunset because Freddie Mac securities are permissable investments under federal statute.

This background paper is intended to advise you of this situation and to enlist the support and resources of the American Bankers Association and its affiliate state associations in our effort to assure the continuation of the legal investment status of FHLMC securities for state-chartered banks.

BACKGROUND

As part of its continuing operations, the Federal Home Loan Mortgage Corporation regularly offers and sells guaranteed mortgage participation certificates (PCs) in various forms pursuant to its authority under the Charter Act. Recently, the 97th Congress authorized Freddie Mac to issue preferred stock.

In 1979, Congress authorized investment by all investors in Freddie Mac obligations and securities to the same extent as obligations issued or guaranteed by the United States or an agency of the U.S. government, not withstanding state law to the contrary, until June 30, 1985. Prior to this sunset date, the states may act to grant or restrict legal investment in FHLMC securities. Congress deemed the sunset period desirable and of sufficient duration " ... for states to decide on the investment authority they wish[ed] to grant to FHLMC securities." (Housing and Community Development Amendment of 1979, House Report 96-706)

LEGAL INVESTMENT STATUS OF FHLMC PREFERRED STOCK UPON SUNSET OF 306(e)

Legal (23)	Not Legal/General Prohibition (10)	Not Legal/FNMA Exception (15)	Not Legal/Others (4)
Arizona	Alaska	Alabama	Georgia - administrative remedy available
California	Arkansas	Florida	New Jersey - administrative remedy available
Connecticut	Colorado	Hawaii	New York - administrative remedy available
Delaware	Idaho	Iowa	Oregon - not legal for preferred stock only
District of Columbia	Louisiana	Kansas	
Illinois	Mississippi	Kentucky	
Indiana	Montana	Michigan	
Maine	Texas	New Mexico	
Maryland	Washington	North Dakota	
Massachusetts	Wisconsin	Oklahoma	
Minnesota		Pennsylvania	
Missouri		Puerto Rico	
Nebraska		South Dakota	
Nevada		Virginia	
New Hampshire		Wyoming	
North Carolina			
Ohio			
Rhode Island			
South Carolina			
Tennessee			
Utah			
Vermont			
West Virginia			

LEGAL INVESTMENT SURVEY

State	Savings Banks	Commercial Banks	Savings and Loan Associations	Trust Funds	Life Insurance Companies	Insurance Companies Other Than Life	State Employees Retirement Systems	Teachers Retirement Systems
Alabama	(1)	Legal	Legal	Legal	Legal	(2)	Legal	Legal
Alaska	Legal	Legal	Legal	(2)	Legal	Legal	(3)	(3)
Arizona	(1)	Legal	Legal	(2)	Legal	Legal	Legal	(4)
Arkansas	(1)	Legal	Legal	(3)	Legal	Legal	Legal	Legal
California	Legal(1)	Legal	Legal	(3)	Not Legal	Not Legal	Legal	Legal
Colorado	(1)	Legal	Legal	(3)	Legal	Legal	(3)	(3)
Connecticut	Legal	Legal	Legal	(3)	Legal	(2)	(3)	Legal
Delaware	(2)	Legal	(5)	(3)	Legal	Legal	(3)	(4)
District of Columbia	(1)	(2)	(2)	(3)	Legal	Legal	Legal	Legal
Florida	Legal(1)	Legal	Legal	(3)	Legal	Legal	Legal	(4)
Georgia	Legal(1)	Legal	Legal	Legal	Legal	Legal	Legal	Legal
Hawaii	Legal(1)	(6)	(7)	(3)	Legal	Legal	(3)	(4)
Idaho	(1)	Legal	Legal	(3)	Legal	Legal	(3)	(4)
Illinois	(1)	Legal	Legal	(3)	Legal	Legal	Legal	Legal
Indiana	Legal	Legal	Legal	(3)	Legal	Legal	(3)	Legal
Iowa	(1)	Legal	Legal	(3)	Legal	Legal	Legal	(2)
Kansas	(1)	Legal	Legal	(3)	Legal	Legal	(3)	Legal
Kentucky	(1)	Legal	Legal	(3)	Legal	Legal	(3)	Legal
Louisiana	Legal(1)	Legal	Legal	(3)	Legal	Legal	Legal	Legal
Maine	Legal	Legal	Legal	(3)	Legal	Legal	(3)	(4)
Maryland	(8)	(2)	Legal	(2)	Legal	Legal	Legal	Legal
Massachusetts	Legal	Legal	Legal	(2)	Legal	Legal	Legal	Legal
Michigan	(1)	Legal	Legal	Legal	Legal	Legal	Legal	Legal
Minnesota	Legal	Legal	Legal	(3)	Legal	Legal	Legal	Legal
Mississippi	(1)	Legal	Legal	(3)	Legal	Legal	Legal	(4)
Missouri	(1)	Legal	Legal	(2)	Legal	Legal	Legal	Legal
Montana	Legal(1)	Legal	Legal	Legal	Legal	Legal	Legal	Legal
Nebraska	(1)	Legal	Legal	(3)	Legal	Legal	Legal	Legal
Nevada	(1)	Legal	Legal	(3)	Legal	Legal	(3)	(4)
New Hampshire	Legal	Legal	Legal	(3)	Legal	Legal	Legal	(4)
New Jersey	Legal	Legal	Legal	(3)	Legal	Legal	(3)	(3)
New Mexico	(1)	Legal	Legal	(3)	Legal	Legal	Legal	Legal
New York	Legal	Legal	Legal	(3)	Legal	Legal	Legal	Legal
North Carolina	(1)	Legal	Legal	(3)	Legal	Legal	Legal	(4)
North Dakota	(1)	Legal	Legal	(3)	Legal	Legal	Legal	Legal
Ohio	Legal(1)	Legal	Legal	(3)	Legal	Legal	Legal	Legal
Oklahoma	(1)	Legal	Legal	(3)	Legal	Legal	Legal	(3)
Oregon	Legal	Legal	Legal	(3)	Legal	Legal	(3)	(9)
Pennsylvania	(3)	Legal	Legal	(3)	Legal	Legal	(3)	(3)
Puerto Rico	Legal	Legal	(2)	(2)	Legal	Legal	Legal	Legal
Rhode Island	Legal	Legal	(10)	Legal	(2)	(2)	(3)	(4)
South Carolina	(1)	Legal	(11)	(3)	Legal	Legal	Legal	(4)
South Dakota	(1)	Legal	Legal	(3)	Legal	Legal	(3)	(4)
Tennessee	(1)	Legal	Legal	(3)	Legal	Legal	Legal	(4)
Texas	(1)	Legal	Legal	(3)	Legal	Legal	(3)	(3)
Utah	(1)	Legal	Legal	(3)	Legal	Legal	Legal	(4)
Vermont	Legal	Legal	Legal	(2)	Legal	Legal	Legal	Legal

State	Savings Banks	Commercial Banks	Savings and Loan Associations	Trust Funds	Life Insurance Companies	Insurance Companies Other Than Life	State Employees Retirement Systems	Teachers Retirement Systems
Virginia	(1)	Legal	Legal	(3)	Legal	Legal	Legal	(4)
Washington	Legal	Legal	Legal	(3)	Legal	Legal	(3)	(3)
West Virginia	(1)	Legal	Legal	Legal	Legal	Legal	Legal	Legal
Wisconsin	Legal	Legal	Legal	(3)	Legal	Legal	Legal	Legal
Wyoming	(1)	Legal	(12)	(3)	Legal	Legal	Legal	(4)

(1) According to *Polk's World Bank Directory,* North American Edition, 170th Issue, Fall, 1979, as of mid-year 1979, there were no mutual savings banks in this jurisdiction.

(2) No relevant statutory provision.

(3) Legal provided "Prudent Investor Test" is met or "Prudent Man Rule" is followed.

(4) Teachers are covered by the State Employees Retirement System.

(5) Legal only for members of the Federal Home Loan Bank System.

(6) Legal only with the consent of the Director of Regulatory Agencies of Hawaii; otherwise, legal only for members of the Federal Reserve System.

(7) Legal only for associations which are members of the Federal Home Loan Bank System and the accounts in which are insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation, subject to the consent of the Director of Regulatory Agencies of Hawaii.

(8) The relevant statute provides that any deposit of money in a savings institution "shall be invested . . . on good security, in the discretion of the directors."

(9) Legal to extent permissible under directives of the Oregon School Board.

(10) Legal only if the Director of Business Regulation of Rhode Island authorizes state-chartered associations to exercise the powers of federal savings and loan associations.

(11) Legal only if the South Carolina Board of Bank Control issues regulations permitting state-chartered associations to engage in activities authorized for federal savings and loan associations.

(12) Legal to extent permissible under rules or regulations of the Wyoming State Examiner.

CHART II

FHLMC INVESTOR BASE, JANUARY, 1982 - NOVEMBER, 1982

BANK INVESTMENT VOLUME

($ = 000)

STATE*	TOTAL DOLLARS**	% FHLMC INVT. VOL.
AK*	$ 21,943	41.69
AL	24,096	16.24
AR*	2,774	1.02
AZ	38,051	11.95
CA	18,982	.07
CO	6,156	1.70
CT	2,965	.83
DC	33,434	3.44
DE	6,859	80.85
FL	18,290	.98
GA	2,670	1.13
HI	92	.10
IA	10,550	5.20
ID	5,126	5.23
IL	33,020	1.79
IN	16,477	7.78
KS	26,513	8.06
KY	40,479	20.29
LA*	9,715	6.22
MA	44,282	7.41
MD	13,767	3.15
ME	6,390	33.84
MI	270,080	15.87
MN	16,132	3.36
MO	2,671	.67
MS*	1,320	2.59
MT*	292	.85
NC	-	-
ND	2,601	2.77
NE	471	.77

STUDENT LOAN MARKETING ASSOCIATION

The Student Loan Marketing Association is a stockholder-owned corporation established by the Higher Education Act of 1965, as amended (the "Act"), to provide liquidity, primarily through secondary market and warehousing activities, for originators of loans made under the Federal Guaranteed Student Loan Program ("GSLP") and the Health Education Assistance Loan ("HEAL") program. The GSLP is a program provided for by the Act pursuant to which the U.S. Department of Education directly insures loans and reinsures loans guaranteed by various states and a limited number of non-profit private agencies. The HEAL program is similar to the GSLP but is administered by the U.S. Department of Health and Human Services. See "The Guaranteed Student Loan Program". Under the Act, Sallie Mae is authorized to purchase, warehouse, sell, offer participations or pooled interests in, or otherwise deal in student loans, including but not limited to loans insured under the GSLP, and to make commitments for any of the foregoing. Sallie Mae is also authorized to undertake a variety of additional activities in support of the credit needs of students. See "Business and Operations".

Sallie Mae obtains funds for its operations primarily from the sale of its debt obligations. Until recently, Sallie Mae financed its activities principally through the issuance to the Federal Financing Bank ("FFB") of debt obligations guaranteed by the Secretary of Education. In March 1981 the FFB agreed to lend Sallie Mae up to a total of $5 billion, inclusive of borrowings then outstanding. The funds available under this agreement were exhausted in January 1982. Sallie Mae issues to investors a variety of non-guaranteed debt obligations, including discount notes and fixed and floating rate notes. See "Capitalization", "Management's Discussion and Analysis of Operating Results and Financial Condition" and "Business and Operations—Financing".

The principal office of Sallie Mae is at 1050 Thomas Jefferson Street, N.W., Washington, D.C. 20007, and its telephone number is (202) 333-8000.

USE OF PROCEEDS

The net proceeds from the sale of the Adjustable Rate Preferred Stock offered hereby will be used by Sallie Mae for general corporate purposes, including the acquisition of additional variable rate assets.

SELECTED FINANCIAL DATA

	December 31,				
(Dollars in thousands, except per share data)	1982	1981	1980	1979	1978
Net interest income	$ 90,091	$ 50,165	$ 27,018	$ 17,341	$ 15,038
Net income	37,753	18,046	9,440	6,347	5,905
Student loans	3,222,004	2,071,500	1,217,058	732,177	438,051
Warehousing advances	3,191,117	2,754,915	1,421,622	707,621	413,966
Total borrowings	7,292,722	5,019,497	2,720,000	1,505,000	915,000
Stockholders' equity	103,339	67,711	51,198	43,092	37,745
Net interest margin	1.47%	1.26%	1.28%	1.46%	2.12%
Earnings per share	$37.75	$18.05	$9.44	$6.35	$5.90
Dividends per share	2.13	1.53	1.33	1.00	.63

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such loans made pursuant to either of such sections and in the share capital and capital reserve of the inter-American savings and loan bank. This authority extends to the acquisition, holding, and disposition of loans having the benefit of any guaranty under section 221 or 222 of such act, or of any commitment or agreement for any such guaranty;

(C) investments under subparagraph (A) of this paragraph shall not be included in any percentage of assets or other percentage referred to in this subsection. Investments under subparagraph (B) of this paragraph shall not exceed, in the case of any association, 1% of the assets of such association;

(4) an association whose net worth in aggregate exceeds that amount which is determined by the national housing act is authorized to invest in obligations which constitute prudent investments, as defined by the commissioner, of Kansas and its political subdivisions thereof, ~~(~~including any agency, corporation~~,~~ or instrumentality~~)~~ if the proceeds of such obligations are to be used for rehabilitation, financing~~,~~ or the construction of residential real estate, and the aggregate amount of all investments under this paragraph shall not exceed the amount of the association's net worth accounts.

(aa) Subject to such prohibitions, limitations and conditions as the commissioner may by regulation provide an association may engage in financial futures transactions and financial options transactions.

(bb) Subject to such prohibitions, limitations and conditions as the commissioner may by regulation provide an association may establish or maintain a data processing office with functions limited to providing data processing services for its own use or primarily for other depository institutions without observing the application and approval procedures for branch offices as provided for in K.S.A. 17-5225, and amendments thereto. An association may participate with others in establishing or maintaining a data processing office, except that the association may participate in establishing or maintaining a data processing office controlled by an entity not subject to a federal or state agency regulating financial institutions only if such entity has agreed in writing with the commissioner that it will permit and pay for such examination of the office as the commissioner deems necessary, and that it will make available for such purposes any records in its possession relating to the operation of the office.

(cc) Subject to such prohibitions, limitations and conditions as the commissioner may by regulation provide an association may provide correspondent services primarily to other deposi-

NEWS RELEASE

Comptroller of the Currency
Administrator of National Banks

NR. 83-84

Washington, D. C. 20219

For: IMMEDIATE RELEASE

Contact: Marie France
(202) 447-1800

Date: December 15, 1983

National Banks Can Purchase Shares in Money Market Mutual Funds

The Office of the Comptroller of the Currency (OCC) today announced guidelines for national banks to purchase shares of money market mutual funds. The guidelines permit national banks to purchase, for their own accounts, shares offered by open-end investment companies that invest solely in the types of securities that banks may purchase directly under the national banking laws.

In announcing the guidelines, Senior Deputy Comptroller H. Joe Selby explained that "deregulation of the liability side of the bank balance sheet is causing a larger percentage of liabilities to be far more rate-sensitive and to have shorter maturities. Many smaller banks are finding it increasingly difficult to match their liabilities with direct investments in their asset accounts."

Allowing banks to purchase shares in certain money market mutual funds provides an alternative to direct purchase of securities, which can be costly, Selby said. "For some banks, investing in money market fund shares may provide more liquidity, risk diversificiation, flexibility and convenience, yet also provide investment results comparable to those gained from purchasing securities directly."

The guidelines require national banks to purchase solely from investment companies that are money market funds. If a company's securities are subject to a bank's investment or lending limits, investment in the fund must be limited to 10 percent of the bank's capital and surplus. Banks that invest in shares of more than one investment company must ensure that their cumulative holdings of shares subject to the 10 percent limit do not exceed that limit.

The guidelines also stipulate that bank investment policies specifically provide for such investments and that board approval be obtained before the initial purchase of funds. Banks should also conduct reviews of their holdings at least monthly.

(more)

Today's guidelines are intended to ensure that banks establish proper controls, so that investments are made in a prudent and legal manner. Selby cautioned, however, that "it remains the responsibility of bank management to ensure that a particular investment company fund is a proper investment for the bank's portfolio."

The guidelines issued in Banking Bulletin No. 83-58 are attached.

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BANKING ISSUANCE

Comptroller of the Currency
Administrator of National Banks

Type: Banking Bulletin

Subject: National Bank Portfolio Investments in Mutual Funds Composed Wholly of Bank Eligible Investments

TO: Chief Executive Officers of all National Banks and Examining Personnel

This Office has determined that it is permissible for a national bank to purchase for its own account shares of open-end investment companies which are purchased or sold at par (i.e. money market funds), as long as the portfolios of such companies consist solely of securities which are eligible for purchase by national banks pursuant to paragraph Seventh of 12 USC 24.

National banks which desire to make such purchases should be aware that it remains the responsibility of a bank's management to ensure that the particular investment company is a proper investment for the bank's portfolio. That decision is the ultimate responsibility of the bank's board of directors. Each holding of shares of an investment company must be reviewed at least on a monthly basis in order to determine whether that particular investment continues to be appropriate for the bank's portfolio.

Banks may purchase and hold investment company shares without limitation if the portfolio of such a company consists wholly of investments in which the bank could invest directly without limitation pursuant to provisions of paragraph Seventh of 12 USC 24. Funds whose portfolios contain investments which are subject to the limits of 12 USC 24 or 12 USC 84 may only be held in an amount not in excess of 10% of capital and surplus. That is, a bank may only invest an amount not in excess of 10% of its capital and surplus in each such investment company.

In addition, banks which invest in investment companies which have portfolio investments of this type must be aware of the possibility of a violation by the bank of the 10% limitation of paragraph Seventh of 12 USC 24, by virtue of the cumulative holdings of a particular security in the portfolio of more than one investment company. Accordingly, it will be the responsibility of the bank which has invested in shares of more than one investment company, to determine that its pro rata share of any security in the fund portfolio which is subject to the 10% limitation, is not in excess of that limitation by reason of being combined with the bank's pro rata share of that security held by all other funds in which the bank has invested. Periodic reviews of the holdings of investment companies whose shares are held by the bank must be conducted for this purpose.

BANKING ISSUANCE

Comptroller of the Currency
Administrator of National Banks

Type: Banking Bulletin

Subject: National Bank Portfolio Investments in Mutual Funds Composed Wholly of Bank Eligible Investments

In summary, the approval of this Office for the investment of bank portfolio funds in the shares of investment companies is conditioned as follows:

1. The fund is an open-ended investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and Securities Act of 1933 or a privately offered fund sponsored by an affiliated commercial bank.

2. When the fund's assets consist solely of and are limited to obligations that are eligible for investment by a national bank, there is no limit on the bank's investment. But where the fund contains securities subject to the bank's investment or lending limitations, investment must be limited to 10% of capital and surplus.

3. The fund's shares are bought and sold at par (i.e., the fund is a money market fund).

4. The shareholder has an equitable and equal proportionate undivided interest in the underlying assets of the fund.

5. Shareholders are shielded from personal liability for acts or obligations of the fund.

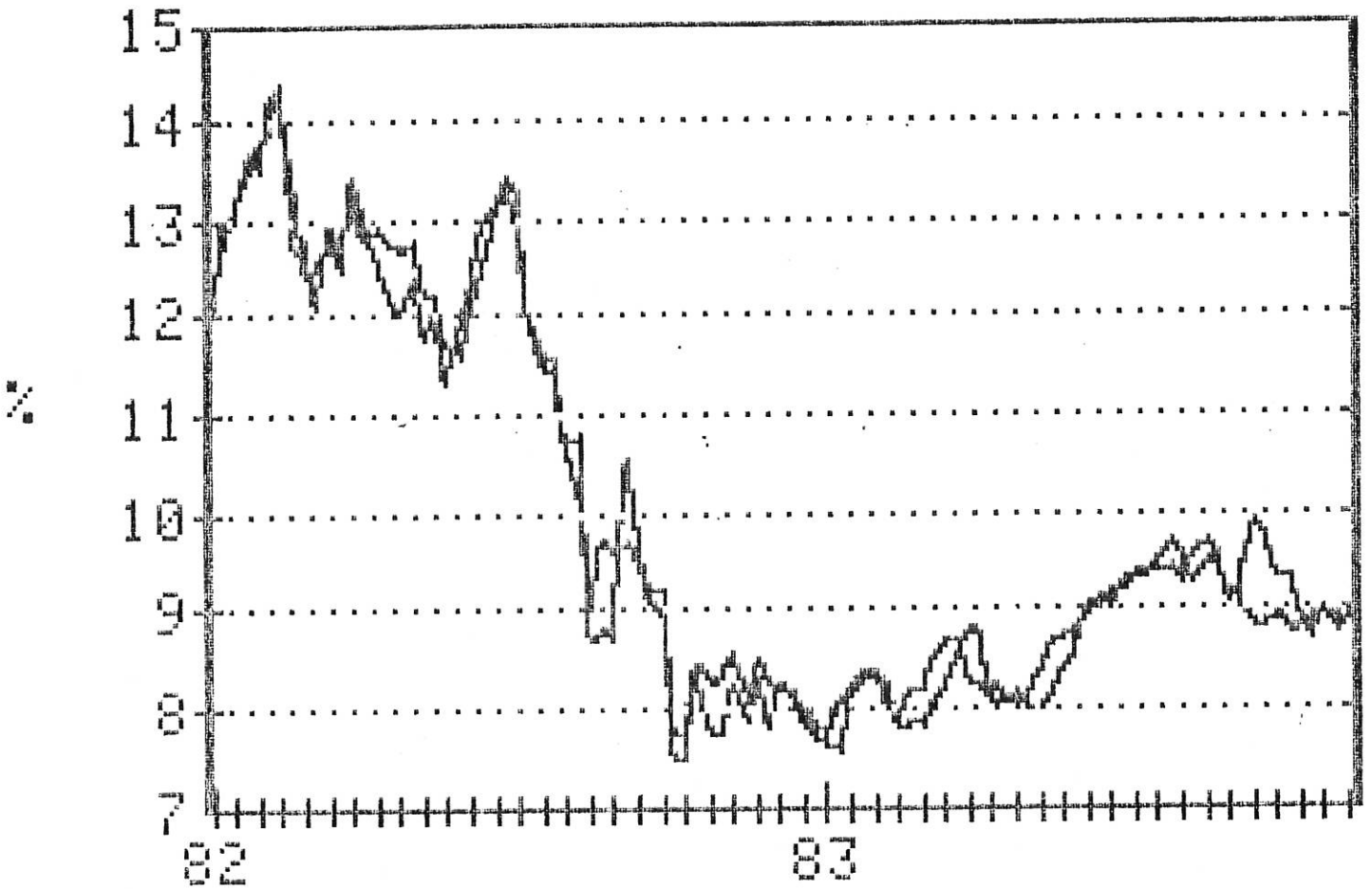
6. The bank's investment policy, as formally approved by its board of directors, specifically provides for such investments; prior approval of the board of directors is obtained for initial investments in specific funds and recorded in the official board minutes; and procedures, standards, and controls for the implementation of such investments are established.

7. The bank conducts reviews at least monthly of its holdings of investment company shares to ensure that such investments are in accordance with the foregoing principles.

Page 3 of 3

Not Attached

Attachment H



6 MO T-BILL VS T-BILL FUTURES

OFFSETTING SIX-MONTH MMC'S WITH SIX-MONTH FCB'S HAS PRODUCED THE FOLLOWING RESULTS:

	FCB'S	Income	$5MM MMC'S	Expense	Net Spread	
May 2, 1983:	8.70	$217,500	8.30	$207,500	.40	$10,000
Nov 2, 1983:	9.45	236,250	8.93	223,250	.52	13,000
One-Year Totals:		$453,750		$430,750		$23,000

AS AN ALTERNATIVE THE MMC'S COULD BE HEDGED FOR ONE YEAR USING TREASURY BILL FUTURES AND PURCHASING A ONE-YEAR SECURITY:

	One-Year Security	Income	$5MM MMC'S	Expense	T-Bill Futures	Gain/ Loss	Net Spread	
May 2, 1983:	9.10	$227,500	8.30	$207,500	8.32		.78	$20,000
Nov 2, 1983:	9.10	227,500	8.93	223,250	8.86	$13,500	.69	17,750
One-Year Totals:		$455,000		$430,750		$13,500		$37,750

INCREASED INCOME FROM HEDGING: $14,750

SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

TESTIMONY ON HB 2759

BY

KANSAS BANKERS ASSOCIATION

MARCH 22, 1984

Attachment III

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 22, 1984

TO: Senate Committee on Commercial and Financial Institutions

RE: HB 2759--Powers of bank service corporations of state chartered banks

Mr. Chairman and members of the committee:

We respectfully request that this committee give favorable consideration to HB 2759 which brings Kansas law into conformity with the provisions of the 1982 Garn-St. Germain Act. Title VII of that act granted new powers to bank service corporations of any federally insured bank. Current Kansas law relating to bank service corporations (K.S.A. 9-1127 through 9-1127) allows only certain limited activities for such service corporations. It should be emphasized that the provisions of the federal law are overriding and HB 2759 is basically to bring Kansas law into conformity with the federal act.

HB 2759 allows banks service corporations to perform other than clerical services and for other than stockholding banks. It further allows such corporations to perform stated clerical service for banks, trust companies, saving and loan associations, savings bank and credit unions. However, with the approval of the Bank Commissioner and the Banking Board, such service corporations could perform for any other person a service its bank stockholders are authorized to perform other than deposit taking, and at such locations as its bank share holders are authorized to perform such services. It is important to emphasize that bank service corporations may not take deposits.

The bill further provides that such service corporations may perform services in other states with the approval of the State Bank Commissioner and State Banking Board. The bill does require, however, that all shareholding banks be located in Kansas except with the express approval of the Commissioner and Banking Board and that at least one stockholding bank must be a Kansas state chartered bank.

HB 2759 also allows service corporations to perform anywhere any service, other than deposit taking, that the federal reserve has determined by regulation to be permissible for bank holding companies. The bill further makes such service corporations subject to examination by the Commissioner and gives him and the State Banking Board authority to adopt rules and regulations to carry out the act and to prevent evasions.

Office of Executive Vice President • 707 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444

Under the provisions of the bill, state banks are authorized to invest up to 10% of capital and unimpared surplus and up to 5% of total assets in service corporations. The bill further prohibits any service corporations from unreasonable discrimination in the providing of services to any depository institution which does not own stock in the corporation.

Thank you for the opportunity to appear on HB 2759 and we respectfully request that the committee give favorable consideration to the provisions of this bill.

James S. Maag
Director of Research

during the period beginning on the date of the enactment of this subparagraph 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 soley 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; 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: Provided, however, That such 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).".

TITLE VII—MISCELLANEOUS

AMENDMENT TO THE TRUTH IN LENDING ACT

SEC. 701. (a) Section 104 of the Truth in Lending Act (15 U.S.C. 1601) is amended by adding at the end thereof the following:

"(6) Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.)".

(b) Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) shall not be subject to any disclosure requirements of any State law.

(c) The amendment made by subsection (a) and subsection (b) shall be effective both with respect to loans made prior to and after the date of enactment of this Act.

DEFINITION OF CREDITOR

SEC. 702. (a) Section 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f)) is amended to read as follows:

"(f) The term 'creditor' refers only to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the preceding sentence, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge are creditors. For the purpose of the requirements imposed under chapter 4 and sections 127(a)(5), 127(a)(6), 127(a)(7), 127(b)(1), 127(b)(2), 127(b)(3), 127(b)(8), and 127(b)(10) of chapter 2 of this title, the term 'creditor' shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Board shall, by regulation, apply these requirements to such card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans.".

(b) The amendment made by subsection (a) shall take effect on the effective date of title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980.

INDUSTRIAL BANKS ELIGIBILITY FOR FDIC INSURANCE

SEC. 703. (a) Section 3(a) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)) is amended by inserting "industrial bank or similar financial institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank," before "or other banking institution".

(b) Section 3(l)(1) of such Act (12 U.S.C. 1813(l)(1)) is amended by inserting "thrift certificate, investment certificate, certificate of indebtedness, or other similar name," before "or a check or draft drawn against a deposit account".

(c) Section 5(a) of such Act (12 U.S.C. 1815(a)) is amended by adding at the end thereof the following: "Before approving the application of any industrial bank or similar financial institution, the Board of Directors shall determine that it is chartered and operating under laws providing for examination, supervision, and liquidation substantially comparable to those applicable to banks operating in the same State.".

(d) Section 109(b)(2) of title 11, United States Code, is amended by striking out "or" before "credit union", and by inserting ", or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h))" after "credit union".

APPLICABILITY OF THE INTERNATIONAL BANKING ACT OF 1978

SEC. 704. Section 8(c) of the International Banking Act of 1978 (12 U.S.C. 3106(c)) is amended by inserting in the first sentence immediately after the words "on the date of enactment of this Act" the following: "or on the date of the establishment of a branch in a State an application for which was filed on or before July 26, 1978".

SECURITIES ACTIVITIES UNDER THE INTERNATIONAL BANKING ACT OF 1978

SEC. 705. (a) The last sentence of section 8(c) of the International Banking Act of 1978 (12 U.S.C. 3106(c)) is amended by striking out all after "company, and" and inserting in lieu thereof the following: "the term 'domestically-controlled affiliate covered in 1978' shall mean an affiliate organized under the laws of the United States or any State thereof if (i) no foreign bank or group of foreign banks acting in concert owns or controls, directly or indirectly, 45 per centum or more of its voting shares, and (ii) no more than 20 per centum of the number of directors as established from time to time to constitute the whole board of directors and 20 per centum of the executive officers of such affiliate are persons affiliated with any such foreign bank. For the purpose of the preceding sentence, the term 'persons affiliated with any such foreign bank' shall mean (A) any person who is or was an employee, officer, agent, or director of such foreign bank or who otherwise has or had such a relationship with such foreign bank that would lead such person to represent the interests of such foreign bank, and (B) in the case of any director of such domestically controlled affiliate covered in 1978, any person in favor of whose election as a director votes were cast by less than two-thirds of all shares voting in connection with such election other than shares owned or controlled, directly or indirectly, by any such foreign bank.".

(b) The second sentence of section 8(c) of such Act is amended to read as follows: "Notwithstanding subsection (a) of this section, a foreign bank or company referred to in this subsection may retain ownership or control of any voting shares (or, where necessary to prevent dilution of its voting interest, acquire additional voting shares) of any domestically-controlled affiliate covered in 1978 which since July 26, 1978, has engaged in the business of underwriting, distributing, or otherwise buying or selling stocks, bonds, and other securities in the United States, notwithstanding that such affiliate acquired after July 26, 1978, an interest in, or any or all of the assets of, a going concern, or commences to engage in any new activity or activities.".

NOW ACCOUNTS FOR PUBLIC FUNDS

SEC. 706. (a) Section 2(a)(2) of Public Law 93-100 (12 U.S.C. 1832(a)(2)) is amended by inserting before the period at the end thereof the following: ", and with respect to deposits of public funds by an officer, employee, or agent of the United States, any State, county, municipality, or political subdivi-

sion thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof".

(b) Section 205(f)(2) of the Federal Credit Union Act (12 U.S.C. 1785(f)(2)) is amended by inserting before the period at the end thereof the following: ", and with respect to deposits of public funds by an officer, employee, or agent of the United States, any State, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof".

FEDERAL NATIONAL MORTGAGE ASSOCIATION

SEC. 707. (a) Section 303(a) of the Federal National Mortgage Association Charter Act is amended—

(1) by inserting after the first sentence the following: "The corporation may have preferred stock on such terms and conditions as the board of directors shall prescribe."; and

(2) by striking out "common" in the last sentence thereof.

(b) Section 304(e) of such Act is amended by striking out the fourth sentence.

RESERVE REQUIREMENT PHASE-IN

SEC. 708. Section 19(b)(8)(D) of the Federal Reserve Act (12 U.S.C. 461(b)(8)(D)) is amended—

(1) by striking out clause (i) and inserting in lieu thereof the following:

"(i) Any bank which was a member bank on July 1, 1979, and which withdrew from membership in the Federal Reserve System during the period beginning July 1, 1979, and ending on March 31, 1980, shall maintain reserves during the first twelve-month period beginning on the date of enactment of this clause in amounts equal to one-half of those otherwise required by this subsection, during the second such twelve-month period in amounts equal to two-thirds of those otherwise required, and during the third such twelve-month period in amounts equal to five-sixths of those otherwise required."

(2) in clause (ii) by striking the words "on or"

BANK SERVICE CORPORATIONS

SEC. 709. The Bank Service Corporation Act (12 U.S.C. 1861 et seq.) is amended to read as follows:

"SHORT TITLE AND DEFINITIONS

"SECTION 1. (a) This Act may be cited as the 'Bank Service Corporation Act'.

"(b) For the purpose of this Act—

"(1) the term 'appropriate Federal banking agency' shall have the meaning provided in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q));

"(2) the term 'bank service corporation' means a corporation organized to perform services authorized by this Act, all of the capital stock of which is owned by one or more insured banks;

"(3) the term 'Board' means the Board of Governors of the Federal Reserve System;

"(4) the term 'depository institution' means an insured bank, or another financial institution subject to examination by the Federal Home Loan Bank Board or the National Credit Union Administration Board;

"(5) the term 'insured bank' shall have the meaning provided in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));

"(6) the term 'invest' includes any advance of funds to a bank service corporation, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment; and

"(7) the term 'principal investor' means the insured bank that has the largest dollar amount invested in the capital stock of a bank service corporation. In any case where two or more insured banks have equal dollar amounts invested in a bank service corporation, the corporation shall, prior to commencing operations, select one of the insured banks as its principal investor and shall notify the bank's appropriate Federal banking agency of that choice within 5 business days of its selection.

"AMOUNT OF INVESTMENT IN BANK SERVICE CORPORATION

"SEC. 2. Notwithstanding any limitation or prohibition otherwise imposed by any provision of law exclusively relating to banks, an insured bank may invest not more than 10 per centum of paid-in and unimpaired capital and unimpaired surplus in a bank service corporation. No insured bank shall invest more than 5 per centum of its total assets in bank service corporations.

"PERMISSIBLE BANK SERVICE CORPORATION ACTIVITIES FOR DEPOSITORY INSTITUTIONS

"SEC. 3. Without regard to the provisions of sections 4 and 5 of this Act, an insured bank may invest in a bank service corporation that performs, and a bank service corporation may perform, the following services only for depository institutions: check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a depository institution.

"PERMISSIBLE BANK SERVICE CORPORATION ACTIVITIES FOR OTHER PERSONS

"SEC. 4. (a) A bank service corporation may provide to any person any service authorized by this section, except that a bank service corporation shall not take deposits.

"(b) Except with the prior approval of the Board under section 5(b) of this Act in accordance with subsection (f) of this section—

"(1) a bank service corporation shall not perform the services authorized by this section in any State other than that State in which its shareholders are located; and

"(2) all insured bank shareholders of a bank service corporation shall be located in the same State.

"(c) A bank service corporation in which a State bank is a shareholder shall perform only those services that such State bank shareholder is authorized to perform under the law of the State in which such State bank operates and shall perform such services only at locations in the State in which such State bank shareholder could be authorized to perform such services.

"(d) A bank service corporation in which a national bank is a shareholder shall perform only those services that such national bank shareholder is authorized to perform under this Act and shall perform such services only at locations in the State at which such national bank shareholder could be authorized to perform such services.

"(e) A bank service corporation that has both national bank and State bank shareholders shall perform only those services that may lawfully be performed by both its national bank shareholder or shareholders under this Act and its State bank shareholder or shareholders under the law of the State in which such State bank or banks operate and shall perform such services only at locations in the State at which both its State bank and national bank shareholders could be authorized to perform such services.

"(f) Notwithstanding the other provisions of this section or any other provision of law, other than the provisions of Federal and State branching law regulating the Georgraphic location of banks to the extent that those laws are applicable to an activity authorized by this subsection, a bank service corporation may perform at any geographic location any service, other than deposit taking, that the Board has determined, by regulation, to be permissible for a bank holding company under section 4(c)(8) of the Bank Holding Company Act.

PRIOR APPROVAL FOR INVESTMENTS IN BANK SERVICE CORPORATIONS

"SEC. 5. (a) No insured bank shall invest in the capital stock of a bank service corporation that performs any service under authority of subsection (c), (d), or (e) of section 4 of this Act without the prior approval of the bank's appropriate Federal banking agency.

"(b) No insured bank shall invest in the capital stock of a bank service corporation that performs any service under authority of section 4(f) of this Act and no bank service corporation shall perform any activity under section 4(f) of this Act without the prior approval of the Board.

"(c) In determining whether to approve or deny any application for prior approval under this section, the Board or the appropriate Federal banking agency, as the case may be, is authorized to consider the financial and managerial resources and future prospects of the bank or banks and bank service corporation involved, including the financial capability of the bank to make a proposed investment under this Act, and possible adverse effects such as undue concentration of resources, unfair or decreased competition, conflicts of interest or unsafe or unsound banking practices.

"(d) In the event the Board or the appropriate Federal banking agency, as the case may be, fails to act on any application under this section within 90 days of the submission of a complete application to the agency, the application shall be deemed approved.

"SERVICES TO NONSTOCKHOLDERS

"SEC. 6. No bank service corporation shall unreasonably discriminate in the provision of any services authorized under this Act to any depository institution that does not own stock in the service corporation on the basis of the fact that the nonstockholding institution is in competition with an institution that owns stock in the bank service corporation, except that—

"(1) it shall not be considered unreasonable discrimination for a bank service corporation to provide services to a nonstockholding institution only at a price that fully reflects all of the costs of offering those services, including the cost of capital and a reasonable return thereon; and

"(2) a bank service corporation may refuse to provide services to a nonstockholding institution if comparable services are available from another source at competitive overall costs, or if the providing of services would be beyond the practical capacity of the service corporation.

"REGULATION AND EXAMINATION OF BANK SERVICE CORPORATIONS

"SEC. 7. (a) A bank service corporation shall be subject to examination and regulation by the appropriate Federal banking agency of its principal investor to the same extent as its principal investor. The appropriate Federal banking agency of the principal shareholder of such a bank service corporation may authorize any other Federal banking agency that supervises any other

ireh ' the bank service corporatic
mak an examination.
"(b) A bank service corporation shall be bject to the provisions of the Financial In- tutions Supervisory Act of 1966 (12 U.S.C. 18(b) et seq.) as if the bank service corpo- ion were an insured bank. For this pur- se, the appropriate Federal banking ency shall be the appropriate Federal nking agency of the principal investor of e bank service corporation.
"(c) Notwithstanding subsection (a) of is section, whenever a bank that is regu- rly examined by an appropriate Federal nking agency, or any subsidiary or affili- e of such a bank that is subject to exami- tion by that agency, causes to be per- rmed for itself, by contract or otherwise, y services authorized under this Act, ether on or off its premises—
"(1) such performance shall be subject to gulation and examination by such agency the same extent as if such services were ing performed by the bank itself on its n premises, and
"(2) the bank shall notify such agency of e existence of the service relationship ithin 30 days after the making of such rvice contract or the performance of the rvice, whichever occurs first.
"(d) The Board and the appropriate Feder- banking agencies are authorized to issue ch regulations and orders as may be nec- ssary to enable them to administer and to rry out the purposes of this Act and to pre- nt evasions thereof.".

NEIGHBORHOOD REINVESTMENT CORPORATION

SEC. 710. (a) Section 604 of the Neighbor- ood Reinvestment Corporation Act (Public aw 95-557) is amended—
(1) by redesignating subsections (f), (g), nd (h) as subsections (g), (h), and (i), re- pectively, and by inserting after subsection e) the following:
"(f) A director who is necessarily absent om a meeting of the board, or of a commit- ee of the board, may participate in such eeting through a duly designated repre- ntative who is serving, pursuant to ap- ointment by the President of the United tates, by and with the advice and consent f the Senate, in the same department, gency, corporation, or instrumentality as he absent director, or in the case of the Comptroller of the Currency, through a duly esignated Deputy Comptroller."; and
(2) by inserting in section 604(g), as redes- gnated, after "members" a comma and the ords "or their representatives as provided n subsection (f),".
(b) Section 606(c)(3) of such Act is amend- d by inserting "funds," after "provide".

MARRINER S. ECCLES FEDERAL RESERVE BOARD BUILDING

SEC. 711. The building at 20th and Consti- ution Avenue, Northwest, in Washington, District of Columbia (commonly known as he Federal Reserve Board Main Building) hall hereafter be known and designated as he "Marriner S. Eccles Federal Reserve Board Building". Any reference in a law, nap, regulation, document, record, or other paper of the United States to that building hall be held to be a reference to the "Mar- iner S. Eccles Federal Reserve Board Build- ng".

INSURANCE STUDY

SEC. 712. (a) The Federal Deposit Insur- nce Corporation, the Federal Savings and oan Insurance Corporation, and the Na- ional Credit Union Administration Board hall each conduct a study of—
(1) the current system of deposit insurance nd its impact on the structure and oper- tions of depository institutions;
(2) the feasibility of providing depositors he option to purchase additional deposit urance covering deposits in excess of the eral limit provided by law and the capa- bilities of the private insurance system, either directly or through reinsurance, to provide risk coverage in excess of the gener- al statutory limit;
(3) the feasibility of basing deposit insur- ance premiums on the risk posed by either the insured institution or the category or size of the depository institution rather than the present flat rate system;
(4) the impact of expanding coverage of insured deposits upon the operations of the insurance funds, including the possibility of increased or undue risk to the funds;
(5) the feasibility of revising the deposit insurance system to provide even greater protection for smaller depositors while fos- tering a greater degree of discipline with re- spect to large depositors;
(6) the adequacy of existing public disclo- sure regarding the condition and business practices of insured depository institutions, and providing an assessment of changes which may be needed to assure adequate public disclosure;
(7) the feasibility of consolidating the three separate insurance funds; and
(8) other related issues.
(b) A report containing the results of each of the studies carried out under subsection (a) shall be transmitted to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and to the Com- mittee on Banking, Housing, and Urban Af- fairs of the Senate not later than six months after the date of enactment of this Act.

TITLE VIII—ALTERNATIVE MORTGAGE TRANSACTIONS

SHORT TITLE

SEC. 801. This title may be cited as the "Al- ternative Mortgage Transaction Parity Act of 1982".

FINDINGS AND PURPOSE

SEC. 802. (a) The Congress hereby finds that—
(1) increasingly volatile and dynamic changes in interest rates have seriously im- paired the ability of housing creditors to pro- vide consumers with fixed-term, fixed-rate credit secured by interests in real property, cooperative housing, manufactured homes, and other dwellings;
(2) alternative mortgage transactions are essential to the provision of an adequate supply of credit secured by residential prop- erty necessary to meet the demand expected during the 1980's; and
(3) the Comptroller of the Currency, the National Credit Union Administration, and the Federal Home Loan Bank Board have recognized the importance of alternative mortgage transactions and have adopted regulations authorizing federally chartered depository institutions to engage in alterna- tive mortgage financing.
(b) It is the purpose of this title to elimi- nate the discriminatory impact that those regulations have upon nonfederally char- tered housing creditors and provide them with parity with federally chartered institu- tions by authorizing all housing creditors to make, purchase, and enforce alternative mortgage transactions so long as the trans- actions are in conformity with the regula- tions issued by the Federal agencies.

DEFINITIONS

SEC. 803. As used in this title—
(1) the term "alternative mortgage trans- action" means a loan or credit sale secured by an interest in residential real property, a dwelling, all stock allocated to a dwelling unit in a residential cooperative housing corporation, or a residential manufactured home (as that term is defined in section 603(6) of the National Manufactured Home Construction and Safety Stan ict of 1974)—
(A) in which the interest r nance charge may be adjusted or renegotiated;
(B) involving a fixed-rate, but which im- plicitly permits rate adjustments by having the debt mature at the end of an interval shorter than the term of the amortization schedule; or
(C) involving any similar type of rate, method of determining return, term, repay- ment, or other variation not common to tra- ditional fixed-rate, fixed-term transactions, including without limitation, transactions that involve the sharing of equity or appre- ciation;
described and defined by applicable regula- tion; and
(2) the term "housing creditor" means—
(A) a depository institution, as defined in section 501(a)(2) of the Depository Institu- tions Deregulation and Monetary Control Act of 1980;
(B) a lender approved by the Secretary of Housing and Urban Development for par- ticipation in any mortgage insurance pro- gram under the National Housing Act;
(C) any person who regularly takes loans, credit sales, or advances secured by interests in properties referred to in paragraph (1); or
(D) any transferee of any of them.
A person is not a "housing creditor" with re- spect to a specific alternative mortgage transaction if, except for this title, in order to enter into that transaction, the person would be required to comply with licensing requirements imposed under State law, unless such person is licensed under appli- cable State law, and such person remains, or becomes, subject to the applicable regulatory requirements and enforcement mechanisms provided by State law.

ALTERNATIVE MORTGAGE AUTHORITY

SEC. 804. (a) In order to prevent discrimi- nation against State-chartered depository institutions, and other nonfederally char- tered housing creditors, with respect to making, purchasing, and enforcing alterna- tive mortgage transactions, housing credi- tors may make, purchase, and enforce alter- native mortgage transactions, except that this section shall apply—
(1) with respect to banks, only to transac- tions made in accordance with regulations governing alternative mortgage transac- tions as issued by the Comptroller of the Currency for national banks, to the extent that such regulations are authorized by rule- making authority granted to the comptroller of the Currency with regard to national banks under laws other than this section;
(2) with respect to credit unions, only to transactions made in accordance with regu- lations governing alternative mortgage transactions as issued by the National Credit Union Administration Board for Fed- eral credit unions, to the extent that such regulation are authorized by rulemaking au- thority granted to the National Credit Union Administration with regard to Fed- eral credit unions under laws other than this section; and
(3) with respect to all other housing credi- tors, including without limitation, savings and loan associations, mutual savings banks, and savings banks, only to transac- tions made in accordance with regulations governing alternative mortgage transac- tions as issued by the Federal Home Loan Bank Board for federally chartered savings and loan associations, to the extent that such regulations are authorized by rulemak- ing authority granted to the Federal Home Loan Bank Board with regard to federally chartered savings and loan associations under laws other than this section.

(g) *Hearing.* Any request for a hearing on an application or notice under this section shall comply with the provisions of § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)). The Board may order a formal or informal hearing or other proceeding on an application, as provided in § 262.3(i)(2) of the Rules of Procedure (12 CFR 262.3(i)(2)). The Board shall order a hearing only if there are disputed issues of material fact that cannot be resolved in some other manner.

(h) *Approval through failure to act [illegible] day rule.* An application or notice [illegible] this subpart shall be deemed approved if the Board fails to act on the application or notice within 91 calendar days after the date of submission to the Board of the complete record on the application or notice. The procedures for computation of the 91-day rule as set forth in § 225.14(g) of Subpart B of this regulation apply to applications and notices under this subpart.

(i) *Emergency thrift institution acquisitions.* In the case of an application to acquire a thrift institution, the Board may modify or dispense with the notice and hearing requirements of this section if the Board finds that an emergency exists that requires the Board to act immediately and the primary Federal regulator of the institution concurs.

§ 225.24 Factors considered in acting on nonbanking applications.

In evaluating an application or notice under section 225.23 of this subpart, the Board shall consider whether the performance by the applicant of the activity can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, the gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, and unsound banking practices). This consideration includes an evaluation of the financial and managerial resources of the applicant, including its subsidiaries, and any company to be acquired, and the effect of the proposed transaction on those resources. Unless the record demonstrates otherwise, the commencement or expansion of a nonbanking activity *de novo* is presumed to result in benefits to the public through increased competition.

§ 225.25 List of permissible nonbanking activities.

(a) *Closely related nonbanking activities.* The activities listed below are so closely related to banking or managing or controlling banks as to be a proper incident thereto and may be engaged in by a bank holding company or a subsidiary thereof in accordance with and subject to the requirements of this regulation.

(b)(1) *Making and servicing loans.* Making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others, such as would be made, for example, by the following types of companies: (i) consumer finance; (ii) credit card; (iii) mortgage; (iv) commercial finance; and (v) factoring.

(2) *Industrial banking.* Operating an industrial bank, Morris Plan bank, or industrial loan company, as authorized under state law, so long as the institution is not a bank.

(3) *Trust company functions.* Performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), in the manner authorized by federal or state law, so long as the institution is not a bank and does not make loans or investments or accept deposits other than:

(i) Deposits that are generated from trust funds not currently invested and that are properly secured to the extent required by law;

(ii) Deposits representing funds received for a special use in the capacity of managing agent or custodian for an owner of, or investor in, real property, securities, or other personal property; or for such owner or investor as agent or custodian of funds held for investment or as escrow agent; or for an issuer of, or broker or dealer in securities, in a capacity such as a paying agent, dividend disbursing agent, or securities clearing agent; provided such deposits are not employed by or for the account of the customer in the manner of a general purpose checking account or interest-bearing account; or

(iii) Making call loans to securities dealers or purchasing money market instruments such as certificates of deposit, commercial paper, government or municipal securities, and bankers acceptances. (Such authorized loans and investments, however, may not be used as a method of channeling funds to nonbanking affiliates of the trust company.)

(4) *Investment or financial advice.* Acting as investment or financial advisor to the extent of:

(i) Serving as the advisory company for a mortgage or a real estate investment trust;

(ii) Serving as investment adviser (as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(20)), to an investment company registered under that act, including sponsoring, organizing, and managing a closed-end investment company;

(iii) Providing portfolio investment advice [1] to any other person;

(iv) Furnishing general economic information and advice, general economic statistical forecasting services and industry studies; [2] and

(v) Providing financial advice to state and local governments, such as with respect to the issuance of their securities.

(5) *Leasing personal or real property.* Leasing personal or real property or acting as agent, broker, or adviser in leasing such property if:

(i) The lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;

(ii) The property to be leased is acquired specifically for the leasing transaction under consideration or was acquired specifically for an earlier leasing transaction;

(iii) The lease is on a nonoperating basis;[3]

[1] The term "portfolio investment" is intended to refer generally to the investment of funds in a "security" as defined in section 2(1) of the Securities Act of 1933 (15 U.S.C. 77b) or in real property interests, except where the real property is to be used in the trade or business of the person being advised. In furnishing portfolio investment advice, bank holding companies and their subsidiaries shall observe the standards of care and conduct applicable to fiduciaries.

[2] This is to be contrasted with "management consulting," which the Board views as including, but not limited to, the provision of analysis or advice as to a firm's (A) purchasing operations, such as inventory control, sources of supply, and cost minimization subject to constraints; (B) production operations, such as quality control, work measurement, product methods, scheduling shifts, time and motion studies, and safety standards; (C) marketing operations, such as market testing, advertising programs, market development, packaging, and brand development; (D) planning operations, such as demand and cost projections, plant location, program planning, corporate acquisitions and mergers, and determination of long-term and short-term goals; (E) personnel operations, such as recruitment, training, incentive programs, employee compensation, and management-personnel relations; (F) internal operations, such as taxes, corporate organization, budgeting systems, budget control, data processing systems evaluation, and efficiency evaluation; or (G) research operations, such as product development, basic research, and product design and innovation. The Board has determined that "management consulting" is not an activity that is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

[3] For purposes of the leasing of automobiles, the requirement that the lease be on a nonoperating basis means that the bank holding company may not, directly or indirectly: (A) provide for the servicing, repair, or maintenance of the leased vehicle during the lease term; (B) purchase parts and accessories in bulk or for an individual vehicle

Continued

(iv) At the inception of the initial lease e effect of the transaction (and, with spect to governmental entities only, asonably anticipated future ansactions[4]) will yield a return that ill compensate the lessor for not less ian the lessor's full investment in the roperty plus the estimated total cost of nancing the property over the term of e lease,[5] from:

(A) Rentals;

(B) Estimated tax benefits (investment x credit, net economic gain from tax eferral from accelerated depreciation, nd other tax benefits with a ubstantially similar effect);

(C) The estimated residual value of e property at the expiration of the itial term of the lease, which in no ase shall exceed 20 percent of the cquisition cost of the property to the essor; and

(D) In the case of a lease of personal roperty of not more than seven years in uration, such additional amount, which hall not exceed 60 percent of the cquisition cost of the property, as may e provided by an unconditional uarantee by a lessee, independent third arty, or manufacturer, which has been etermined by the lessor to have the inancial resources to meet such bligation, that will assure the lessor of ecovery of its investment and cost of inancing;

(v) The maximum lease term during which the lessor must recover the essor's full investment in the property, lus the estimated total cost of financing he property, shall be 40 years; and

(vi) At the expiration of the lease including any renewals or extensions with the same lessee), all interest in the property shall be either liquidated or released on a nonoperating basis as soon as practicable but in no event later than two years from the expiration of the lease;[6] however, in no case shall the lessor retain any interest in the property beyond 50 years after its acquisition of the property.

(6) *Community development.* Making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents.

(7) *Data processing.* Providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means, if:

(i) The data to be processed or furnished are financial, banking, or economic, and the services are provided pursuant to a written agreement so describing and limiting the services;

(ii) The facilities are designed, marketed, and operated for the processing and transmission of financial, banking, or economic data; and

(iii) The hardware provided in connection therewith is offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering.

(8) *Insurance sales.* Except as prohibited in Title VI of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 1843(c)(8)), acting as insurance agent or broker in offices at which the holding company or its subsidiaries are otherwise engaged in business (or in an office adjacent thereto) with respect to the following types of insurance:

(i) Any insurance that (A) is directly related to an extension of credit by a bank or bank-related firm of the kind described in this regulation, or (B) is directly related to the provision of other financial services by a bank or such a bank-related firm; and

(ii) Any insurance sold by a bank holding company or a nonbanking subsidiary in a community that has a population not exceeding 5,000 (as shown by the last preceding decennial census), if the principal place of banking business of the bank holding company is located in a community having a population not exceeding 5,000.

(9) *Underwriting Credit Life, Accident and Health Insurance.* Acting as underwriter for credit life insurance and credit accident and health insurance that is directly related to an extension of credit by the bank holding company system.[7]

(10) *Courier services.* Providing courier services for:

(i) Checks, commercial papers, documents, and written instruments (excluding currency or bearer-type negotiable instruments) that are exchanged among banks and financial institutions; and

(ii) Audit and accounting media of a banking or financial nature and other business records and documents used in processing such media.[8]

(11) *Management consulting to depository institutions.* Providing management consulting advice [9] to nonaffiliated bank and nonbank depository institutions, including commercial banks, savings and loan associations, mutual savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks, and industrial loan companies, if:

(i) Neither the bank holding company nor any of its subsidiaries own or control, directly or indirectly, any equity securities in the client institution;

(ii) No management official, as defined in 12 CFR 212.2(h), of the bank holding company or any of its subsidiaries serves as a management official of the client institution, except

fter the lessee has taken delivery of the vehicle; (C) rovide for the loan of an automobile during ervicing of the leased vehicle; (D) purchase nsurance for the lessee; or (E) provide for the enewal of the vehicle's license merely as a service o the lessee where the lessee could renew the icense without authorization from the lessor.

[4] The Board understands that some federal, state nd local governmental entities may not enter into a ease for a period in excess of one year. Such an mpediment does not prohibit a company authorized o conduct leasing activities under this paragraph rom entering into a lease with such governmental ntities if the company reasonably anticipates that he governmental entities will renew the lease nnually until such time as the company is fully ompensated for its investment in the leased roperty plus its costs of financing the property. urther, a company authorized to conduct personal roperty leasing activities under this paragraph may lso engage in so-called "bridge" lease financing of ersonal property, but not real property, if the lease s short-term pending completion of long-term inancing, by the same or another lender.

[5] The estimate by the lessor of the total cost of inancing the property over the term of the lease hould reflect, among other factors: the term of the ease, the modes of financing available to the lessor, he credit rating of the lessor and/or the lessee, if a actor in the financing, and prevailing rates in the money and capital markets.

[6] In the event of a default on a lease agreement prior to the expiration of the lease term, the lessor shall either release the property, subject to all the conditions of this paragraph, or liquidate the property as soon as practicable but in no event later than two years from the date of default on a lease agreement or such additional time as the Board may permit under section 225.22(c)(1) of this regulation, as if the property were DPC property.

[7] To assure that engaging in the underwriting of credit life and credit accident and health insurance can reasonably be expected to be in the public interest, the Board will only approve applications in which an applicant demonstrates that approval will benefit the consumer or result in other public benefits. Normally such a showing would be made by a projected reduction in rates or increase in policy benefits due to bank holding company performance of this service.

[8] See also the Board's interpretation on courier activities (12 CFR 225.129), which sets forth conditions for bank holding company entry into the activity.

[9] A bank holding company that has received the Board's prior approval to engage in offering management consulting advice to nonaffiliated commercial banks as of April 20, 1982, may offer such advice on a *de novo* basis to nonbank depository institutions pursuant to this paragraph without filing an application under section 225.23 of this subpart.

where such interlocking relationships are permitted pursuant to an exemption granted under 12 CFR 212.4(b);

(iii) The advice is rendered on an explicit fee basis without regard to correspondent balances maintained by the client institution at any depository institution subsidiary of the bank holding company; and

(iv) Disclosure is made to each potential client institution of (A) the names of all depository institutions that are affiliates of the consulting company, and (B) the names of all existing client institutions located in the same county(ies), Metropolitan Statistical Area, or Primary Metropolitan Statistical Area as the client institution.[10]

(12) *Money orders, savings bonds, and travelers checks.* The issuance and sale at retail of money orders and similar consumer-type payment instruments having a face value of not more than $1,000; the sale of U.S. savings bonds; and the issuance and sale of travelers checks.

(13) *Real estate appraising.* Performing appraisals of real estate.

(14) *Arranging commercial real estate equity financing.* Acting as intermediary for the financing of commercial or industrial income-producing real estate by arranging for the transfer of the title, control and risk of such a real estate project to one or more investors, if:

(i) The financing arranged exceeds $1 million;

(ii) The bank holding company and its affiliates do not provide financing to the investors to acquire a real estate project for which the bank holding company arranges equity financing;

(iii) The bank holding company and its affiliates do not have an interest in or participate in managing, developing or syndicating a real estate project for which it arranges equity financing, and do not promote or sponsor the development or syndication of such property; and

(iv) The fee received for arranging equity financing for a real estate project is not based on profits to be derived from the project and is not larger than the fee that would be charged by an unaffiliated intermediary.

(15) *Securities Brokerage.* Providing securities brokerage services, related securities credit activities pursuant to the Board's Regulation T [12 CFR Part 220), and incidental activities such as offering custodial services, individual retirement accounts, and cash management services, if the securities brokerage services are restricted to buying and selling securities solely as agent for the account of customers and do not include securities underwriting or dealing or investment advice or research services.

(16) *Underwriting and dealing in government obligations and money market instruments.* Underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, including bankers' acceptances and certificates of deposit, under the same limitations as would be applicable if the activity were performed by the bank holding company's subsidiary member banks or its subsidiary nonmember banks as if they were member banks.

(17) *Foreign exchange advisory and transactional services.* Providing, by any means, general information and statistical forecasting with respect to foreign exchange markets; advisory services designed to assist customers in monitoring, evaluating and managing their foreign exchange exposures; and transactional services with respect to foreign exchange by arranging for "swaps" among customers with complementary foreign exchange exposures and for the execution of foreign exchange transactions; provided the activity is conducted through a separately incorporated subsidiary of the bank holding company that:

(i) Does not take positions in foreign exchange for its own account;

(ii) Observes the standards of care and conduct applicable to fiduciaries with respect to its foreign exchange advisory and transactional services; and

(iii) Does not itself execute foreign exchange transactions.

(18) *Futures commission merchant.* Acting as a futures commission merchant for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit and other money market instruments that a bank may buy or sell in the cash market for its own account, if the activity is conducted through a separately incorporated subsidiary of the bank holding company that:

(i) Does not become a clearing member of any exchange or clearing association that requires the parent corporation of the clearing member to also become a member of that exchange or clearing association unless a waiver of the requirement is obtained;

(ii) Does not trade for its own account except for the purpose of hedging a cash position in the related government security, bullion, foreign currency, or money market instrument;

(iii) Time stamps orders of all customers to the nearest minute, executes all orders strictly in chronological sequence to the extent consistent with the customers' specifications, and executes all orders with reasonable promptness with due regard to market conditions;

(iv) Does not extend credit to customers for the purpose of meeting initial or maintenance margins required of customers except for posting margin on behalf of customers in advance of prompt reimbursement; and

(v) Has and maintains capitalization fully adequate to meet its own commitments and those of its customers, including affiliates.

Subpart D—Control and Divestiture Proceedings

§ 225.31 Control proceedings.

(a) *Preliminary determination of control.* (1) The Board may issue a preliminary determination of control under the procedures set forth in this section in any case in which:

(i) Any of the presumptions of control set forth in paragraph (d) of this section is present; or

(ii) It otherwise appears that a company has the power to exercise a controlling influence over the management or policies of a bank or other company.

(2) If the Board makes a preliminary determination of control under this section, the Board shall send notice to the controlling company containing a statement of the facts upon which the preliminary determination is based.

(b) *Response to preliminary determination of control.* Within 30 calendar days of issuance by the Board of a preliminary determination of control or such longer period permitted by the Board, the company against whom the determination has been made shall:

(1) Submit for the Board's approval a specific plan for the prompt termination of the control relationship;

(2) File an application under subpart B or C of this regulation to retain the control relationship; or

[10] In performing this activity, bank holding companies are not authorized to perform tasks or operations or provide services to client institutions either on a daily or continuing basis, except as necessary to instruct the client institution on how to perform such services for itself. See also the Board's interpretation of bank management consulting advice [12 CFR 225.131]. This interpretation shall apply to the performance of management consulting services for commercial banks and any other type of depository institution.