Editorial Notes

AMENDMENTS

1999—Pub. L. 106–102 inserted at end ''For purposes of this chapter, a financial subsidiary of a national bank engaging in activities pursuant to section 24a(a) of this title shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.''

Statutory Notes and Related Subsidiaries

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.

§ 1972. Certain tying arrangements prohibited; correspondent accounts

(1) A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

(A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;

(B) that the customer shall obtain some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;

(C) that the customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

(D) that the customer provide some additional credit, property, or service to a bank holding company of such bank, or to any other subsidiary of such bank holding company; or

(E) that the customer shall not obtain some other credit, property, or service from a competitor of such bank, a bank holding company of such bank, or any subsidiary of such bank holding company, other than a condition or requirement that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit.

The Board may issue such regulations as are necessary to carry out this section, and, in consultation with the Comptroller of the Currency and the Federal Deposit Insurance Company, may by regulation or order permit such exceptions to the foregoing prohibition and the prohibitions of section 1843(f)(9) and 1843(h)(2) of this title as it considers will not be contrary to the purposes of this chapter.

(2)(A) No bank which maintains a correspondent account in the name of another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank or to any related interest of such person unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(B) No bank shall open a correspondent account at another bank while such bank has outstanding an extension of credit to an executive officer or director of, or other person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, the bank desiring to open the account or to any related interest of such person, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(C) No bank which maintains a correspondent account at another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank or to any related interest of such person, unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(D) No bank which has outstanding an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, another bank or to any related interest of such person shall open a correspondent account at such other bank, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(E) For purposes of this paragraph, the term ''extension of credit'' shall have the meaning prescribed by the Board pursuant to section 375b of this title, and the term ''executive officer'' shall have the same meaning given it under section 375a of this title.

(F) CIVIL MONEY PENALTY.—

(i) FIRST TIER.—Any bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such bank who, violates any provision of this paragraph shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(ii) SECOND TIER.—Notwithstanding clause (i), any bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such bank who—

(I)(aa) commits any violation described in clause (i);

(bb) recklessly engages in an unsafe or unsound practice in conducting the affairs of such bank; or

(cc) breaches any fiduciary duty;

(II) which violation, practice, or breach—

(aa) is part of a pattern of misconduct;

(bb) causes or is likely to cause more than a minimal loss to such bank; or

(cc) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(iii) THIRD TIER.—Notwithstanding clauses (i) and (ii), any bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such bank who—

(I) knowingly—

(aa) commits any violation described in clause (i);

(bb) engages in any unsafe or unsound practice in conducting the affairs of such bank; or

(cc) breaches any fiduciary duty; and

(II) knowingly or recklessly causes a substantial loss to such bank or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under clause (iv) for each day during which such violation, practice, or breach continues.

(iv) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN CLAUSE (iii).—The maximum daily amount of any civil penalty which may be assessed pursuant to clause (iii) for any violation, practice, or breach described in such clause is—

(I) in the case of any person other than a bank, an amount to not exceed $1,000,000; and

(II) in the case of a bank, an amount not to exceed the lesser of—

(aa) $1,000,000; or

(bb) 1 percent of the total assets of such bank.

(v) ASSESSMENT; ETC.—Any penalty imposed under clause (i), (ii), or (iii) may be assessed and collected—

(I) in the case of a national bank, by the Comptroller of the Currency;

(II) in the case of a State member bank, by the Board; and

(III) in the case of an insured nonmember State bank, by the Federal Deposit Insurance Corporation,

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

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

(vii) DISBURSEMENT.—All penalties collected under authority of this subsection shall be deposited into the Treasury.

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

(ix) REGULATIONS.—The Comptroller of the Currency, the Board, and the Federal Deposit Insurance Corporation shall prescribe regulations establishing such procedures as may be necessary to carry out this subparagraph.

(G) For the purpose of this paragraph—

(i) the term ''bank'' includes a mutual savings bank, a savings bank, and a savings association (as those terms are defined in section 1813 of this title);

(ii) the term ''related interests of such persons'' includes any company controlled by such executive officer, director, or person, or any political or campaign committee the funds or services of which will benefit such executive officer, director, or person or which is controlled by such executive officer, director, or person; and

(iii) the terms ''control of a company'' and ''company'' have the same meaning as under section 375b of this title.

(H) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such a bank (including a separation caused by the closing of such a bank) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such bank (whether such date occurs before, on, or after August 9, 1989).

(Pub. L. 91–607, title I, § 106(b), Dec. 31, 1970, 84 Stat. 1766; Pub. L. 95–630, title VIII, § 801, Nov. 10, 1978, 92 Stat. 3690; Pub. L. 97–320, title IV, §§ 410(f), 424(c), (d)(11), (e), 428, Oct. 15, 1982, 96 Stat. 1520, 1523, 1526; Pub. L. 101–73, title IX, §§ 905(h), 907(i), Aug. 9, 1989, 103 Stat. 461, 473; Pub. L. 102–242, title III, § 306(j), Dec. 19, 1991, 105 Stat. 2359; Pub. L. 104–208, div. A, title II, § 2216(a), Sept. 30, 1996, 110 Stat. 3009–413; Pub. L. 109–351, title VI, § 601(b), Oct. 13, 2006, 120 Stat. 1978; Pub. L. 111–203, title III, § 355, July 21, 2010, 124 Stat. 1547.)

Editorial Notes

AMENDMENTS

2010—Par. (1). Pub. L. 111–203 inserted ''issue such regulations as are necessary to carry out this section, and, in consultation with the Comptroller of the Currency and the Federal Deposit Insurance Company, may'' after ''The Board may'' in concluding provisions.

2006—Par. (2)(G) to (I). Pub. L. 109–351 redesignated subpars. (H) and (I) as (G) and (H), respectively, and

struck out former subpar. (G) which related to written reporting requirements relating to bank loans to executive officers or stockholders with power to vote more than 10 per centum of any class of voting securities of an insured bank.

1996—Par. (1). Pub. L. 104–208, in concluding provisions, inserted ''and the prohibitions of section 1843(f)(9) and 1843(h)(2) of this title'' after ''prohibition''.

1991—Par. (2)(H)(i). Pub. L. 102–242 inserted before semicolon at end '', a savings bank, and a savings association (as those terms are defined in section 1813 of this title)''.

1989—Par. (2)(F). Pub. L. 101–73, § 907(i), amended subpar. (F) generally, revising and restating as cls. (i) to (ix) provisions of former cls. (i) to (vii).

Par. (2)(I). Pub. L. 101–73, § 905(h), added subpar. (I).

1982—Par. (2)(A) to (D). Pub. L. 97–320, § 428(a)(1)–(4), inserted ''or to any related interest of such person'' after ''such other bank'' in subpar. (A), ''desiring to open the account'' in subpar. (B), ''such other bank'' in subpar. (C), and ''another bank'' in subpar. (D).

Par. (2)(E). Pub. L. 97–320, § 410(f), substituted ''the meaning prescribed by the Board pursuant to section 375b of this title'' for ''the same meaning given it in section 371c of this title''.

Par. (2)(F)(i). Pub. L. 97–320, § 424(c), (d)(11), inserted proviso giving agency discretionary authority to compromise, etc., any civil money penalty imposed under such authority, and substituted ''may be assessed'' for ''shall be assessed''.

Par. (2)(F)(iv). Pub. L. 97–320, § 424(e), substituted ''twenty days from the service'' for ''ten days from the date''.

Par. (2)(G)(ii). Pub. L. 97–320, § 428(b)(1), substituted ''(ii) The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by any bank or executive officer or principal shareholder thereof concerning any extension of credit by a correspondent bank to the reporting bank's executive officers or principal shareholders, or the related interests of such persons.'' for ''(ii) Each insured bank shall compile the reports filed pursuant to subparagraph (G)(i) and forward such compilation to the Comptroller of the Currency in the case of a national bank, the Board in the case of a State member bank, and the Federal Deposit Insurance Corporation in the case of an insured nonmember State bank.''

Par. (2)(G)(iii). Pub. L. 97–320, § 428(b)(2), struck out cl. (iii) which required insured banks to include in their section 1817(k)(1) report a list of names of executive officers or stockholders of record owning, controlling, or having more than a 10 per centum voting control of any class of voting securities of the bank who file information required by subpar. (G)(i) and aggregate amount of extensions of credit by correspondent banks to such executive officers or stockholders of record, any company controlled by such persons, and any political or campaign committee the funds or services of which will benefit such persons, or which is controlled by such persons.

Par. (2)(H). Pub. L. 97–320, § 428(c), added subpar. (H).

1978—Pub. L. 95–630 designated existing provisions as par. (1), redesignated former pars. (1) to (5) as subpars. (A) to (E), and added par. (2).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–242 effective upon earlier of date on which final regulations under section 306(m)(1) of Pub. L. 102–242 become effective or 150 days after Dec. 19, 1991, see section 306(*l*) of Pub. L. 102–242, set out as a note under section 375b of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 428(b) of Pub. L. 97–320 effective when regulations referred to in the amendment become effective as provided in section 430 of Pub. L. 97–320, set out as a note under section 1817 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.

§ 1973. Jurisdiction of courts; duty of United States attorneys; equitable proceedings; petition; expedition of cases; temporary restraining orders; bringing in additional parties; subpenas

The district courts of the United States have jurisdiction to prevent and restrain violations of section 1972 of this title and it is the duty of the United States attorneys, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. The proceedings may be by way of a petition setting forth the case and praying that the violation be enjoined or otherwise prohibited. When the parties complained of have been duly notified of the petition, the court shall proceed, as soon as possible, to the hearing and determination of the case. While the petition is pending, and before final decree, the court may at any time make such temporary restraining order or prohibition as it deems just. Whenever it appears to the court that the ends of justice require that other parties be brought before it, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and subpenas to that end may be served in any district by the marshal thereof.

(Pub. L. 91–607, title I, § 106(c), Dec. 31, 1970, 84 Stat. 1767.)

§ 1974. Actions by United States; subpenas for witnesses

In any action brought by or on behalf of the United States under section 1972 of this title, subpenas for witnesses may run into any district, but no writ of subpena may issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the prior permission of the trial court upon proper application and cause shown.

(Pub. L. 91–607, title I, § 106(d), Dec. 31, 1970, 84 Stat. 1767.)

§ 1975. Civil actions by persons injured; jurisdiction and venue; amount of recovery

Any person who is injured in his business or property by reason of anything forbidden in sec-