

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

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

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

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

§ 1843. Interests in nonbanking organizations

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

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

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

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

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

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

such extension is necessary to avert substantial loss to the company.

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

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

(c) Exemptions

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

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

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

riod, or the disposal of such shares during such 5-year period would have been detrimental to the company, except that the aggregate duration of such extensions shall not extend beyond 10 years after the date on which such shares were acquired;

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

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

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

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

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

(8) shares of any company the activities of which had been determined by the Board by regulation or order under this paragraph as of the day before November 12, 1999, to be so closely related to banking as to be a proper incident thereto (subject to such terms and conditions contained in such regulation or order, unless modified by the Board);

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

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

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

(12) shares retained or acquired, or activities engaged in, by any company which becomes,

as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on December 31, 1970, or by any subsidiary thereof, if such company—

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

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

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

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

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

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

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

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

(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

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

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

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

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

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

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

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

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

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

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

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

(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its in-

vestment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodity contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

(E) Notwithstanding any other provision of law, an Edge Act corporation, organized under section 25(a)¹ of the Federal Reserve Act (12 U.S.C. 611-631), which is a subsidiary of a bank holding company, or an agreement corporation, operating subject to section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.], which is a subsidiary of a bank holding company, may invest directly and indirectly in the aggregate up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of a corporation not engaged in banking) in the voting stock of² other evidences of ownership in one or more export trading companies.

(F) For purposes of this paragraph—

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

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

(iii) the term "bank holding company" shall include a bank which (I) is organized solely to do business with other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank, owning stock in a bank described in this clause that invests in an

export trading company, shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

(iv) the term "extension of credit" shall have the same meaning given such term in the fourth paragraph of section 371c¹ of this title.

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

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

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

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

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

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

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

(H) INVENTORY.—

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

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

The Board shall include in its annual report to the Congress a description and a statement of

¹ See References in Text note below.

² So in original. Probably should be "or".

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

the reasons for approval of each activity approved by it by order or regulation under such paragraph during the period covered by the report.

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

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

(e) Divestiture of nonexempt shares

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

(f) Certain companies not treated as bank holding companies

(1) In general

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

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

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

shall not be treated as a bank holding company for purposes of this chapter solely by virtue of such company's control of such institution.

(2) Loss of exemption

Subject to paragraph (3), a company described in paragraph (1) shall no longer qualify for the exemption provided under that paragraph if—

(A) such company directly or indirectly—

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

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

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

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

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

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

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

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

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

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

(IX) shares of a savings association held by any insurance company, as defined in section 2(a)(17) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(17)], except as provided in paragraph (11);

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

(XI) assets that are derived from, or incidental to, activities in which institutions described in subparagraph (F) or (H) of section 1841(c)(2) of this title are permitted to engage;

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

(B) any bank subsidiary of such company—

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

(ii) engages in the business of making commercial loans (except that, for pur-

poses of this clause, loans made in the ordinary course of a credit card operation shall not be treated as commercial loans); or

(C) after August 10, 1987, any bank subsidiary of such company permits any overdraft (including any intraday overdraft), or incurs any such overdraft in the account of the bank at a Federal reserve bank, on behalf of an affiliate, other than an overdraft described in paragraph (3).

(3) Permissible overdrafts described

For purposes of paragraph (2)(C), an overdraft is described in this paragraph if—

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

(B) such overdraft—

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

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

(C) such overdraft—

(i) is permitted or incurred by, or on behalf of, an affiliate in connection with an activity that is financial in nature or incidental to a financial activity; and

(ii) does not cause the bank to violate any provision of section 371c or 371c-1 of this title, either directly, in the case of a bank that is a member of the Federal Reserve System, or by virtue of section 18(j) of the Federal Deposit Insurance Act [12 U.S.C. 1828(j)], in the case of a bank that is not a member of the Federal Reserve System.

(4) Divestiture in case of loss of exemption

If any company described in paragraph (1) fails to qualify for the exemption provided under paragraph (1) by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period beginning on the date on which the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless, before the end of such 180-day period, the company has—

(A) either—

(i) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; or

(ii) submitted a plan to the Board for approval to cease the activity or correct the condition in a timely manner (which shall not exceed 1 year); and

(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.

(5) Subsection ceases to apply under certain circumstances

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

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

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

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

(6) Information requirement

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

(7) Examination

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

(8) Enforcement

(A) In general

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

(B) Application of other act

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

(C) No effect on other authority

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

(9) Tying provisions

A company described in paragraph (1) shall be—

(A) treated as a bank holding company for purposes of section 106 of the Bank Holding

Company Act Amendments of 1970 [12 U.S.C. 1971 et seq.] and section 22(h) of the Federal Reserve Act [12 U.S.C. 375b] and any regulation prescribed under any such section; and

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

(10) Exemption unaffected by certain emergency acquisitions

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

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

(B) either—

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

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

(11) Shares held by insurance affiliates

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

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

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

(12) Exemption unaffected by certain other acquisitions

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

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

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

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

A company described in paragraph (1) that holds shares issued in a qualified stock issuance pursuant to section 1467a(q) of this title

by any savings association or savings and loan holding company (neither of which is a subsidiary) shall not be deemed to control such savings association or savings and loan holding company solely because such company holds such shares unless—

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

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

(14) Foreign bank subsidiaries of limited purpose credit card banks

(A) In general

An institution described in section 1841(c)(2)(F) of this title may control a foreign bank if—

(i) the investment of the institution in the foreign bank meets the requirements of section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.] and the foreign bank qualifies under such sections;

(ii) the foreign bank does not offer any products or services in the United States; and

(iii) the activities of the foreign bank are permissible under otherwise applicable law.

(B) Other limitations inapplicable

The limitations contained in any clause of section 1841(c)(2)(F) of this title shall not apply to a foreign bank described in subparagraph (A) that is controlled by an institution described in such section.

(g) Limitations on certain banks

(1) In general

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

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

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

(2) Limitations cease to apply under certain circumstances

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

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

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

(h) Tying provisions

(1) Applicable to certain exempt institutions and parent companies

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

(2) Applicable with respect to certain transactions

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

(i) Acquisition of savings associations

(1) In general

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

(2) Prohibition on tandem restrictions

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

(3) Acquisition of insolvent savings associations

(A) In general

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

(B) "Qualified savings association" defined

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

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

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

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

(4) Solicitation of views

(A) Notice

Upon receiving any application or notice by a bank holding company to acquire, directly or indirectly, a savings association under subsection (c)(8), the Board shall solicit comments and recommendations from—

(i) the Comptroller of the Currency, with respect to the acquisition of a Federal savings association; and

(ii) the Federal Deposit Insurance Corporation, with respect to the acquisition of a State savings association.

(B) Comment period

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

(5) Examination

(A) Scope

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

(B) Access to inspection reports

Upon the request of the Comptroller of the Currency or the Federal Deposit Insurance Corporation, the Board shall furnish the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, with a copy of any inspection report, additional examination materials, or supervisory information relating to any bank holding company that directly or indirectly controls a savings association.

(6) Coordination of enforcement efforts

The Board and the Comptroller of the Currency or the Federal Deposit Insurance Cor-

poration, as applicable, shall cooperate in any enforcement action against any bank holding company that controls a savings association, if the relevant conduct involves such association.

(7) Repealed. Pub. L. 111-203, title III, § 354(2)(A)(iv), July 21, 2010, 124 Stat. 1547

(8) Interstate acquisitions

(A) In general

The Board may not approve an application by a bank holding company to acquire an insured depository institution under subsection (c)(8) or any other provision of this chapter if—

(i) the home State of such insured depository institution is a State other than the home State of the bank holding company; and

(ii) the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) Exception

Subparagraph (A) shall not apply to an acquisition that involves an insured depository institution in default or in danger of default, or with respect to which the Federal Deposit Insurance Corporation provides assistance under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823).

(j) Notice procedures for nonbanking activities

(1) General notice procedure

(A) Notice requirement

Except as provided in paragraph (3), no bank holding company may engage in any nonbanking activity or acquire or retain ownership or control of the shares of a company engaged in activities based on subsection (c)(8) or (a)(2) or in any complementary activity under subsection (k)(1)(B) without providing the Board with written notice of the proposed transaction or activity at least 60 days before the transaction or activity is proposed to occur or commence.

(B) Contents of notice

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

(C) Procedure for agency action

(i) Notice of disapproval

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

(ii) Extension of period

The Board may extend the 60-day period referred to in clause (i) for an additional 30

days. The Board may further extend the period with the agreement of the bank holding company submitting the notice pursuant to this subsection.

(iii) Determination of period in case of public hearing

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

(D) Approval before end of period

(i) In general

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

(ii) Shorter periods by regulation

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

(E) Extension of period

In the case of any notice to engage in, or to acquire or retain ownership or control of shares of any company engaged in, any activity pursuant to subsection (c)(8) or (a)(2) or in any complementary activity under subsection (k)(1)(B) that has not been previously approved by regulation, the Board may extend the notice period under this subsection for an additional 90 days. The Board may further extend the period with the agreement of the bank holding company submitting the notice pursuant to this subsection.

(2) General standards for review

(A) Criteria

In connection with a notice under this subsection, the Board shall consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system.

(B) Grounds for disapproval

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

(C) Conditional action

Nothing in this subsection limits the authority of the Board to impose conditions in

connection with an action under this section.

(3) No notice required for certain transactions

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

(4) Criteria for statutory approval

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

(A) Financial criteria

Both before and immediately after the proposed transaction—

- (i) the acquiring bank holding company is well capitalized;
- (ii) the lead insured depository institution of such holding company is well capitalized;
- (iii) well capitalized insured depository institutions control at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company; and
- (iv) no insured depository institution controlled by such holding company is undercapitalized.

(B) Managerial criteria

(i) Well managed

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

(ii) Limitation on poorly managed institutions

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

(C) Activities permissible

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

- (i) activities that are permissible under subsection (c)(8), as determined by the Board by regulation or order thereunder, subject to all of the restrictions, terms, and conditions of such subsection and such regulation or order; and
- (ii) such other activities as are otherwise permissible under this section, subject to the restrictions, terms and conditions, including any prior notice or approval requirements, provided in this section.

(D) Size of acquisition

(i) Asset size

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

(ii) Consideration

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

(E) Notice not otherwise warranted

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

(F) Compliance criterion

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

(5) Notification

(A) Commencement of activities approved by rule

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

(B) Activities permitted by order and acquisitions

(i) In general

At least 12 business days before commencing any activity pursuant to paragraph (3) (other than an activity described in subparagraph (A) of this paragraph) or acquiring shares or assets of any company pursuant to paragraph (3), the bank holding company shall provide written notice of the proposal to the Board, unless the Board determines that no notice or a shorter notice period is appropriate.

(ii) Description of activities and terms

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

(6) Recently acquired institutions

Any insured depository institution which has been acquired by a bank holding company

during the 12-month period preceding the date on which the company proposes to commence an activity or acquisition pursuant to paragraph (3) may be excluded for purposes of paragraph (4)(B)(ii) if—

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

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

(7) Adjustment of percentages

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

(k) Engaging in activities that are financial in nature

(1) In general

Notwithstanding subsection (a), a financial holding company may engage in any activity, and may acquire and retain the shares of any company engaged in any activity, that the Board, in accordance with paragraph (2), determines (by regulation or order)—

(A) to be financial in nature or incidental to such financial activity; or

(B) is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.

(2) Coordination between the Board and the Secretary of the Treasury

(A) Proposals raised before the Board

(i) Consultation

The Board shall notify the Secretary of the Treasury of, and consult with the Secretary of the Treasury concerning, any request, proposal, or application under this subsection for a determination of whether an activity is financial in nature or incidental to a financial activity.

(ii) Treasury view

The Board shall not determine that any activity is financial in nature or incidental to a financial activity under this subsection if the Secretary of the Treasury notifies the Board in writing, not later than 30 days after the date of receipt of the notice described in clause (i) (or such longer period as the Board determines to be appropriate under the circumstances) that the Secretary of the Treasury believes that the activity is not financial in nature or incidental to a financial activity or is not otherwise permissible under this section.

(B) Proposals raised by the Treasury

(i) Treasury recommendation

The Secretary of the Treasury may, at any time, recommend in writing that the

Board find an activity to be financial in nature or incidental to a financial activity.

(ii) Time period for Board action

Not later than 30 days after the date of receipt of a written recommendation from the Secretary of the Treasury under clause (i) (or such longer period as the Secretary of the Treasury and the Board determine to be appropriate under the circumstances), the Board shall determine whether to initiate a public rulemaking proposing that the recommended activity be found to be financial in nature or incidental to a financial activity under this subsection, and shall notify the Secretary of the Treasury in writing of the determination of the Board and, if the Board determines not to seek public comment on the proposal, the reasons for that determination.

(3) Factors to be considered

In determining whether an activity is financial in nature or incidental to a financial activity, the Board shall take into account—

(A) the purposes of this chapter and the Gramm-Leach-Bliley Act;

(B) changes or reasonably expected changes in the marketplace in which financial holding companies compete;

(C) changes or reasonably expected changes in the technology for delivering financial services; and

(D) whether such activity is necessary or appropriate to allow a financial holding company and the affiliates of a financial holding company to—

(i) compete effectively with any company seeking to provide financial services in the United States;

(ii) efficiently deliver information and services that are financial in nature through the use of technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; and

(iii) offer customers any available or emerging technological means for using financial services or for the document imaging of data.

(4) Activities that are financial in nature

For purposes of this subsection, the following activities shall be considered to be financial in nature:

(A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

(B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing, in any State.

(C) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940 [15 U.S.C. 80a-3]).

(D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

(E) Underwriting, dealing in, or making a market in securities.

(F) Engaging in any activity that the Board has determined, by order or regulation that is in effect on November 12, 1999, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).

(G) Engaging, in the United States, in any activity that—

(i) a bank holding company may engage in outside of the United States; and

(ii) the Board has determined, under regulations prescribed or interpretations issued pursuant to subsection (c)(13) (as in effect on the day before November 12, 1999) to be usual in connection with the transaction of banking or other financial operations abroad.

(H) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls), or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust certificates, or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or subsidiary of a depository institution;

(ii) such shares, assets, or ownership interests are acquired and held by—

(I) a securities affiliate or an affiliate thereof; or

(II) an affiliate of an insurance company described in subparagraph (I)(ii) that provides investment advice to an insurance company and is registered pursuant to the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], or an affiliate of such investment adviser;

as part of a bona fide underwriting or merchant or investment banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

(iii) such shares, assets, or ownership interests are held for a period of time to enable the sale or disposition thereof on a reasonable basis consistent with the financial viability of the activities described in clause (ii); and

(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not routinely manage or operate such company or entity except as may be necessary or required to ob-

tain a reasonable return on investment upon resale or disposition.

(I) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or a subsidiary of a depository institution;

(ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance) or providing and issuing annuities;

(iii) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and

(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not routinely manage or operate such company except as may be necessary or required to obtain a reasonable return on investment.

(5) Actions required

(A) In general

The Board shall, by regulation or order, define, consistent with the purposes of this chapter, the activities described in subparagraph (B) as financial in nature, and the extent to which such activities are financial in nature or incidental to a financial activity.

(B) Activities

The activities described in this subparagraph are as follows:

(i) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

(ii) Providing any device or other instrumentality for transferring money or other financial assets.

(iii) Arranging, effecting, or facilitating financial transactions for the account of third parties.

(6) Required notification

(A) In general

A financial holding company that acquires any company or commences any activity pursuant to this subsection shall provide written notice to the Board describing the activity commenced or conducted by the company acquired not later than 30 calendar days after commencing the activity or con-

summing the acquisition, as the case may be.

(B) Approval not required for certain financial activities

(i) In general

Except as provided in subsection (j) with regard to the acquisition of a savings association and clause (ii), a financial holding company may commence any activity, or acquire any company, pursuant to paragraph (4) or any regulation prescribed or order issued under paragraph (5), without prior approval of the Board.

(ii) Exception

A financial holding company may not acquire a company, without the prior approval of the Board, in a transaction in which the total consolidated assets to be acquired by the financial holding company exceed \$10,000,000,000.

(iii) Hart-Scott-Rodino filing requirement

Solely for purposes of section 18a(c)(8) of title 15, the transactions subject to the requirements of this paragraph shall be treated as if the approval of the Board is not required.

(7) Merchant banking activities

(A) Joint regulations

The Board and the Secretary of the Treasury may issue such regulations implementing paragraph (4)(H), including limitations on transactions between depository institutions and companies controlled pursuant to such paragraph, as the Board and the Secretary jointly deem appropriate to assure compliance with the purposes and prevent evasions of this chapter and the Gramm-Leach-Bliley Act and to protect depository institutions.

(B) Sunset of restrictions on merchant banking activities of financial subsidiaries

The restrictions contained in paragraph (4)(H) on the ownership and control of shares, assets, or ownership interests by or on behalf of a subsidiary of a depository institution shall not apply to a financial subsidiary (as defined in section 24a of this title) of a bank, if the Board and the Secretary of the Treasury jointly authorize financial subsidiaries of banks to engage in merchant banking activities pursuant to section 122 of the Gramm-Leach-Bliley Act.

(I) Conditions for engaging in expanded financial activities

(1) In general

Notwithstanding subsection (k), (n), or (o), a bank holding company may not engage in any activity, or directly or indirectly acquire or retain shares of any company engaged in any activity, under subsection (k), (n), or (o), other than activities permissible for any bank holding company under subsection (c)(8), unless—

(A) all of the depository institution subsidiaries of the bank holding company are well capitalized;

(B) all of the depository institution subsidiaries of the bank holding company are well managed;

(C) the bank holding company is well capitalized and well managed; and

(D) the bank holding company has filed with the Board—

(i) a declaration that the company elects to be a financial holding company to engage in activities or acquire and retain shares of a company that were not permissible for a bank holding company to engage in or acquire before the enactment of the Gramm-Leach-Bliley Act; and

(ii) a certification that the company meets the requirements of subparagraphs (A), (B), and (C).

(2) CRA requirement

Notwithstanding subsection (k) or (n) of this section, section 24a(a) of this title, or section 46(a) of the Federal Deposit Insurance Act [12 U.S.C. 1831w(a)], the appropriate Federal banking agency shall prohibit a financial holding company or any insured depository institution from—

(A) commencing any new activity under subsection (k) or (n) of this section, section 24a(a) of this title, or section 46(a) of the Federal Deposit Insurance Act; or

(B) directly or indirectly acquiring control of a company engaged in any activity under subsection (k) or (n) of this section, section 24a(a) of this title, or section 46(a) of the Federal Deposit Insurance Act (other than an investment made pursuant to subparagraph (H) or (I) of subsection (k)(4), or section 122 of the Gramm-Leach-Bliley Act, or under section 46(a) of the Federal Deposit Insurance Act by reason of such section 122, by an affiliate already engaged in activities under any such provision);

if any insured depository institution subsidiary of such financial holding company, or the insured depository institution or any of its insured depository institution affiliates, has received in its most recent examination under the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.], a rating of less than “satisfactory record of meeting community credit needs”.

(3) Foreign banks

For purposes of paragraph (1), the Board shall apply comparable capital and management standards to a foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States, giving due regard to the principle of national treatment and equality of competitive opportunity.

(m) Provisions applicable to financial holding companies that fail to meet certain requirements

(1) In general

If the Board finds that—

(A) a financial holding company is engaged, directly or indirectly, in any activity under subsection (k), (n), or (o), other than activities that are permissible for a bank holding company under subsection (c)(8); and

(B) such financial holding company is not in compliance with the requirements of subsection (l)(1);

the Board shall give notice to the financial holding company to that effect, describing the conditions giving rise to the notice.

(2) Agreement to correct conditions required

Not later than 45 days after the date of receipt by a financial holding company of a notice given under paragraph (1) (or such additional period as the Board may permit), the financial holding company shall execute an agreement with the Board to comply with the requirements applicable to a financial holding company under subsection (l)(1).

(3) Board may impose limitations

Until the conditions described in a notice to a financial holding company under paragraph (1) are corrected, the Board may impose such limitations on the conduct or activities of that financial holding company or any affiliate of that company as the Board determines to be appropriate under the circumstances and consistent with the purposes of this chapter.

(4) Failure to correct

If the conditions described in a notice to a financial holding company under paragraph (1) are not corrected within 180 days after the date of receipt by the financial holding company of a notice under paragraph (1), the Board may require such financial holding company, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the discretion of the Board, either—

(A) to divest control of any subsidiary depository institution; or

(B) at the election of the financial holding company instead to cease to engage in any activity conducted by such financial holding company or its subsidiaries (other than a depository institution or a subsidiary of a depository institution) that is not an activity that is permissible for a bank holding company under subsection (c)(8).

(5) Consultation

In taking any action under this subsection, the Board shall consult with all relevant Federal and State regulatory agencies and authorities.

(n) Authority to retain limited nonfinancial activities and affiliations

(1) In general

Notwithstanding subsection (a), a company that is not a bank holding company or a foreign bank (as defined in section 3101(7) of this title) and becomes a financial holding company after November 12, 1999, may continue to engage in any activity and retain direct or indirect ownership or control of shares of a company engaged in any activity if—

(A) the holding company lawfully was engaged in the activity or held the shares of such company on September 30, 1999;

(B) the holding company is predominantly engaged in financial activities as defined in paragraph (2); and

(C) the company engaged in such activity continues to engage only in the same activities that such company conducted on Sep-

tember 30, 1999, and other activities permissible under this chapter.

(2) Predominantly financial

For purposes of this subsection, a company is predominantly engaged in financial activities if the annual gross revenues derived by the holding company and all subsidiaries of the holding company (excluding revenues derived from subsidiary depository institutions), on a consolidated basis, from engaging in activities that are financial in nature or are incidental to a financial activity under subsection (k) represent at least 85 percent of the consolidated annual gross revenues of the company.

(3) No expansion of grandfathered commercial activities through merger or consolidation

A financial holding company that engages in activities or holds shares pursuant to this subsection, or a subsidiary of such financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company that is engaged in any activity that the Board has not determined to be financial in nature or incidental to a financial activity under subsection (k), except this paragraph shall not apply with respect to a company that owns a broadcasting station licensed under title III of the Communications Act of 1934 [47 U.S.C. 301 et seq.] and the shares of which are under common control with an insurance company since January 1, 1998, unless such company is acquired by, or otherwise becomes an affiliate of, a bank holding company that, at the time such acquisition or affiliation is consummated, is 1 of the 5 largest domestic bank holding companies (as determined on the basis of the consolidated total assets of such companies).

(4) Continuing revenue limitation on grandfathered commercial activities

Notwithstanding any other provision of this subsection, a financial holding company may continue to engage in activities or hold shares in companies pursuant to this subsection only to the extent that the aggregate annual gross revenues derived from all such activities and all such companies does not exceed 15 percent of the consolidated annual gross revenues of the financial holding company (excluding revenues derived from subsidiary depository institutions).

(5) Cross marketing restrictions applicable to commercial activities

(A) In general

A depository institution controlled by a financial holding company shall not—

(i) offer or market, directly or through any arrangement, any product or service of a company whose activities are conducted or whose shares are owned or controlled by the financial holding company pursuant to this subsection or subparagraph (H) or (I) of subsection (k)(4); or

(ii) permit any of its products or services to be offered or marketed, directly or through any arrangement, by or through any company described in clause (i).

(B) Rule of construction

Subparagraph (A) shall not be construed as prohibiting an arrangement between a depository institution and a company owned or controlled pursuant to subparagraph (H) or (I) of subsection (k)(4) for the marketing of products or services through statement inserts or Internet websites if—

(i) such arrangement does not violate section 106 of the Bank Holding Company Act Amendments of 1970 [12 U.S.C. 1971 et seq.]; and

(ii) the Board determines that the arrangement is in the public interest, does not undermine the separation of banking and commerce, and is consistent with the safety and soundness of depository institutions.

(6) Transactions with nonfinancial affiliates

A depository institution controlled by a financial holding company may not engage in a covered transaction (as defined in section 371c(b)(7) of this title) with any affiliate controlled by the company pursuant to this subsection.

(7) Sunset of grandfather

A financial holding company engaged in any activity, or retaining direct or indirect ownership or control of shares of a company, pursuant to this subsection, shall terminate such activity and divest ownership or control of the shares of such company before the end of the 10-year period beginning on November 12, 1999. The Board may, upon application by a financial holding company, extend such 10-year period by a period not to exceed an additional 5 years if such extension would not be detrimental to the public interest.

(o) Regulation of certain financial holding companies

Notwithstanding subsection (a), a company that is not a bank holding company or a foreign bank (as defined in section 3101(7) of this title) and becomes a financial holding company after November 12, 1999, may continue to engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that were not permissible for bank holding companies to conduct in the United States as of September 30, 1997, if—

(1) the holding company, or any subsidiary of the holding company, lawfully was engaged, directly or indirectly, in any of such activities as of September 30, 1997, in the United States;

(2) the attributed aggregate consolidated assets of the company held by the holding company pursuant to this subsection, and not otherwise permitted to be held by a financial holding company, are equal to not more than 5 percent of the total consolidated assets of the bank holding company, except that the Board may increase that percentage by such amounts and under such circumstances as the Board considers appropriate, consistent with the purposes of this chapter; and

(3) the holding company does not permit—

(A) any company, the shares of which it owns or controls pursuant to this sub-

section, to offer or market any product or service of an affiliated depository institution; or

(B) any affiliated depository institution to offer or market any product or service of any company, the shares of which are owned or controlled by such holding company pursuant to this subsection.

(May 9, 1956, ch. 240, § 4, 70 Stat. 135; Pub. L. 89-485, § 8, July 1, 1966, 80 Stat. 238; Pub. L. 91-607, title I, § 103, Dec. 31, 1970, 84 Stat. 1763; Pub. L. 95-188, title III, § 301(c), Nov. 16, 1977, 91 Stat. 1389; Pub. L. 95-630, title I, § 112, Nov. 10, 1978, 92 Stat. 3671; Pub. L. 96-221, title VII, § 701(b), Mar. 31, 1980, 94 Stat. 186; Pub. L. 97-290, title II, § 203, Oct. 8, 1982, 96 Stat. 1236; Pub. L. 97-320, title I, §§ 118(a), 141(a)(4), title IV, § 433(b), title VI, § 601, Oct. 15, 1982, 96 Stat. 1479, 1489, 1527, 1536; Pub. L. 97-457, § 30, Jan. 12, 1983, 96 Stat. 2511; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-86, title I, § 101(b), (c), title V, §§ 502(h)(2), 509(a), Aug. 10, 1987, 101 Stat. 557, 628, 635; Pub. L. 100-418, title III, § 3402, Aug. 23, 1988, 102 Stat. 1384; Pub. L. 101-73, title VI, §§ 601(a), 603, 604(b), title XII, § 1219, Aug. 9, 1989, 103 Stat. 408, 409, 411, 546; Pub. L. 102-242, title IV, § 461, Dec. 19, 1991, 105 Stat. 2384; Pub. L. 102-550, title XVI, § 1606(h)(1), Oct. 28, 1992, 106 Stat. 4089; Pub. L. 103-325, title III, § 346, Sept. 23, 1994, 108 Stat. 2239; Pub. L. 104-208, div. A, title II, §§ 2203(d), 2208(a), 2215, 2304(a), 2612, Sept. 30, 1996, 110 Stat. 3009-404, 3009-406, 3009-413, 3009-425, 3009-476; Pub. L. 106-102, title I, §§ 102(a), 103(a), (c)(2), 107(a), (b), (d)-(f), Nov. 12, 1999, 113 Stat. 1341, 1342, 1351, 1359-1361; Pub. L. 109-351, title VI, § 611, title VII, § 727(b), Oct. 13, 2006, 120 Stat. 1984, 2003; Pub. L. 111-203, title III, § 354(2)(A), title VI, §§ 604(e), 606(a), 623(b)(1), July 21, 2010, 124 Stat. 1546, 1601, 1607, 1634.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning act May 9, 1956, ch. 240, 70 Stat. 133, known as the Bank Holding Company Act of 1956, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

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

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

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

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

Section 371c of this title, referred to in subsec. (c)(14)(F)(iv), was amended generally by Pub. L. 97-320, title IV, §410(b), Oct. 15, 1982, 96 Stat. 1515, and, as so amended, no longer contains undesignated pars. and no longer defines “extension of credit”.

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

Section 106 of the Bank Holding Company Act Amendments of 1970, referred to in subsecs. (f)(9)(A), (h) and (n)(5)(B)(i), is Pub. L. 91-607, title I, §106, Dec. 31, 1970, 84 Stat. 1766, as amended, which is classified generally to chapter 22 (§1971 et seq.) of this title.

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

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

The Gramm-Leach-Bliley Act, referred to in subsecs. (k)(3)(A), (7) and (l)(1)(D)(i), (2)(B), is Pub. L. 106-102, Nov. 12, 1999, 113 Stat. 1338. Section 122 of the Act is set out as a note below. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of this title and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (k)(4)(H)(ii)(II), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80b-20 of Title 15 and Tables.

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

The Communications Act of 1934, referred to in subsec. (n)(3), is act June 19, 1934, ch. 652, 48 Stat. 1964. Title III of the Act is classified generally to subchapter III (§301 et seq.) of chapter 5 of Title 47, Telecommunications. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

AMENDMENTS

2010—Subsec. (i)(4)(A). Pub. L. 111-203, §354(2)(A)(i)(I), struck out “to Director” at end of heading, substituted “Board shall solicit comments and recommendations from—” for “Board shall solicit comments and recommendations from the Director with respect to such acquisition.”, and added cls. (i) and (ii).

Subsec. (i)(4)(B). Pub. L. 111-203, §354(2)(A)(i)(II), substituted “Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable,” for “Director” wherever appearing.

Subsec. (i)(5). Pub. L. 111-203, §354(2)(A)(ii)(II), substituted “Comptroller of the Currency or the Federal Deposit Insurance Corporation” for “Director” in two places.

Subsec. (i)(5)(B). Pub. L. 111-203, §354(2)(A)(ii)(I), substituted “Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, with” for “Director with”.

Subsec. (i)(6). Pub. L. 111-203, §354(2)(A)(iii), substituted “Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable,” for “Director”.

Subsec. (i)(7). Pub. L. 111-203, §354(2)(A)(iv), struck out par. (7). Text read as follows: “For purposes of this section, the term ‘Director’ means the Director of the Office of Thrift Supervision.”

Subsec. (i)(8). Pub. L. 111-203, §623(b)(1)(A), added par. (8).

Subsec. (j)(2)(A). Pub. L. 111-203, §604(e)(1), substituted “unsound banking practices, or risk to the sta-

bility of the United States banking or financial system” for “or unsound banking practices”.

Subsec. (k)(6)(B). Pub. L. 111-203, §623(b)(1)(B), substituted “insured depository institution” for “savings association”.

Pub. L. 111-203, §604(e)(2), amended subpar. (B) generally. Prior to amendment, text read as follows: “Except as provided in subsection (j) of this section with regard to the acquisition of a [sic] insured depository institution, a financial holding company may commence any activity, or acquire any company, pursuant to paragraph (4) or any regulation prescribed or order issued under paragraph (5), without prior approval of the Board.”

Subsec. (l)(1)(C), (D). Pub. L. 111-203, §606(a)(1)–(3), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (l)(1)(D)(ii). Pub. L. 111-203, §606(a)(4), substituted “subparagraphs (A), (B), and (C)” for “subparagraphs (A) and (B)”.

2006—Subsec. (h)(1), (2). Pub. L. 109-351, §727(b), substituted “(G), or (H) of section 1841(c)(2)” for “(G), (H), (I), or (J) of section 1841(c)(2)”.

Subsec. (n)(5)(B). Pub. L. 109-351, §611, substituted “subparagraph (H) or (I) of subsection (k)(4)” for “subsection (k)(4)(I)” in introductory provisions.

1999—Subsec. (c)(8). Pub. L. 106-102, §102(a), amended par. (8) generally, substituting present provisions for provisions which exempted from prohibitions of this section shares of any bank holding company the activities of which were determined to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, which further provided that for purposes of this subsection it was not closely related to banking or managing or controlling banks for a bank holding company to provide insurance as a principal, agent, or broker except in certain circumstances, which further provided factors to consider in determining whether a particular activity is a proper incident to banking or managing or controlling banks, and which further provided notice and other procedural requirements in making such determinations.

Subsec. (f)(2). Pub. L. 106-102, §107(d)(1), added introductory provisions and struck out former introductory provisions which read as follows: “Paragraph (1) shall cease to apply to any company described in such paragraph if—”.

Subsec. (f)(2)(A)(ii)(XI). Pub. L. 106-102, §107(d)(2)(A)–(C), added subcl. (XI).

Subsec. (f)(2)(B), (C). Pub. L. 106-102, §107(d)(2)(D), (3), added subpars. (B) and (C) and struck out former subpar. (B) which read as follows: “any bank subsidiary of such company fails to comply with the restrictions contained in paragraph (3)(B).”

Subsec. (f)(3). Pub. L. 106-102, §107(a), (b), added par. (3) and struck out heading and text of former par. (3) which related to limitation on banks controlled by paragraph (1) companies.

Subsec. (f)(4). Pub. L. 106-102, §107(e), reenacted heading without change and amended text of par. (4) generally. Prior to amendment, text read as follows: “If any company described in paragraph (1) loses the exemption provided under such paragraph by operation of paragraph (2), such company shall divest control of each bank it controls within 180 days after such company becomes a bank holding company due to the loss of such exemption.”

Subsec. (f)(14). Pub. L. 106-102, §107(f), added par. (14).

Subsec. (j)(1)(A), (E). Pub. L. 106-102, §103(c)(2)(A), inserted “or in any complementary activity under subsection (k)(1)(B)” after “subsection (c)(8) or (a)(2)”.

Subsec. (j)(3). Pub. L. 106-102, §103(c)(2)(B), inserted “, other than any complementary activity under subsection (k)(1)(B),” after “to engage in any activity” and “or a company engaged in any complementary activity under subsection (k)(1)(B)” after “insured depository institution”.

Subsecs. (k) to (o). Pub. L. 106-102, §103(a), added subsecs. (k) to (o).

1996—Subsec. (c)(2). Pub. L. 104-208, §2215, struck out “for not more than one year at a time” before “if, in

its judgment,” and substituted “and, in the case of a bank holding company which has not disposed of such shares within 5 years after the date on which such shares were acquired, the Board may, upon the application of such company, grant additional exemptions if, in the judgment of the Board, such extension would not be detrimental to the public interest and, either the bank holding company has made a good faith attempt to dispose of such shares during such 5-year period, or the disposal of such shares during such 5-year period would have been detrimental to the company, except that the aggregate duration of such extensions shall not extend beyond 10 years” for “but no such extensions shall extend beyond a date five years”.

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

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

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

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

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

1994—Subsec. (c). Pub. L. 103-325, §346(2), struck out before last sentence “In the event of the failure of the Board to act on any application for an order under paragraph (8) of this subsection within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted.”

Subsec. (j). Pub. L. 103-325, §346(1), added subsec. (j).
1992—Subsec. (i)(3). Pub. L. 102-550, §1606(h)(1), amended directory language of Pub. L. 102-242, §461. See 1991 Amendment note below.

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (i). Pub. L. 101-73, §601(a), added subsec. (i).
1988—Subsec. (c)(14)(A). Pub. L. 100-418, §3402(b), added cl. (v) and redesignated former cls. (v) and (vi) as (vi) and (vii), respectively.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1978—Subsec. (c). Pub. L. 95-630 substituted “The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural or-

ganization exempt from taxation under section 501 of title 26, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred” for “The prohibitions in this section shall not apply to any bank holding company which is (i) a labor, agricultural, or horticultural organization and which is exempt from taxation under section 501 of title 26”.

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

1970—Subsec. (a). Pub. L. 91-607, §103(1), (2), in par. (2) of first sentence, inserted provision respecting prohibition in the case of a company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, after Dec. 31, 1980, substituted “engage in any activities” for “engage in any business”, designated existing provisions as cl. (A), substituting therein “and other subsidiaries authorized under this chapter or of furnishing services to or performing services for its subsidiaries” for “or of furnishing services to or performing services for any bank of which it owns or controls 25 per centum or more of the voting shares”, added cl. (B) and provisions respecting activities of a company covered in 1970, and termination of authority for engaging in the activities, authorization of bank holding company to engage in activities through acquisition of interest in or assets of a going concern engaged in the activities, and retention for period of ten years ownership or control of shares in a company carrying on the activity, where the activity of the company has been terminated; and, in second sentence substituted “two year period” for “period”, respectively.

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

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

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

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

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

1966—Subsec. (a). Pub. L. 89-485, §8(a), extended until December 31, 1978, the deadline for divestiture by bank holding companies of their nonbanking interests in the case of any company that has been continuously affil-

ated since May 15, 1955, with a company which was registered under the Investment Company Act of 1940, prior to May 15, 1955, in such a manner as to constitute an affiliated company within the meaning of that Act.

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

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

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 354(2)(A) of Pub. L. 111-203 effective on the transfer date, see section 351 of Pub. L. 111-203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 604(e) of Pub. L. 111-203 effective on the transfer date, see section 604(j) of Pub. L. 111-203, set out as a note under section 1462 of this title.

Amendment by section 606(a) of Pub. L. 111-203 effective on the transfer date, see section 606(c) of Pub. L. 111-203, set out as a note under section 1467a of this title.

Amendment by section 623(b)(1) of Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106-102, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

SHORT TITLE OF 1982 AMENDMENT

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

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsection (c) (last sentence) of this section is listed on page 171), see section 3003 of Pub. L. 104-66, set out as a note under section 1113 of Title 31, Money and Finance.

DETERMINATIONS REGARDING REAL ESTATE BROKERAGE
ACTIVITY OR REAL ESTATE MANAGEMENT ACTIVITY

Pub. L. 111-8, div. D, title VI, §624, Mar. 11, 2009, 123 Stat. 678, provided that: “Notwithstanding any other provision of law, for fiscal year 2009 and each fiscal year thereafter, neither the Board of Governors of the Federal Reserve System nor the Secretary of the Treasury may determine, by rule, regulation, order, or otherwise, for purposes of section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)], or section 5136A of the Revised Statutes of the United States [12 U.S.C. 24a], that real estate brokerage activity or real estate management activity is an activity that is financial in nature, is incidental to any financial activity, or is complementary to a financial activity. For purposes of this section, ‘real estate brokerage activity’ shall mean ‘real estate brokerage’, and ‘real estate management activity’ shall mean ‘property management’, as those terms were understood by the Board of Governors of the Federal Reserve System prior to March 11, 2000.”

REPORT TO CONGRESS ON NEW ACTIVITIES OF
FINANCIAL HOLDING COMPANIES

Pub. L. 106-102, title I, §103(d), Nov. 12, 1999, 113 Stat. 1351, provided that:

“(1) IN GENERAL.—By the end of the 4-year period beginning on the date of the enactment of this Act [Nov. 12, 1999], the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall submit a joint report to the Congress containing a summary of new activities, including grandfathered commercial activities, in which any financial holding company is engaged pursuant to subsection (k)(1) or (n) of section 4 of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)(1), (n)] (as added by subsection (a)).

“(2) OTHER CONTENTS.—The report submitted to the Congress pursuant to paragraph (1) shall also contain the following:

“(A) A discussion of actions by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, whether by regulation, order, interpretation, or guideline or by approval or disapproval of an application, with regard to activities of financial holding companies that are incidental to activities that are financial in nature or complementary to such financial activities.

“(B) An analysis and discussion of the risks posed by commercial activities of financial holding companies to the safety and soundness of affiliate depository institutions.

“(C) An analysis and discussion of the effect of mergers and acquisitions under section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)] on market concentration in the financial services industry.”

CONSIDERATION OF MERCHANT BANKING ACTIVITIES BY
FINANCIAL SUBSIDIARIES

Pub. L. 106-102, title I, §122, Nov. 12, 1999, 113 Stat. 1381, provided that: “After the end of the 5-year period beginning on the date of the enactment of the Gramm-Leach-Bliley Act [Nov. 12, 1999], the Board of Governors of the Federal Reserve System and the Secretary of the Treasury may, if appropriate, after considering—

“(1) the experience with the effects of financial modernization under this Act [see Tables for classification] and merchant banking activities of financial holding companies;

“(2) the potential effects on depository institutions and the financial system of allowing merchant banking activities in financial subsidiaries; and

“(3) other relevant facts;

jointly adopt rules that permit financial subsidiaries to engage in merchant banking activities described in section 4(k)(4)(H) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)(4)(H)], under such terms and conditions as the Board of Governors of the Federal Reserve System and the Secretary of the Treasury jointly determine to be appropriate.”

MODIFICATION OF PRIOR APPROVALS

Pub. L. 101-73, title VI, §601(b), Aug. 9, 1989, 103 Stat. 409, provided that: “If the Board of Governors of the Federal Reserve System, in approving an application by a bank holding company to acquire a savings association, imposed any restriction that would have been prohibited under section 4(i)(2) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(i)(2)] (as added by subsection (a) of this section) if that section had been in effect when the application was approved, the Board shall modify that approval in a manner consistent with that section.”

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

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

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

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

BANK EXPORT SERVICES

Pub. L. 97-290, title II, §202, Oct. 8, 1982, 96 Stat. 1235, provided that: “The Congress hereby declares that it is the purpose of this title [enacting section 635a-4 of this title, amending sections 372 and 1843 of this title, and enacting provisions set out as notes under section 1843 of this title] to provide for meaningful and effective participation by bank holding companies, bankers’ banks, and Edge Act [12 U.S.C. 611 et seq.] corporations, in the financing and development of export trading companies in the United States. In furtherance of such purpose, the Congress intends that, in implementing its authority under section 4(c)(14) of the Bank Holding Company Act of 1956 [subsec. (c)(14) of this section] the Board of Governors of the Federal Reserve System should pursue regulatory policies that—

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

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

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

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

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

Pub. L. 97-290, title II, §205, Oct. 8, 1982, 96 Stat. 1238, required Federal Reserve Board, within two years after

Oct. 8, 1982, to report to Congress its recommendations with respect to implementation of this section, on any changes in United States law to facilitate financing of United States exports, and on effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in United States.

§ 1844. Administration

(a) Registration of bank holding company

Within one hundred and eighty days after May 9, 1956, or within one hundred and eighty days after becoming a bank holding company, whichever is later, each bank holding company shall register with the Board on forms prescribed by the Board, which shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry out the purposes of this chapter. The Board may, in its discretion, extend the time within which a bank holding company shall register and file the requisite information. A declaration filed in accordance with section 1843(l)(1)(C)¹ of this title shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 1842 of this title.

(b) Regulations and orders

The Board is authorized to issue such regulations and orders, including regulations and orders relating to the capital requirements for bank holding companies, as may be necessary to enable it to administer and carry out the purposes of this chapter and prevent evasions thereof. In establishing capital regulations pursuant to this subsection, the Board shall seek to make such requirements countercyclical, so that the amount of capital required to be maintained by a company increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the company.

(c) Reports and examinations

(1) Reports

(A) In general

The Board, from time to time, may require a bank holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—

(i) its financial condition, systems for monitoring and controlling financial and operating risks, and transactions with depository institution subsidiaries of the bank holding company; and

(ii) compliance by the bank holding company or subsidiary with—

(I) this chapter;

(II) Federal laws that the Board has specific jurisdiction to enforce against the company or subsidiary; and

(III) other than in the case of an insured depository institution or functionally regulated subsidiary, any other applicable provision of Federal law.

(B) Use of existing reports and other supervisory information

The Board shall, to the fullest extent possible, use—

(i) reports and other supervisory information that the bank holding company or any subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

(ii) externally audited financial statements of the bank holding company or subsidiary;

(iii) information otherwise available from Federal or State regulatory agencies; and

(iv) information that is otherwise required to be reported publicly.

(C) Availability

Upon the request of the Board, the bank holding company or a subsidiary of the bank holding company shall promptly provide to the Board any information described in clauses (i) through (iii) of subparagraph (B).

(2) Examinations

(A) In general

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], the Board may make examinations of a bank holding company and each subsidiary of a bank holding company in order to—

(i) inform the Board of—

(I) the nature of the operations and financial condition of the bank holding company and the subsidiary;

(II) the financial, operational, and other risks within the bank holding company system that may pose a threat to—

(aa) the safety and soundness of the bank holding company or of any depository institution subsidiary of the bank holding company; or

(bb) the stability of the financial system of the United States; and

(III) the systems of the bank holding company for monitoring and controlling the risks described in subclause (II); and

(ii) monitor the compliance of the bank holding company and the subsidiary with—

(I) this chapter;

(II) Federal laws that the Board has specific jurisdiction to enforce against the company or subsidiary; and

(III) other than in the case of an insured depository institution or functionally regulated subsidiary, any other applicable provisions of Federal law.

(B) Use of reports to reduce examinations

For purposes of this paragraph, the Board shall, to the fullest extent possible, rely on—

(i) examination reports made by other Federal or State regulatory agencies relating to a bank holding company and any subsidiary of a bank holding company; and

(ii) the reports and other information required under paragraph (1).

(C) Coordination with other regulators

The Board shall—

¹ See References in Text note below.