REPORT OF THE
JOINT SUBCOMMITTEE STUDYING

The Revision of The Savings and Loan Laws and the Interest Rate Laws of the Commonwealth and The Issue of Interstate Banking

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

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Report of the Joint Subcommittee Studying The Revision of The Savings and Loan Laws and Interest

Rate Laws of the Commonwealth and the Issue

of Interstate Banking

TO: Honorable Charles S. Robb, Governor of Virginia
and
The General Assembly of Virginia

January, 1985

INTRODUCTION

The joint subcommittee studying the revision of the savings and loan laws and interest rate laws of the Commonwealth and the issue of interstate banking was established pursuant to House Joint Resolution No. 30 of the 1984 General Assembly. That resolution reads as follows:

HOUSE JOINT RESOLUTION No. 30

Requesting the House Committee on Corporations, Insurance and Banking and the Senate Committee on Commerce and Labor to establish a joint subcommittee to study the laws of the Commonwealth of Virginia dealing with savings and loan associations and to make recommendations for a revision of the Virginia Savings and Loan Act.

WHEREAS, the savings and loan industry plays a vital role in the economic well-being of the Commonwealth and provides essential depository and lending services for the citizens of the Commonwealth; and

WHEREAS, there has long existed in the Commonwealth a dual system of federally chartered and state-chartered savings and loan associations; and

WHEREAS, it is desirable to continue this system of federally charterd and state-chartered savings and loan associations in order to encourage the continuing evolution of a strong, financially stable savings and loan industry in the Commonwealth; and

WHEREAS, during the last three years, significant federal legislation has been passed by Congress which has greatly changed the manner in which federally chartered savings and loan associations conduct their operations and business and which has also changed the manner in which the savings and loan industry is regulated; and

WHEREAS, other significant legislation affecting the savings and loan industry is currently pending in Congress, with likely enactment during the year 1984; and

WHEREAS, it is highly desirable that the laws of the Commonwealth dealing with the savings and loan associations be updated and clarified so that the state-chartered savings and loan associations will be able to effectively compete with their federally chartered counterparts; and

WHEREAS, it is also desirable to ensure that the agencies of the Commonwealth will continue to effectively regulate the savings and loan industry in the interest of depositors, borrowers and the general public; and

WHEREAS, the Congress of the United States has enacted laws that substantially alter many of the Commonwealth's laws that pertain to interest rates; and

WHEREAS, developments in other parts of the United States, proposals and actions by other state legislatures, and proposals in Congress make it prudent that the question of operation of financial institutions on an interstate basis, including savings and loan assocaitions, banks and credit unions, be reviewed; and

WHEREAS, because of the aforementioned federal enactments it will be beneficial to the citizens of the Commonwealth for the laws that relate to interest rates to be stated in a clear manner; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, that the House Committee on Corporations, Insurance and Banking and the Senate Committee on Commerce and Labor are requested to establish a joint subcommittee to study the present laws of the Commonwealth dealing with savings and loan associations, to analyze recently enacted and proposed future legislation and regulations, and to make recommendations to the General Assembly for a revision of the Virginia Savings and Loan Act and such other laws as the joint subcommittee may believe are appropriate to aid the savings and loan industry in the public interest; and, be it

RESOLVED further, That the joint subcommittee shall review the developments in other states and the United States and conditions which bear upon interstate operations of financial institutions and the possible effects on the Commonwealth, its economy, its citizens, and its financial institutions, and report thereon; and, be it

RESOLVED FINALLY, That the joint subcommittee shall clarify and consolidate the interest rate laws of the Commonwealth.

The joint subcommittee shall consist of eleven members. Seven members shall be appointed by the Speaker of the House, four of whom shall be members of the House Committee on Corporations Insurance and Banking; and four members shall be appointed by the Senate Committee on Privileges and Elections, three of whom shall be from the membership of the Senate Committee on Commerce and Labor.

All agencies of the Commonwealth shall assist the joint subcommittee in its study.

The joint subcommittee shall complete its work in time to submit recommendations to the 1985 Session of the General Assembly.

All direct and indirect costs of conducting this study are estimated to be $16,500.

Delegate George H. Heilig, Jr., of Norfolk was elected chairman of the Subcommittee. Other members of the House of Delegates appointed to serve were: William T. Wilson of Covington, Alson H. Smith, Jr. of Winchester, Franklin P. Hall of Richmond and Vincent F. Callahan, Jr., of McLean.

Senator William F. Parkerson, Jr. of Henrico was elected Vice-Chairman of the Subcommittee. Other Senate members appointed to serve were: Edward E. Willey of Richmond, Peter K. Babalas of Norfolk and Richard J. Holland of Windsor.

Two citizen members were appointed to serve on the Subcommittee: John B. Bernhardt, Vice-charirman of the Board of Sovran Bank and Edwin B. Brooks, Jr., President of Virginia Federal Savings and Loan Association.

C. William Cramme', III, Senior Attorney and Terry Mapp, Research Associate of the Virginia Division of Legislative Services served as legal and research staff for the Subcommittee. Ann Howard and Barbara Hanback of the House Clerk's Office provided administrative and clerical staff assistance for the Subcommittee.

WORK OF THE SUBCOMMITTEE

The full Joint Subcommittee held meetings on June 25, September 18 and December 18. During its meetings the Subcommittee heard a great deal of oral testimony. The staff and interested parties offered the study group voluminous amounts of written materials during and between meetings.

Prior to the Subcommittee's first meeting, its staff furnished each member with a copy of a synopsis of the various states' on the issue of interstate banking and copies of the enacted or proposed legislation of those states listed in the synopsis. Also, the members received many articles which discussed and analyzed the issue of interstate banking.

The Subcommittee's first meeting, which was held on June 25, was mainly an organizational meeting in which the study group elected its chairman and vice-chairman and adopted a timetable for the study. During that meeting because Mr. Heilig had asked representatives of the various industries to brief the Subcommittee on the three issues which the Subcommittee was charged with reviewing, the Subcommittee heard testimony from the Virginia League of Savings Institutions, the Virginia Bankers Association, the Bureau of Financial Institutions, the Virginia Credit Union League and the Independent Bankers Association of Virginia. The Subcommittee heard brief testimony from the representatives of the groups which centered on their thoughts with regard to the three areas of the study. In discussing the work schedule and future meetings of the Subcommittee, the Subcommittee agreed that draft legislation should be developed in the three areas with which the Subcommittee was charged to study. They decided that once this legislation had been prepared the Subcommittee could hold another meeting in order to elicit comments on that legislation.

During the month of July, August and early September Counsel for the Virginia League of Savings Institutions prepared draft legislation to revise the savings and loan laws. Also, during that time period the Subcommittee's staff prepared legislation to revise the interest rate laws and to effect interstate banking in Virginia.

At the September 18 meeting of the full Joint Subcommittee, the Subcommittee received testimony on the savings and loan draft, the interest rate draft, and the interstate banking draft. The Subcommittee decided to establish three subcommittees to hold meetings on the particular draft legislation. It was decided that a Savings and Loan Subcommittee, an Interstate Subcommittee and an Interest Rate Subcommittee be established in order to hold hearings for a line by line review of the particular draft legislation. The full Joint Subcommittee decided that the establishing of the three subcommittees would provide the best method for an expeditious handling of the subjects with which the Subcommittee was charged to study. The membership of those Subcommittees were as follows:

Interest Rate Subcommittee	Savings and Loan Loan Subcommittee	Interstate Subcommittee
Babalas	Heilig	Parkerson
Holland	Willey	Smith
Callahan	Hall	Wilson
	Brooks	Bernhardt
		Brooks

During the same meeting the Subcommittee heard testimony Counsel highlighted the savings and loan draft. The Virginia Bankers Association presented the interstate banking draft and written testimony on the interstate banking issue. Also, at this meeting the Subcommittee considered the possibility of the banks, savings and loan associations and the credit unions having their own bill dealing with the interstate issue since the banks were leaning toward a

regional approach, and the savings and loan associations and credit unions were leaning toward a national approach.

The Subcommittee decided the three subcommittees established should meet as soon as possible and as many times as necessary in order that the draft legislation may be discussed and fine tuned, and in order that a report of the subcommittees' work may be presented at the next meeting of the full Joint Subcommittee. The Subcommittee decided that the subcommittees' reports should be received by the full Joint Subcommittee in time that full Joint Subcommittee may make its recommendations at a meeting in December.

All three subcommittees met twice. The Savings and Loan Subcommittee met on October 22 and December 7; the Interstate Banking Subcommittee met on October 16 and December 10; and the Interest Rate Subcommittee met on October 16 and December 7. At all of the meetings of the subcommittees draft legislation was discussed section by section and many changes were recommended to the drafts.

At all three of the subcommittees' meetings the representatives of the Virginia Bankers Associaiton, the Virginia League of Savings Institutions, the Virginia Independent Bankers' Association and the Bureau of Financial Institutions gave testimony concerning the particular draft under study. During the meetings of the Interest Rate Subcommittee, the subcommittee also heard testimony from representatives of the Virginia Consumer Finance Association who took a strong interest in this particular portion of the study. During the meetings of the Interstate Banking Subcommittee, the subcommittee heard testimony from representatives from the First National Bank of Maryland and its Counsel, representatives from Citicorp Bank in New York, and the Virginia Credit Union League on Senate Bill No. 148 which was carried over by the 1984 Session of the General Assembly. Other participants in the meetings of the Savings and Loan Subcommittee were the Virginia Realtors Association and the Virginia Home Builders Association. At its final meeting on December 18, the full Joint Subcommittee received the reports of the three subcommittees. Senator Babalas, Chairman of the Interest Rate Subcommittee, briefly stated the work of his subcommittee and asked that that portion of the study dealing with interest rates be continued for another year. Senator Parkerson, Chairman of the Interstate Banking Subcommittee, asked the staff of the full subcommittee, Bill Cramme' to present the interstate banking bill and report to the full Joint Subcommittee. During the report of the Interstate Banking Subcommittee, the full Subcommittee heard testimony from the First National Bank of Maryland and its Counsel, Piper and Marbury of Maryland, the Bureau of Financial Institutions and the Virginia Bankers Association. Senator Parkerson called on the Virginia Credit Union League to present Senate Bill No. 148 of the 1984 General Assembly Session that address the interstate issue with regards to credit unions. Delegate Heilig, Chairman of the Savings and Loan Subcommittee, called on the Virginia League of Savings Institutions and its Counsel, the law firm of Thomas and Fiske, to present the savings and loan draft to the Subcommittee. The full Subcommittee also heard from the Virginia Bankers Association, the Virginia Independent Bankers Association, and the Bureau of Financial Institutions during the report of the Savings and Loan Subcommittee.

Having heard testimony from all of the interested parties, the Subcommittee thoroughly discussed and carefully considered which recommendations to make to the 1985 General Assembly. Some of the recommendations were not made by a unanimous vote of the members of the full Joint Subcommittee and some were made with conditions that further testimony should be heard by the General Assembly on various items within particular drafts.

RECOMMENDATIONS

The subcommittee offers the following recommendations to the General Assembly:

I. THAT THE GENERAL ASSEMBLY SHOULD PASS A BILL, AS OFFERED BY THE JOINT SUBCOMMITTEE, TO REVISE THE SAVINGS AND LOAN LAWS OF THE COMMONWEALTH. THAT THE BILL SHOULD ALLOW FOR THE INTERSTATE BRANCHING OF SAVINGS AND LOAN ASSOCIATIONS ON A REGIONAL RECIPROCAL BASIS. THAT THE BILL SHOULD PLACE AN AGGREGATE CAP ON THE TOTAL PERCENTAGE OF ASSETS THAT A SAVINGS AND LOAN ASSOCIATION MAY INVEST IN ITS SERVICE CORPORATION AND DIRECTLY IN

REAL ESTATE AND THAT THAT CAP SHOULD PROVIDE PARITY BETWEEN THE FEDERALLY CHARTERED AND STATE CHARTERED SAVINGS AND LOAN ASSOCIATIONS. THAT THE BILL'S PROVISION DEALING WITH THE AUTHORITY TO OFFER CHECKING ACCOUNTS SHOULD REMAIN A SUBJECT FOR FURTHER DISCUSSION BY THE COMMITTEES IN THE GENERAL ASSEMBLY. THAT THE BILL'S PROVISIONS SETTING FORTH THE APPLICATION PROCESS AND INVESTIGATION PROCESS FOR INTERSTATE BRANCHING SHOULD CONFORM AS CLOSELY AS POSSIBLE TO THOSE SAME PROVISIONS IN THE INTERSTATE BANKING BILL.

II. THAT THE GENERAL ASSEMBLY SHOULD PASS A BILL, AS OFFERED BY THE JOINT SUBCOMMITTEE, THAT WOULD ALLOW REGIONAL RECIPROCAL INTERSTATE BANKING THROUGH THE HOLDING COMPANY PROCESS. THAT THE FOREIGN EXCLUSION CLAUSE PROVISION IN THE BILL SHOULD REMAIN A SUBJECT FOR FURTHER DISCUSSION AND TESTIMONY IN THE APPROPRIATE COMMITTEES IN THE GENERAL ASSEMBLY. THAT BY INTRODUCTION OF A COMPANION BILL TO THE INTERSTATE BANKING BILL, THE NONBANK BANK ISSUE SHOULD BE RESOLVED.

III. THAT SENATE BILL 148, CARRIED OVER BY THE 1984 SESSION OF THE GENERAL ASSEMBLY, AS AMENDED BY THE FULL JOINT SUBCOMMITTEE, SHOULD BE PASSED BY THE GENERAL ASSEMBLY IN ITS 1985 SESSION. THAT A PROVISION SHOULD BE ADDED TO SENATE BILL 148 PROVIDING FOR THE STATE CORPORATON COMMISSION TO HAVE THE AUTORITY TO CORRECT THE SITUATION OF NONCOMPLYING OUT-OF-STATE CREDIT UNIONS DOING BUSINESS IN VIRGINIA.

IV. THAT A JOINT RESOLUTION CONTINUING THIS STUDY SHOULD BE PASSED BY THE 1985 SESSION OF THE GENERAL ASSEMBLY. THAT THE RESOLUTION SHOULD PROVIDE THAT THE JOINT SUBCOMMITTEE SHOULD CONTINUE TO WORK ON THE REVISION OF THE INTEREST RATE LAWS OF THE COMMONWEALTH AND SHOULD MONITOR FEDERAL ACTIVITY IN THE AREAS OF SAVINGS AND LOAN LAWS AND INTERSTATE BANKING.

REASONS FOR RECOMMENDATIONS

I. THAT THE GENERAL ASSEMBLY SHOULD PASS A BILL, AS OFFERED BY THE JOINT SUBCOMMITTEE, TO REVISE THE SAVINGS AND LOAN LAWS OF THE COMMONWEALTH. THAT THE BILL SHOULD ALLOW FOR THE INTERSTATE BRANCHING OF SAVINGS AND LOAN ASSOCIATIONS ON A REGIONAL RECIPROCAL BASIS. THAT THE BILL SHOULD PLACE AN AGGREGATE CAP ON THE TOTAL PERCENTAGE OF ASSETS THAT A SAVINGS AND LOAN ASSOCIATION MAY INVEST IN ITS SERVICE CORPORATION AND DIRECTLY IN REAL ESTATE AND THAT THAT CAP SHOULD PROVIDE PARITY BETWEEN THE FEDERALLY CHARTERED AND STATE CHARTERED SAVINGS AND LOAN ASSOCIATIONS. THAT THE BILL'S PROVISION DEALING WITH THE AUTHORITY TO OFFER CHECKING ACCOUNTS SHOULD REMAIN A SUBJECT FOR FURTHER DISCUSSION BY THE COMMITTEES IN THE GENERAL ASSEMBLY. THAT THE BILL'S PROVISIONS SETTING FORTH THE APPLICATION PROCESS AND INVESTIGATION PROCESS FOR INTERSTATE BRANCHING SHOULD CONFORM AS CLOSELY AS POSSIBLE TO THOSE SAME PROVISIONS IN THE INTERSTATE BANKING BILL.

In making this recommendation, the Subcommittee found that there was a need for providing a new order in the Savings and Loan Act and a need to remove archaic language, to update the Act and to add provisions new to the Virginia Act. The Subcommittee found that it was necessary to have Virginia continue to be a leader in the savings and loan laws area.

The Subcommittee heard testimony from the Virginia League of Savings Institutions that this revision was needed for several reasons. The League pointed out that during the last five years, significant changes have occurred in the federal law and the laws of various other states with regard to the operation of savings and loan institutions. He pointed out that Congress had substantially revised the federal law regulating saving institutions when it enacted the Depository Insitutions Deregulation Act of 1980, P.L.96-221 and the Garn-St.Germain Depository Institutions Act of 1982, P.L.97-320.

The Subcommittee found that the 1980 Federal Act began the process of deregulating the interest rates which depository institutions are permitted to charge. They found that the 1982 Federal Act further deregulated the activities of savings institutions by granting them a number of powers previously possessed only by commercial banks and authorized depository institutions to offer fully insured money market deposit accounts and granted authority to the Federal Home Loan Bank Board to permit interstate mergers and acquisitions in certain circumstances. The Subcommittee found that even prior to the enactment of those two federal acts, the Federal Home Loan Bank Board adopted regulations significantly changing the manner in which federal savings and loan associations and federally-insured state savings institutions were permitted to conduct their business activities. They found that as a result of the enactment of these regulations and laws, that a number of amendments have been made to the Virginia statutes governing savings and loan associations. The Subcommittee decided that these amendments were made in an effort to keep pace with changes in the federal law and the laws of other states. Because of the patchwork nature of these amendments, the Subcommittee decided that it has become apparent that a total revision of the Virginia Savings and Loan Act was necessary in order to consolidate them and more concisely set forth Virginia's savings and loan laws. The Subcommittee also found that additional changes were being suggested to the Savings and Loan Act in order to enable state-chartered savings and loan associations to successfully compete with other segments of the financial institutions industry.

A portion of the savings and loan draft which the Subcommittee reviewed, authorized Virginia Savings and Loan Associations, for the first time, to participate in interstate branching on a national basis. That portion of the bill will allow an out-of-state savings and loan association to do business in Virginia as long as the state from which that out-of-state association is coming would reciprocate and allow Virginia institutions to do business in that state. The Subcommittee found that the bill provided sufficient regulatory authority to the State Corporation Commission to continually examine and supervise these out of state savings institutions coming into Virginia.

During the discussion of the interstate branching issue, the Virginia Bankers Association pointed out that their association was concerned with the national approach taken by the savings and loan associations because money center banks may circumvent the newly proposed interstate banking statutes by using this national branching approach in the new savings and loan statute. They stated that they favored a regional approach presently for banks and savings and loan associations in Virginia. The Subcommittee decided that the savings and loan draft should be amended to eliminate the national approach and incorporate the regional approach for interstate branching for savings and loan associations. The Subcommittee also decided that the savings and loan associations should be allowed to cross state lines through the holding company acquisition method, through merger or by branching. It was pointed out that they should be allowed to branch since some of the savings and loan associations are non-stock corporations or, as commonly refered to mutuals. The Virginia Bankers Association stated that their reasons for favoring a regional approach was that it allows the institutions within the region to grow so that they may compete with the money center financial institutions.

The Subcommittee also found that there are no branching limitations in the federal regulations or statutes and that if state law allows interstate branching for state savings and loan associations then the federal savings and loan association within that state can also branch interstate. Testimony from the Virginia League of Savings Institutions revealed that federal savings and loan associations in Virginia do not oppose this legislative revision and are encouraging a move to this new area. It was explained that this feature will in no way affect the parity between the federally-chartered associations and the state-chartered associations. The League also pointed out that in this regard there was a need and desire to update the savings and loan laws to provide state-chartered associations with an attractive regulatory environment so that they would want to remain state-chartered associations.

The Virginia Independent Bankers Association presented written and oral testimony stating their opposition to the General Assembly allowing any form of interstate branching merging or acquisition. A copy of that testimony may be found in Appendix I of this report.

Another provision in the savings and loan draft on which the Subcommittee spent a considerable amount of time discussing and carefully studying, is the section of the draft, § 6.1-194.69, that sets forth the general investment authority of state-chartered savings and loan associations. The initial draft has increased an association's authority to invest a percentage of

its assets in its service corporation. Current law allows an association to invest up to 5% of its total assets in its service corporation, and the initial draft would have increased that amount to allow an association to invest up to 10% of its total assets in its service corporation. Additionally, the initial draft would have allowed an association to invest up to another 10% of its total assets directly into real estate. The Virginia League of Institutions testified that the need for these changes was to create an attractive regulatory environment in Virginia by allowing the association some flexibility of investing their assets. They stated that the additional authority of allowing an association to invest up to 10% of its assets directly into real estate would be for the purposes of development, leasing and other profit making activities. He pointed out that the laws of a number of other states currently grant this authority to state-chartered associations and that the average percentage allowed in those states was 10%.

The Subcommittee heard testimony from the Home Builders Association of Virginia and the Virginia Association of Realtors in opposition to increasing the savings and loan associations' investment authority. The Home Builders pointed out that when you add together the two new proposals, a total of 20% could be invested in real estate by a savings and loan and thus puts it directly into competition with the home builders. The Builders Association also pointed out that although this increase investment authority could allow a savings and loan association to joint venture with a smaller builder in order that that smaller builder may compete with with the larger builders, this increased authority could create an unfair and distinct advantage for those builders venturing with a savings and loan. The advantage may come in the area of points and other loan arrangements and the providing of a ready source of buyers to the builders. The Home Builders also pointed out that there is a considerable risk in the construction and development of buildings and that savings and loan associations were taking a great risk in getting into this area of business. They stated that there is a great potential in this type of real estate investment for those investments to go sour. They emphasized that the Builders Associations need the savings and loan associations to be strong in order that they may borrow from them. The League of Savings Institutions reminded the committee that given this authority, the savings and loan associations would be just as judicious in their decision-making process of whether to make this type of investment in real estate as they would with any other investment decision they would have to make. They pointed out that the proposed changes to the present law which are being discussed would allow a profit center for a savings and loan association to make money in order to loan money to builders and other potential borrowers.

The Virginia Association of Realtors stated that their concern with the changes being proposed is that the savings and loan associations would not only be moving into the real estate market business but more particularly into the real estate brokerage business and all the time using a more favorable tax treatment and interest rates to compete with the realtors. The realtors provided the Subcommittee with their statement of opposition to allowing savings and loan associations' increased authority in the area of investments. A copy of that statement is attached as Appendix II.

The Subcommittee found that under current federal law a total of 3% of the total assets of a federally-chartered savings and loan may be invested in the service corporation, 1% of which was limited to Community Reinvestment Act Activity and that current federal law does not allow a federal association to invest directly into real estate. The Subcommittee learned that presently the Federal Home Loan Bank Board is considering a change to that regulation which will allow federal associations to invest in the aggregate of up to 10% of its total assets in its service corporation and directly into real estate. The Subcommittee learned that that proposed regulation is still out for comment and the comment period will end January 16, 1985. In the final draft of the revision of the Savings and Loan Act which the subcommittee reviewed, the Subcommittee agreed to a revision that would allow a state association to invest not more than 10% in the aggregate, of its total assets in its service corporation and directly into real estate. The Subcommittee agreed to this provision placing a 10% cap in order to maintain parity with the federally-chartered savings and loan associations. The agreement came with the condition that the new federal proposed regulation would be monitored and that this provision in the Savings and Loan Act would be changed in the legislative process accordingly. The Subcommittee also agreed to language which would prohibit savings and loan associations from entering into third party real estate brokerage business.

Another provision in the draft which the Subcommittee received a great amout of testimony involved §§ 6.1-194.7 and 6.1-194.49 which would place checking accounts offered by savings and

loan associations under the Uniform Commercial Code and which would permit savings and loan associations to offer checking account services to customers with whom they need not have a loan or credit relationship. The draft would allow the savings and loan association's board of directors to authorize the association to offer checking accounts and to pay interest on those checking accounts as allowed by federal or state law. The Virginia League of Savings Institutions testified that this new provision would make it clear that the Uniform Commercial Code would apply to checking account activities of state chartered savings and loan associations. They noted that rather than developing another body of law to determine how these accounts would be controlled, this new section would merely state that the Uniform Commercial Code would control. It was explained that the Uniform Commercial Code is an established and well tested body of law in this area. The League also stated that this provision will conform to the present trend to do away with artificial distinctions between deposit accounts offered by state associations and by banks. The League emphasized that the accounts, presently being offered by state associations for all practical purposes, are checking accounts, and that they may be advertised as checking accounts. The League stated that the provision being added to the Savings and Loan Act would recognize these accounts as checking accounts and would provide protection to the public and the depositors.

The Subcommittee heard testimony that a state association presently must have a potential line of credit or a loan relationship with the customer in order to offer checking services to the customer. Under this bill, the need for a potential line of credit or a loan relationship would no longer be necessary when dealing with the state chartered savings and loan association. The Subcommittee also found that the although this draft eliminates the need for a potential line of credit or loan relationship between the state association and its customer, federally-chartered associations (because of existing federal regulations) will still need to have a line of credit or loan relationship with its customer before offering checking services. The subcommittee learned, however, that Congress is considering taking off this limitation for federally-chartered savings and loan associations.

The Virginia Bankers Association stated their opposition to this new provision by pointing out that their concern is that historically Virginia has drawn a distinction between banks and savings and loan associations. They stated that in recent years state associations have been given more and more powers that traditionally have been banks', and that by allowing them to offer checking accounts to their customers would be giving the savings and loan associations another power that all along has been the banks'. They pointed out that although Congress may be considering eliminating these limitations for federally-chartered associations they don't necessarily agree with that stance. They stated that their association thinks that present federal law goes far enough and that there is no reason to go any further. They noted that should the General Assembly pass this draft with this particular provision in it the parity which the General Assembly has always tried to maintain between the federal associations and the state associations may be disrupted. The association stated that their basic concern is, on the one hand, the lessening of the distinction between a savings and loan association and bank by the product and services that they are authorized to offer, but on the other hand there still remains a large difference in how they are regulated and taxed.

Further testimony received from the Bankers Assocaition pointed out that generally one of the theories behind not allowing a savings and loan association to offer checking accounts was that balances of those accounts often tend to fluctuate greatly and that this fluctuation could cause a problem in the long term loans made by an association. They pointed out that the same was not true for banks since they are not involved in as many long term loans. The Virginia League of Savings Institutions reminded the Subcommittee that due to deregulation under Regulation D and Regulation Z, the portfolios of savings and loan associations are vastly changing and that that theory was not true anymore. The Virginia Independent Bankers Association noted their concern in allowing savings and loan associations to offer checking accounts when such associations are not playing on the same regulatory field as the banks.

The Subcommittee decided to leave this provision in the draft revision of the Savings and Loan Act with the condition that the provision should remain subject to discussion as the bill goes through the General Assembly and that appropriate changes will be made if action was taken in Congress.

The Subcommittee also decided that the draft's provisions relating to the State Corporation

Commission's reviewing of an investigation of applications for interstate branching should as closely as possible parallel and conform to those similar provisions found in the interstate banking proposal.

A copy of a summary of the revision of the savings and loan act and a copy of the draft revision are found in Appendix III and IV, respectively, of this report.

Regarding the entire draft revision of the Savings and Loan Act, the Bureau of Financial Institutions respectfully requested the right to reserve comment on and the right to address some of the regulatory aspects of the draft. The Subcommittee noted that the Bureau of Financial Institutions would certainly have that right.

For the reasons cited above, the Subcommittee recommends that a revision of the Savings and Loan Act be passed by the 1985 General Assembly.

II. THAT THE GENERAL ASSEMBLY SHOULD PASS A BILL, AS OFFERED BY THE JOINT SUBCOMMITTEE, THAT WOULD ALLOW REGIONAL RECIPROCAL INTERSTATE BANKING THROUGH THE HOLDING COMPANY PROCESS. THAT THE FOREIGN EXCLUSION CLAUSE PROVISION IN THE BILL SHOULD REMAIN A SUBJECT FOR FURTHER DISCUSSION AND TESTIMONY IN THE APPROPRIATE COMMITTEES IN THE GENERAL ASSEMBLY. THAT, BY INTRODUCTION OF A COMPANION BILL TO THE INTERSTATE BANKING BILL, THE NONBANK BANK ISSUE SHOULD BE RESOLVED.

The Subcommittee found that the purpose of the interstate banking legislation was to establish a framework for permitting interstate banking on a reciprocal basis within a defined region composed of states in the Fifth and Sixth Federal Reserve Districts and Kentucky and the District of Columbia. The rationale is that by permitting the expansion of banking activities within the Region, regionally oriented banks will have an opportunity to develop within their natural geographic, cultural and economic region in order that they may be able to grow and compete with the larger money center banks of the Northeast. The Subcommittee learned that the draft legislation effects a relaxation of the restrictions imposed by the Douglas Amendment to the Federal Bank Holding Company Act (12U.S.C. § 1842(b)), in that it permits qualifying holding companies to engage in acquisitions involving banks, or bank holding companies across state lines. The legislation does not, however, effect a relaxation of the McFadden Act and, consequently, interstate branching will continue to be prohibited. In order to participate in the regional framework, a holding company structure is necessary. From a legal point of view, this approach is viewed desirable since states may permissible regulate the activities of holding companies, whereas their ability to regulate the activities of national banks is limited. By requiring a holding company framework, a state can monitor the entry of out-of-state institutions into their particular state.

The Virginia Bankers' Association submitted extensive oral and written testimony to the Subcommittee during its hearing. A copy of the written testimony submitted by the Bankers' Association may be found in Appendix V of this report. A copy of a synopsis of states' laws or proposed state laws are enclosed as Appendix VI of this report.

The Subcommittee found that the draft bill establishes various criteria which the out-of-state bank holding company must meet in order to acquire a bank or bank holding company in Virginia. The out-of-state bank holding company must have its principal place of business in one of the states in the defined region. The region consists of the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia and the District of Columbia. The out-of-state or regional bank holding company must have within the region 80% of its total deposits held by all of its bank subsidiaries, other than bank subsidiaries (i) which had been acquired under the failing institutions statutes, (ii) which were acquired in accordance with regular business conduct of securing or collecting debts or (iii) which are "Edge Act" banks. The state from which the applicant bank holding company is coming must allow Virginia bank holding companies to come into that state and acquire that states' banks or bank holding companies. The applicant bank holding company coming into Virginia must be eligible to be accquired by the Virginia bank holding company that it seeks to acquire. The Virginia bank or all the subsidiaries of the Virginia bank holding company which the asking bank seeks to acquire must have been in existance for five years or more.

In addition to meeting these criteria, the State Corporation Commission in its investigative findings of the application must find that the proposed acquisition would not be detrimental to the safety and soundness of the applicant or of the Virginia bank or bank holding company which the applicant seeks to control. The Commission must also find that the acquiring applicant is qualified by character, experience and financial responsibility. The Commission must find that the proposed acquisition would not be prejudicial to the interest of the depositors, creditors or shareholders of the applicant or the Virginia bank or bank holding company and that the acquisiton is in the public interest. Finally, the applicant bank holding company must not be controlled by nor be a foreign bank as defined in the International Banking Act of 1978 (12U.S.C. §301(7)). This last requirement is known as the Foreign Exclusion Clause.

A good deal of time and effort was spent by the Subcommittee on the Foreign Exclusion Clause. The Subcommittee learned that prior to 1978 foreign banks could establish branches in any state in the United States. In 1978 Congress, in addressing the concern of the national domestic banks, changed this type of activity in the International Banking Act of 1978 by requiring a foreign bank to use a "home state" approach. This approach required the foreign bank or foreign controlled bank to designate one state in the United States as a "home state" and be subjected to the laws of that state, the same as any domestic state chartered bank of that state. A foreign controlled bank would be one in which 25% or more of its stock is owned and controlled by foreign interests outside of the United States.

The Subcommittee heard extensive testimony from representatives of the First National Bank of Maryland, 43% of whose stock is owned by the Allied Irish Bank in Dublin, Ireland. Those representatives were requesting that the Foreign Exclusion Clause be removed from the draft. They offered, however, as an alternative to removing the Foreign Exclusion Clause, language which would exempt a "home state" foreign controlled bank that had chosen one of the states in the region as its "home state". The Maryland bank emphasized that the Foreign Exclusion Clause does not exclude foreign investors from investing in banks within the region, but it merely prevents foreign controlled bank holding companies from making interstate acquisition. The Maryland bank representatives also pointed out that the home state has the same control and authority over such foreign controlled banks as it has over its domestic banks and bank holding companies. They added that the "home state" designation was an irrevocable commitment.

The Subcommittee heard testimony regarding a constitutional argument challenging the Foreign Exclusion Clause. The argument states that under the current version of the proposed legislation, a bank holding company that has its principal place of business within the region, but which is controlled by a foreign bank holding company, will not qualify as a "regional bank holding company." Such an institution will, therefore, not be permitted to acquire a Virginia bank or bank holding company. The bill in its present form defines "regional bank holding company" to exclude (1) any bank holding company that is controlled by a bank holding company other than a regional bank holding company and (2) any bank holding company that either is controlled by or is a foreign bank as defined in the International Banking Act of 1978. The latter "foreign bank" exclusion (and the former exclusion as well in so far as it operates to exclude foreign banks) very likely conflicts with the Foreign Commerce Clause of the United States Constitution.

Under the Foreign Commerce Clause no state may regulate foreign commerce unless specifically authorized to do so by Congress. Since Congress has not authorized the states to prohibit direct investments in financial institutions by foreign banks, Virginia could not constitutionally enact a law flatly prohibiting foreign banks from investing directly into Virginia financial institutions. Congress has authorized states to regulate the acquisition of interest in domestic financial institutions by foreign banks in § 5 of the International Banking Act of 1928, 12U.S.C. § 3103(a) (5). Under this provision, which applies only to foreign banks that have established branches or agencies in the United States, Virginia can prohibit a foreign bank from acquiring interest in Virginia financial institutions only to the same degree that a bank holding company organized in the foreign bank's "home state" would be prohibited under Virginia law from acquiring such an interest. Thus, Virginia cannot, constitutionally, prohibit a foreign controlled institution that has its "home state" in one of the states within the region from acquiring interest in Virginia financial institutions if the foreign controlled institution would otherwise qualify as a regional bank holding company.

The Subcommittee received amendatory language from the representatives of the First National Bank of Maryland which would be added at the end of paragraph 4 in the definition of "Regional bank holding company" and which would exempt from the foreign exclusion "home state" foreign controlled banks within the region. The language that was offered is as follows: "other than a foreign bank which has designated a state within the region or the District of Columbia as its home state pursuant to 12U.S.C. 3103(c)." It was stated that the proposed amendment to the definition of "Regional bank holding company" would bring the bill into accordance with these constitutional requirements. Finally, it was pointed out that because of the draft's Nonseverability Clause, if there were a successful challenge of the Foreign Exclusion Clause in its present form, the entire Interstate Banking Act would be declared null and void.

The Subcommittee heard from the Bureau of Financial Institutions regarding the Foreign Exclusion Clause. The Bureau explained that if a Virginia Bank or bank holding company is acquired by an out-of-state bank holding company their first concern is over the soundness of that acquiring institution. They stated that in the example of the First National Bank of Maryland it would be difficult to get behind the Maryland entity to determine whether the bank was sound or not. They stated that the availability of a means of determining the safety and soundness of an institution such as First National Bank of Maryland is limited because it is owned by an Irish bank. The Bureau also pointed out that it is a question of control of financial resources of a major bank in Maryland which is beyond the reach of the Maryland authorities. The Bureau stated that they knew why the Foreign Exclusion Clause was in the North Carolina and Florida statutes, and that was because the control of certain banks was beyond the reach of those regulating the safety and soundness of financial institutions. They emphasized that in this area of foreign exclusion it is a quid pro quo situation wherein a certain amount of capital is brought into a state but control is taken away. The Bureau noted another concern which is the effect the ultimate owners have upon the bank since they can control the election of the Board of Directors of the bank who in turn lend money all around the world. Further testimony pointed out that it would be difficult to prohibit, through the definition of "Region", a New York money center bank from participating under this bill but not to prohibit a foreign owned bank. In response to this last testimony representatives from the First National Bank of Maryland stated that their bank had irrevocably chosen Maryland as its home state under the International Banking Act, and that it was an inaccurate understanding of federal law to espouse that if you let in foreign controlled bank holding companies then you should let in New York state bank holding companies. Finally, the Bureau pointed out that in their opinion it would be best to restrict the opportunity to own a Virginia bank or bank holding company to bank holding companies in the defined region.

The Virginia Bankers' Association, when asked by members of the Subcommittee, stated that with regard to the Foreign Exclusion Clause the Association feels that there ought to be some kind of exclusion but that it has no particular feeling as to which form the exclusion should take. They stated that their association was not sure whether the state could tell a domestic bank that it could participate but not allow foreign controlled banks designating that state as its "home state", to participate. They stated that although the Association has no strong feelings with regard to the form of the exclusion, the position offered by the First National Bank of Maryland through its amendment may be a good compromise between two extreme positions. The Bankers' Association noted the constitutional argument that was made with regard to the Foreign Exclusion Clause.

Because of the large amount of testimony received by the Subcommittee on the Foreign Exclusion Clause issue, they decided to leave the Foreign Exclusion Clause in the bill as drafted with the condition that it should remain subject to further discussion once the bill was assigned to the various committees in the General Assembly. The Subcommittee did direct the staff to rewrite the nonseverability provision of the draft in order to exempt successful challenges to the Foreign Exclusion Clause.

The Virginia Independent Bankers' Association testified that they were against any form of interstate banking. They stated that in the event that an interstate banking bill should be successful in the General Assembly they would like to have a provision placed in the bill that would put a cap on the total percentage of deposits that a bank holding company may have control over in Virginia. They stated that Kentucky and Tennessee have added this provision to their statutes. The Virginia Bankers' Association cautioned the Subcommittee in adding this limitation. They stated that, depending on the percentage of the cap, presently existing bank

holding companies in Virginia may be eliminated from operating under the bill's provisions. A copy of written testimony offered to the subcommittee appears as Appendix I to this report.

In general, the Bureau of Financial Institutions testified to what it thought were some positive and negative aspects of interstate banking. The Bureau stated that some of the positive aspects that may result from interstate banking may be a more competitive market and a more efficient allocation of credit. They noted that there is no indication that the entry of large banks has impaired small banks, but that small banks tend to prosper when a large bank comes into the same market. They pointed out that the regional approach would allow banks to develop in a natural geographic and economic region without the fear of encroachment of money center banks. They added that it would be better to have the ultimate control of the assets lying in the Southeast rather than the Northeast of the country.

With regards to negative aspects of the regional approach, the Bureau pointed out that the operating expenses of the larger banks are more than the small banks and thus interstate banking would not promote operating efficiency. They stated that the smaller banks are more profitable, better capitalized and more sound. They stated that less competition among institutions may result due to a small number of institutions in a market area. The Bureau emphasized that control of assets in the local marketplace may suffer by moving the control to another area. Such a bill may reduce the sensitivity to the local community needed for financial services.

The subcommittee received written testimony from Citicorp on its position on interstate banking. Citicorp stated to the subcommittee that it favors a national approach to interstate banking. A copy of Citicorp's position paper is included as Appendix VII to this report.

The final draft of the interstate banking bill as agreed to by the Subcommittee appears as Appendix VIII to this report.

For the reasons cited above, the Subcommittee recommends that a regional reciprocal interstate banking bill providing for holding company acquisition be passed by the 1985 Session of the General Assembly.

During the Subcommittee's deliberation of the interstate issue, it heard testimony concerning the nonbank bank issue. The Subcommittee found that the nonbank bank is an entity that takes advantage of a loophole as provided in the Federal Banking Act wherein the term "bank" is defined as an institution that accepts deposits and makes commercial loans. The nonbank bank does one or the other but not both and thereby escapes regulation. As part of its recommendation, the Subcommittee decided that legislation should be introduced to regulate nonbank banks doing business in Virginia and to eliminate the possibility that they may participate in interstate banking. A copy of the legislation that carries out this mandate appears as Appendix IX to this report.

III. THAT SENATE BILL 148, CARRIED OVER BY THE 1984 SESSION OF THE GENERAL ASSEMBLY AND AS AMENDED BY THE FULL JOINT SUBCOMMITTEE, SHOULD BE PASSED BY THE GENERAL ASSEMBLY IN ITS 1985 SESSION. THAT A PROVISION SHOULD BE ADDED TO SENATE BILL 148 PROVIDING FOR THE STATE CORPORATION COMMISSION TO HAVE THE AUTHORITY TO CORRECT THE SITUATION OF NONCOMPLYING OUT-OF-STATE CREDIT UNIONS DOING BUSINESS IN VIRGINIA.

As part of its study, the Subcommittee reviewed Senate Bill No. 148 of the 1984 Session of the General Assembly which was carried over by the Senate. The bill allows for interstate branching of credit unions through the national approach. The bill was carried over by the 1984 General Assembly in order to allow this study to be completed.

The Virginia Credit Union League stated that credit unions are different from banks and savings and loan associations in their desire to cross state lines. Credit unions expand into a state when an industry moves to or is incorporated in that state. He stated that they do not want to cross state lines for competitive reasons, but they do so to serve the financial needs of the employees of the industry. The League pointed out that in reviewing other states' laws, before initially drafting Senate Bill 148, all of the other states have the same basic requirements in their statutes. They stated that those basic requirements are found in this bill and are: (1) share

insurance for members, (2) a need for services in the house state, (3) exchange of supervisory reports and examinations, (4) compliance with the house state lending laws and regulations and (5) designation of a registered agent. The League emphasized that the draft that the Subcommittee was reviewing was in the same form as that carried over by the General Assembly in its 1984 Session with one exception which is the addition of paragraph 5 to subsection B. They stated that that paragraph was added at the request of the Virginia Bankers' Association. Paragraph 5 requires the out- of-state credit union desiring to come into Virginia to have any insurer of shares designate an agent for service of process or in absence of such designation to agree that the Clerk of the Commission be served. The League explained that this addition takes into account those insurance-of- accounts funds operated by states.

The Subcommittee learned from testimony that presently there are no prohibitions on federally chartered credit unions from branching across state lines. They also learned that an out-of-state credit union doing business in Virginia is not controlled by our Commissioner of Financial Institutions but by the home state regulatory authority. Further, the Subcommittee learned that should the out-of-state credit union be failing, the present draft bill will not provide for Virginia regulators to attempt to correct the situation.

A copy of the draft legislation to which the subcommittee conditionally agreed is attached as Appendix X to this report. The Subcommittee conditioned its approval of the draft upon the amending of the draft to provide for a State Corporation Commission having authority to control a noncomplying out-of-state credit union's authority to do business in Virginia. A copy of suggested amendatory language appears in Appendix X of this report.

For the reasons cited above, the Subcommittee recommends that Senate Bill No. 148, as amended, be passed by the 1985 Session of the General Assembly.

IV. THAT A JOINT RESOLUTION CONTINUING THIS STUDY SHOULD BE PASSED BY THE 1985 SESSION OF THE GENERAL ASSEMBLY. THAT THE RESOLUTION SHOULD PROVIDE THAT THE JOINT SUBCOMMITTEE SHOULD CONTINUE TO WORK ON THE REVISION OF THE INTEREST RATE LAWS OF THE COMMONWEALTH AND SHOULD MONITOR FEDERAL ACTIVITY IN THE AREAS OF SAVINGS AND LOAN LAWS AND INTERSTATE BANKING.

The Subcommittee found in its careful deliberations and study of the issues that there remains a need to continue the study. Throughout its study, the Subcommittee found that the laws relating to interstate banking, savings and loan associations and interest rates have been subject to continual change in recent years. They found that further changes may be made in these areas within the next year. The Subcommittee decided to continue its study in order that it may monitor the federal activities in the areas of savings and loan laws and interstate banking. They decided also to continue the study in order that more deliberations and consideration be given to the revision of the interest rate laws of the Commonwealth.

For the reasons cited above the Subcommittee recommends that a resolution be introduced and passed by the 1985 Session of the General Assembly to continue the Subcommittee's study. A copy of that resolution is attached as Appendix XI to this report.

CONCLUSION

The Subcommittee expresses its appreciation to all parties who particiapted in its study. The Subcommittee expresses its desire that all the parties who participated will continue to participate in its future study of the issues. The study group's recommendations have been offered only after carefully and thoroughly studying the data and information it received. The Subcommittee believes that its recommendations are in the best interest of the Commonwealth and it encourages the General Assembly to adopt those recommendations.

Respectfully submitted,

....

George H. Heilig, Jr., Chairman

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William F. Parkerson, Jr., Vice-Chairman

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William T. Wilson

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Alson H. Smith, Jr.

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Franklin P. Hall

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Vincent F. Callahan, Jr.

....

Edward E. Willey

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Peter K. Babalas

....

Richard J. Holland

....

John B. Bernhardt

....

APPENDIX I

Independent Bankers Association of Virginia

Serving Virginia's Independent Banks

Mutual Building, Suite 221
9th & Main Streets
P O. Box 973
Richmond, Virginia 23207
804-643-4569

Sue M. Gift
Executive Vice President Director

June 18, 1984

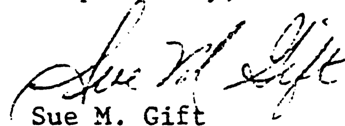
TO: MEMBERS OF THE COMMITTEE STUDYING HJR 30: SAVINGS & LOAN LAW, INTEREST RATE AND INTERSTATE BANKING STUDY.

RE: POSITION ON INTERSTATE BANKING

Enclosed please find a Resolution and supporting remarks regarding our position on Interstate Banking.

I hope you will have time to peruse it before the meeting and welcome the opportunity to discuss any questions which you might have.

Respectfully,



Sue M. Gift
Executive Vice President

SMG:se

Enclosure

The Honorable George H. Heilig, Jr. (Chairman)
The Honorable Vincent F. Callahan, Jr.
The Honorable Franklin P. Hall
The Honorable William T. Wilson
The Honorable Edward E. Willey
The Honorable Peter K. Babalas
The Honorable Alson H. Smith, Jr.
The Honorable Richard J. Holland
The Honorable William F. Parkerson, Jr.
Mr. John B. Bernhardt, Vice Chairman of the Board, Sovran Bank
Mr. Edwin Brooks, President, Security Federal Savings & Loan Association

INDEPENDENT BANKERS ASSOCIATION OF VIRGINIA

INTERSTATE BANKING POSITION

The Independent Bankers Association of Virginia passed a Resolution at their annual convention against any action by the Virginia General Assembly to open the door for interstate banking. The Resolution reads:

> WHEREAS, the Independent Bankers Association of Virginia believes that the best interests of Virginia's businesses and borrowers can best be served by dealing with local financial institutions; and
>
> WHEREAS, we believe that interstate bank ownership will force businesses and borrowers to deal with institutions headquartered outside their community and state; and
>
> WHEREAS, we believe that interstate banking would further stifle competition and foster the development of monopolies, we
>
> THEREFORE urge the members of the Virginia General Assembly to vote against any legislation which would open the door to national or regional interstate banking in Virginia.

We firmly believe that while a few Virginia banks would enjoy short-term advantages from interstate banking, the concentration of bank ownership and deposits is a potential danger to Virginia consumers, small businesses, and the banking economy in general. We would ask the committee members to consider the following issues regarding this matter:

IS INTERSTATE BANKING ALREADY HERE? Not really. Yes, we have interstate banking in the form of mortgage banking, finance companies, credit cards, factoring industrial banks, loan production offices, loan servicing, trust companies, financial advisors, leasing, data processing, insurance agents, management consultants, etc. but this is not the "Interstate Banking" issues we are really considering for Virginia. What we're talking about is INTERSTATE DEPOSIT TAKING AND INTERSTATE BANK OWNERSHIP. Current laws prohibit moving deposits from one state to another. National interstate banking would allow banks to play "merger monopoly" across state lines anywhere in the United States and regional reciprocal interstate banking would allow the same at a regional level. We firmly believe that funds generated in the local communities should be available for recycling within the community -- decisions on who can build houses or establish businesses or operate farms simply cannot be delegated to occupants of board rooms in New York, Chicago, etc.

INTERSTATE DEPOSIT TAKING AND INTERSTATE BANK OWNERSHIP IS BUT A TOOL FOR ACQUIRING ECONOMIC AND POLITICAL POWER. CONCENTRATION OF ASSETS IN MONEY-CENTER BANK HOLDING COMPANIES WILL GIVE THEM THE POWER TO DETERMINE WHO LIVES AND DIES.

WILL INTERSTATE BANKING BRING NEW JOBS, MORE CAPITAL, OR NEW & BETTER SERVICES? NO

NEW JOBS -- According to surveys made by the Small Business Association, the bulk of new jobs are in small businesses. Also, small business loans were made mostly by local community banks. Bank holding companies have a history of expansion by merger, not new creation. For example, between 1968 and 1979, bank holding com-

panies purchased 1,700 banks; during the same years, they organized only 79 new banks. Further consider that banks in New York and Philadelphia are closing branches in poor neighborhoods, denying banking services to the less affluent.

MORE CAPITAL -- Studies by the Federal Reserve Bank of Philadelphia found that the banking structure of a particular state is not associated with the economic development of the state. Banking structure has much less influence on economic growth than such factors as the labor supply, the resources available in the state and their cost, transportation facilities, and relative tax rates. Cases in point are California, which has high per capita income and state wide branching, and Illinois, which also has high per capita income but has unit banking.

NEW AND BETTER SERVICES -- A number of studies have proven that increases in market concentration lead to higher prices for services and loans. If the consumer has few or not alternative sources for his banking services, he is forced to pay "the going rate". Also, as banking markets become more highly concentrated, a few entrenched firms which confront each other in a number of local markets are likely to pursue a policy of interdependence and follow parallel pricing practices just short of overt collusion. As Stephen A. Rhoades, Senior Economist of the Federal Reserve wrote in his indepen-ent study entitled Power, Empire Building and Mergers (published 1983)

> The results of my studies dealing with bank-holding companies' participation in the mortgage-banking, consumer-finance, and leasing industries reveal that, if anything, after companies are acquired they are less efficient than independent firms in these industries...

Compare the transportation industries: airline deregulation has led to fewer flights and higher fares for travel between "less affluent" cities; since 1980 the deregulated freight railroads have abandoned over 7,000 miles of track in 41 states, and since the "deregulation" of passenger bus service, 390 communities in 21 states have lsot bus service and another 227 communities in 15 states have lost at least 50% of their service.

DO WE NEED INTERSTATE BANKING TO COMPETE WITH NEW NATION-WIDE PROVIDERS OF FINANCIAL SERVICES? No. Banks need the products which are competitive in quality and price to meet the products offered by Sears and other non-financial competitors. An example would be the experience with the money market mutual funds. When we were allowed to compete we did so and beat the competition at its own game. Given the choice between equal products, costomers will almost always choose a local source over a national firm. We also need the "level playing" field so often referred to -- all institutions which receive funds as deposits or near-deposits should be treated alike, and regulated as banks.

> ...The economy is moving away from competitive capitalism to monolithic capitalism--a system dominated by relatively few large, diversified companies. The long-run effects of this tendency on the economic and socio-political systems will be profound and in my opinion unattractive to most citizens. Some who support the move toward monolithic capitalism claim that it is inevitable, that technological requirements of modern industry dictate large, diversified firms with few competitors. The evidence, however, does not support that view. (Stephen A. Rhoades, Power, Empire Building and Mergers

CONCLUSION -- We strongly feel that Virginia has a unique and sound financial market place. While we would gain little by expansion into surrounding areas, other states are anxious to expand into ours.

We are very concerned about the safety and soundness of our financial institutions and feel the regulatory agencies need to establish strong guidelines before we should consider allowing out of state deposit taking and ownership which will result in mega banks and lack of any local control. Continental Illinois brought this to our attention.

Two of our U. S. Congressmen recently discussed interstate banking and expressed their concerns. I feel their concluding statements are worth repeating:

> ...Our greatest task today is to protect the God-made man from the man-made giant. The God-made man has natural rights; the corporate giant has no rights except those conferred by the law. (William Jennings Bryon, 1919, reiterated in a speech by the Honorable Byron L. Dorgan April, 1984 before the U.S. Committee on Banking, Finance and Urban Affairs)

> ...We must retain diversity in the financial community--in this economy there has been and continues to be a need for large, medium and small banks. One size does not fit all in this economy. (The Honorable Fernand J. St. Germain, Chairman, Committee on Banking, Finance and Urban Affairs, May, 1984)

Raymond B. Cavedo, Jr., President
INDEPENDENT BANKERS ASSOCIATION OF VIRGINIA

Sue M. Gift, Executive Vice President
INDEPENDENT BANKERS ASSOCIATION OF VIRGINIA

APPENDIX II

APPENDIX 2

STATEMENT

OF

THE LEGISLATIVE COMMITTEE

OF THE

VIRGINIA ASSOCIATION OF REALTORS

BEFORE THE

SAVINGS AND LOAN SUBCOMMITTEE

OF THE

HJR 30 JOINT SUBCOMMITTEE

October 8, 1984

The Virginia Association of REALTORS represents approximately 19,000 licensed real estate brokers and agents throughout the Commonwealth. As such, the Association is interested in all legislation affecting the provision of mortgage financing in the Commonwealth. The Legislative Committee of the Association offers several comments on the proposed Virginia Savings Institutions Act of 1985. While a section by section comparison of the existing statute with the proposed Act may produce additional specific comments, the Committee has several more general concerns to raise at this time.

It is the position of the Legislative Committee of the Association that:

1. The need to increase the amount a state-chartered savings institution can invest in a service corporation from 5% to 10% has not been demonstrated;

2. The need to increase the amount a state-chartered savings institution can invest in real estate from 3% to 10% has not been demonstrated;

3. Neither current law nor the proposed new Act define the kinds of activities in which service corporations owned by state-chartered savings institutions can engage. It is the Committee's view that such service corporations should be restricted to activities incidental to the functions of the savings institution in a manner comparable to service corporations owned by federally-chartered savings institutions.

4. The Committee believes that neither federally-chartered nor state-chartered depository institutions should have the authority to engage in third party real estate brokerage. The absence of statutory purposes for service corporations owned by state chartered savings institutions appears to permit such corporations to engage, directly or indirectly, in third party real estate brokerage.

We start from the view that savings institutions were created to provide a pool of long-term mortgage financing to support residential home-ownership nationwide. While we do not argue that such institutions should not be permitted to expand their range of financial services and

methods of operation to remain competitive with other forms of financial service companies, we believe the General Assembly should keep in mind the principal reason for having savings institutions. Thus, we believe efforts by state-chartered savings institutions to diversify should be reasonably related to the provision of home mortgage financing or should be designed to strengthen the institutions and not simply to permit them to engage in any other line of business.

Since Virginia law does not, to our knowledge, circumscribe the limits of service corporation activities, such corporations appear to have the inherent power to engage in any line of business, including, for example, third party real estate brokerage. Thus, our opposition to the increase in the level of investment in such a corporation from 5% of the parent's assets to 10% stems principally from the absence of restrictions of the activities of service corporations. We are opposed to such corporations engaging in activities not reasonably related to the provision of real estate mortgage financing and to such corporations engaging, directly or indirectly, in third party real estate brokerage.

We also note that the proposed 10% limit relates only to an investment on the part of the parent in the

subsidiary service corporation and is not a limitation on the size of the service corporation itself. Thus, the 10% investment can be leveraged with service corporation debt and retained earnings can accumulate without limit.

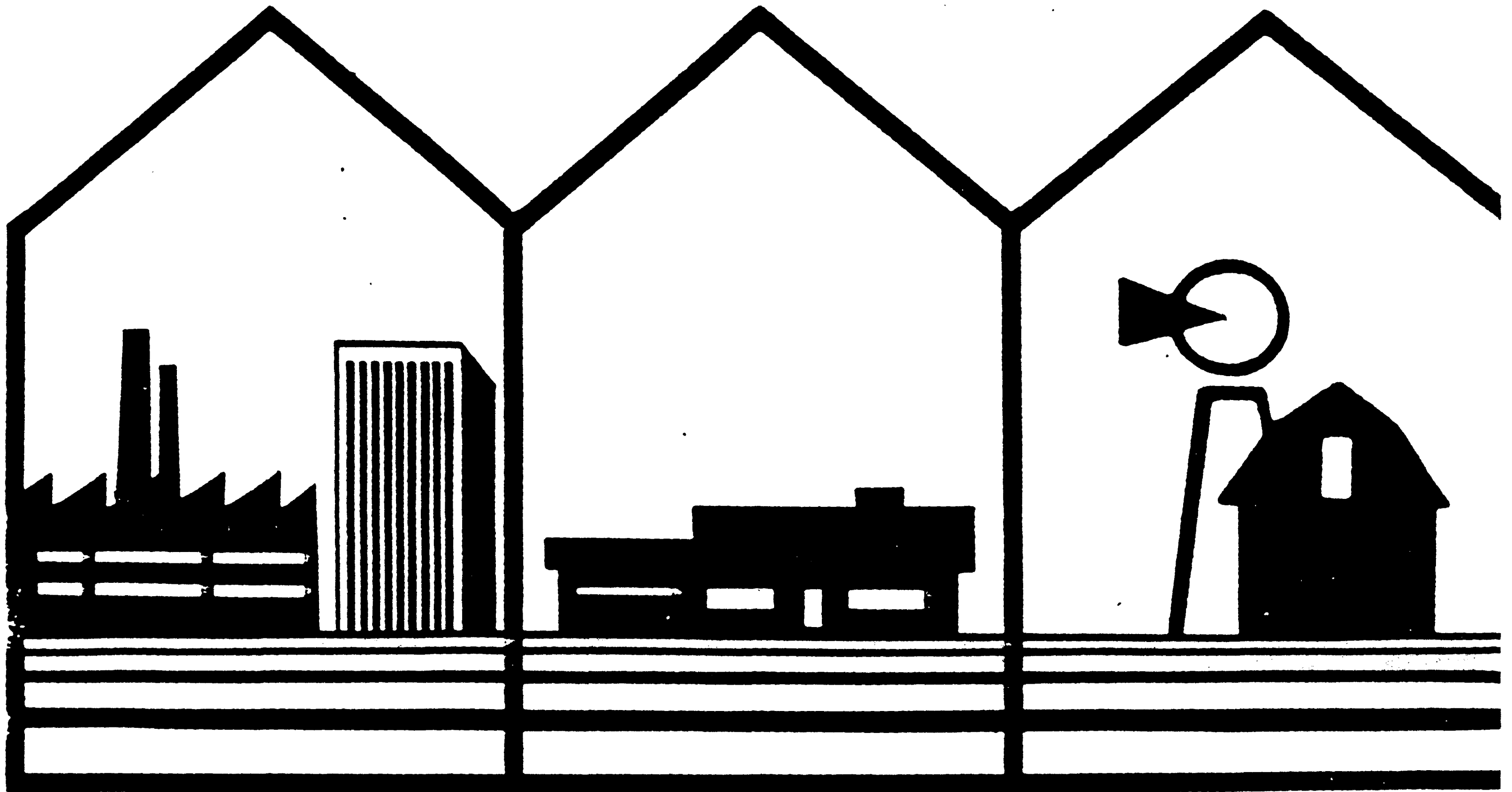
We have seen no discussion of the need to increase the service corporation investment limit from 5% to 10%. We note that federally-chartered savings institutions are limited to 3% investments in service corporations. We believe the proponents of the new Act should be required to demonstrate why the current limits on service corporation investment and direct investment in real estate should be increased. We also believe the justifications for each increase should be reasonably related to the purposes for which savings institutions were created.

Although there is nothing in the proposed Act that addresses the subject of real estate brokerage, we want the Subcommittee to be aware of the problems created by recent efforts on the part of savings institutions to expand into third party real estate brokerage. Attached for your information a copy of the statement of the President of the National Association of REALTORS to the Senate Committee on Banking, Housing, and Urban Affairs. The statement gives examples of savings institutions engaging in third party real estate brokerage and identifies the problems such

relationships create. Given the enormous range of financial services and the economic power of many savings institutions, the potential for anti-competitive conduct is great. We note that the regulations governing service corporations owned by federally-chartered savings institutions contain a laundry-list of permitted service corporation activities. Conspicuously absent is third party real estate brokerage. In fact, we believe the legislative history of the Garn-St. Germain Depository Institutions Act of 1982 will reveal that third party real estate brokerage was intentionally omitted. Thus, it is clear that Congress does not want federally-chartered savings institutions involved in third party real estate brokerage.

We bring this to your attention because there is no comparable list of permitted activities for service corporations formed by state-chartered savings institutions. We would prefer that the Act be more descriptive, by way of limitation, on the activities in which such corporation may engage. We would urge that third party real estate brokerage not be such a permitted activity.

We appreciate the opportunity to present these comments to the Subcommittee on behalf of the 19,000+ REALTORS of the Commonwealth. Our members share many common interests with savings institutions and they stand ready to support legislative efforts that address our mutual interests.



Statement of the

NATIONAL ASSOCIATION OF REALTORS®

THE WORLD'S LARGEST TRADE ASSOCIATION

TO THE: SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

ON: FINANCIAL INSTITUTIONS DEREGULATION

BY: DONALD H. TREADWELL

DATE: MARCH 7, 1984

STATEMENT

of Donald H. Treadwell

on behalf of the

NATIONAL ASSOCIATION OF REALTORS®

before the

Senate Committee on Banking, Housing

and Urban Affairs

Mr. Chairman, my name is Donald Treadwell and I am a REALTOR® from Detroit, Michigan and am President of the Association. I am here on behalf of over 600,000 members of the NATIONAL ASSOCIATION OF REALTORS® involved in every facet of real estate. I would like to thank you for this opportunity to comment on legislative proposals which would authorize depository institutions involvement in third party real estate brokerage. For several reasons which I will elaborate on during my testimony, it is the position of the NATIONAL ASSOCIATION OF REALTORS® that depository institutions should not be granted the authority to engage in third party real estate brokerage.

There are two issues I would like to address in my opening remarks. First, I would like to explain the functions performed by real estate brokers in the marketplace and second, I will dispel the misnomer that real estate brokers are in the "banking" business.

Real estate brokers perform three basic functions for the public: a marketing function to find buyers for sellers; a technical function to lead buyers and sellers through the intricacies of transferring interest in real property; and, an advisory function to assist buyers in determining the availability of funds to close the transaction.

It is this third function of assisting buyers in their efforts to secure mortgage financing that have led some in the banking industry to misunderstand that real estate brokers are now in the banking business. They contend that real estate brokerage firms which offer mortgage finance assistance to clients through either computerized programs such as the NATIONAL ASSOCIATION OF REALTORS® NATIONAL MORTGAGE ACCESS (RNMA) system or through mortgage companies have entered the banking business. It is indeed a misnomer to suggest that because the real estate industry has found a better way to market its product that this translates into real estate brokers being in the banking business.

REALTORS® using systems like RNMA are not banks or S & Ls. These computer systems do not require REALTORS® to assume any of the risk associated with the mortgage instrument selected by the buyer. Rather, the computerized sources of information on available mortgage instruments is like a public utility, it merely allows those participating in the service to tie into financing that is available. The actual risk associated with the extension of mortgage credit is shouldered by the lenders who ultimately provide the financing.

While it is true that some realty companies have opened mortgage company subsidiaries, it is also true that there are significant differences between mortgage banks on the one hand, and commercial banks and S & Ls on the other. A mortgage company is neither chartered by the federal government nor a state government and therefore does not enjoy the benefits of banks and savings and loans . When a mortgage company needs funds, it goes to the marketplace for them. It does not use FDIC or FSLIC insurance to attract capital. Further, mortgage banking companies do not have access to Federal Home Loan Bank Board advances or the FED discount window. Thus, to suggest that real estate brokers have entered the banking business is a fallacy.

While realty firms may own and operate mortgage companies, it is also true that bank holding companies have authority to own and operate mortgage bankir companies, and many do. In this regard, we would bring to your attention a case decided by the Federal Reserve Board in March 1972. Boatmen's Bankshares, Inc., a bank holding company, applied to the FED for approval to acquire Williams, Kurrus Company, a mortgage banking firm. In approving the acquisition, the Board required Williams, Kurrus to terminate its third party real estate brokerage activities reasoning that: "Real estate brokerage is not an activity that the Board has determined to be so closely related to banking or mananging or controlling banks as to be a proper incident thereto." This reasoning appears to be predicated on the concept that to

achieve safety and soundness, the regulatory system must keep banks in familiar territory. In Boatmen's, the Board went on to state that: nor has the applicant demonstrated that its activites in the real estate brokerage field are so closely related to banking or managing or controlling banks as to be a proper incident thereto.

In approving an application in September 1982 submitted by Bank America Corporation to engage in the activity of arranging equity financing through a subsidiary (BAMIRCO), the Board reaffirmed its position that third party real estate brokerage is not a permissible activity for bank holding companies explicitly stating that "because the particular expertise and analysis required for equity financing are not involved in general real estate brokerage, the Board's conclusion with respect to BAMIRCO's proposed activities does not represent a departure from the Board's position concerning the impermissibility of general real estate brokerage." These two cases clearly indicate that third party real estate brokerage are neither closely related to banking nor a proper incident thereto.

In light of the financial risk to the public, third party real estate brokerage firms, unlike most other commercial entities, are subject to a maze of state laws and regulations. For example, under state law, real estate brokers must meet various licensing and education standards and remain subject to public grievance procedures. Further, brokers must act in compliance with relevant state agency laws.

SAFETY AND SOUNDNESS

The reasons Congress enacted the Glass-Steagall and Bank Holding Company Acts are fundamental in a debate regarding financial institution deregulation, and in our view, remain valid today. The Glass-Steagall Act was enacted for the purpose of separating investment banking from commercial banking and the purpose of the Bank Holding Company Act is to require that any activities performed by a bank holding company be closely related to banking. Together, these two bodies of law effectually enforce a separation between banking and other kinds of financial and commercial activity and have served for over fifty years to maintain and promote the safety and soundness of financial institutions.

Now, in light of activities occurring in the marketplace provoked by various financial services companies, some members of Congress appear willing to abandon these laws and dismantle a system that has served our nation so well for the past fifty years. A system that has ably met this country's diverse needs including: The fostering of home ownership at levels unmatched by any other nation; access and availibility of credit throughout the country that has made small business the bulwark of our economy; and a secure, sound financial system which has regained the public confidence lost amid the disruption of the market in the 1920s.

In recognition of the fact that the failure of depository institutions is different than the failure of other business, Congress some fifty years ago

enacted important legislation intended to promote a safe and sound banking system, reduce the potential for conflicts of interest, prevent the concentration of economic power in the hands of a few and avoid the extension of credit being tied to acceptance of other services. This rationale remains valid today as no one believes that human nature has changed, or that the growth of the expertise of regulators has been faster than the innovations and techniques of modern financial entrepeneurs. A review of the recent record supports this: The Penn Square failure; the collapse of the Butcher Banks in Tennessee; and the Chase Manhattan/Drysdale securities debacle. Further, the recent $8.4 billion IMF authorization was necessary because neither federal regulation nor bank management was sufficient to keep leading banks from over-extending in foreign debt.

The most recent threat to the safety and soundness of the system stems from money-market brokers whose brokered deposits seem to be ending up in failed institutions. This is another example of the failure of the regulatory structure to keep up with events in the market. Depository institutions are getting into trouble in this area too quickly for regulators to be aware of it, and the possibility exists that providing a warning signal could by itself push a marginal institution into failure.

We believe that the brokered deposit problem is symptomatic of the need for a broader and open-minded look at the issue of depository institution deregulation and its consequences for the safety and soundness of the banking system. Thus, we would urge Congress not to make decisions based solely on

events occurring in the market, but rather, examine with scrutiny the level o. the system's safety and soundness, as measured by whether our capital markets are orderly and the saving public is protected. We should not permit innovations in the marketplace to jeopardize depositor's savings as this is essential if we are to avoid a loss of public confidence and if the nation's pool of savings is to be tapped and converted to the long term credit on which our nation's businesses depend.

Let us not forget that current laws were enacted to keep depository institutions out of areas not closely related to banking because when depository institutions make bad decisions, the public and the economy suffer the consequences. The measure of whether the current system is working is not the number of banks nor their profitability; For Congress, the measure must b the level of the system's safety and soundness. Further, in response to those who reason that expanded powers including real estate brokerage, are necessary to promote the safety and soundness of depository institutions, we would remind them that third party brokerage is a cyclical business. Thus, during recessionary or high interest periods the ability to offer third party brokerage will do nothing to stabilize their earnings or help them maintain their market share.

SEPARATE AFFILIATE STRUCTURE

The NATIONAL ASSOCIATION OF REALTORS® strongly disagrees with those who argue that the separate affiliate structure alleviates anti-competitive and

safety and soundness concerns. Although legal separation of parts of the holding company may be desirable to assist appropriate functional regulation and to help contain the elements of risk and conflicts of interest, it cannot prevent them. The combination of banking and real estate brokerage in one holding company makes it more likely that these products will be purchased in the same place, thereby greatly increasing the incentive and opportunity for tying arrangements. While it may be possible to cross-sell products without prima facie violations of anti-tying provisions (12 U.S.C. § 1972 and § 12 U.S.C. 1464 (q)), it will be most difficult to avoid violating the spirit of the law.

The potential riskiness of non-banking activities is relevant to the public's perception of the safety and soundness of the depository institution itself. This is so because of the inevitable linking of a bank's regulation to that of its affiliates as the holding companies themselves, the securities markets and the general public look upon the holding company and its subsidiaries as one consolidated corporate entity.

This can be illustrated by the experiences of banks as real estate lenders in the mid-70s including the problems related to their REIT affiliations.

- In September 1974, American Bank and Trust of Orangeburg, South Carolina, was declared insolvent as a result of loan defaults by several large land developers.

- In February of 1976, the $400 million Hamilton National Bank failed as result of the impact of the 1973-74 recession upon real estate loans acquired from the parent holding company and nonbank subsidiary (Hamilton Mortgage Company). Many of the loans were in default precluding the possibility of their sale. Additionally, since many of the loans were to the development projects and required the banks to lend additional funds, Hamilton National could only provide more funds to the projects or refuse to honor written commitments and face legal action.

- Although they apparently had no legal obligation to do so, Chase Manhattan eventually acquired $235 million in troubled loans from its affiliated REIT, of which more than $130 million was nonearning;

- First Wisconsin National Bank purchased nearly $15 million in loans from its affiliated REIT's and reimbursed the trust $5.5 million for losses in other loans;

- Continental Illinois purchased $61 million of loans from its namesake.

It is also possible that the public may confuse the name and identity of a risky affiliate with the bank, resulting in problems for the bank.

- In 1974, Beverly Hills Bank Corp., a one-bank holding company, found itself in trouble when a real estate developer defaulted on a substantial loan. As a result of the news accounts of the default, customers quickly withdrew 15 percent of deposits in the affiliated bank. The Federal Reserve intervened to halt the deposit run and the solvent bank was ultimately sold to Wells Fargo.

CROSS-SUBSIDY

Additionally, depository institutions argue that Section 23A of the Federal Reserve Act limits the ability of banks to make loans to their affiliates. Loans of an insured bank to an individual nonbank affiliate may not exceed 10 percent, and loans to all nonbank affiliates combined 20 percent of the bank's capital and surplus. The bankers statement that this limits the ability to loan money to affiliates is correct, however, the law explicitly authorizes such loans. Real estate brokerage is a labor intensive industry, not a capital intensive industry and therefore, allowing a captive brokerage firm to borrow up to 10 percent of a bank's capital and surplus would permit a captive brokerage firm to ride-out recessionary and high interest rate cycles in the economy, while their independent brokerage competitors would be forced to close down. Further, certain labor and administrative costs associated with the brokerage firm could be absorbed within the bank's overhead structure.

COMPETITIVE ADVANTAGES ENJOYED BY FEDERALLY INSURED AND FEDERALLY SUPPORTED INSTITUTIONS

Banks and thrifts serve many important public needs but do so with tremendous competitive advantages over other business entities. Thus, Congress must be cognizant of the fact that if a vast array of expanded powers is enacted for depository institutions, this will make depository institutions competitors, rather than resources for the commerce of this nation. Thus, we urge this Committee to carefully examine and consider what impact such deregulation will have on the long range availibility of credit to individuals and businesses of all sizes and kinds in all parts of the country. We cannot over-emphasize the fact that availability and access to credit are the heart and soul of our industry, and that depository institutions play a keyrole in providing the credit necessary to keep ours and other lines of commerce alive.

1. Federal Deposit Insurance

When a business needs capital, it must borrow these funds. Financial institutions borrow funds from depositors. These funds are in large part available because of federal deposit insurance. A cursory review of current advertisements for the Money Market Deposit Accounts and the proliferation of "non-bank banks" underscores the important advantgage of federal deposit insurance as a means of attracting depositors.

2. <u>Favorable Tax Treatment</u>

The tax treatment of federally chartered financial institutions also provides strong federal tax support that regular businesses do not enjoy. The bad debt reserve enables banks and thrifts institutions to deduct additions to bad debt reserves over and above actual loan losses. Banks can deduct interest on obligations incurred to purchase tax-exempt securities, something regular taxpayers cannot do. Banks also pay little or no tax on foreign activities. Other preferential tax treatment includes special rules for loss carryovers and carrybacks, exemptions from restriction on commodity tax straddles, and special rules for loan foreclosures. These tax adventages can help explain why the effective U.S. tax rate on U.S. income for commercial banks in 1981 was 2.3 percent while the retailing industry tax rate was 22.7 percent.

The nature of the relationship between a commercial enterprise and a financial institution could create anti-competitive situations. For example, service corporations are very effective tax management tools for their parent association that could lead to cross subsidies wrought by federal tax law. According to a "Special Management Bulletin" published by the U.S. League of Savings Associations on August 14, 1981, "The association's marginal tax rate is usually about 29%, whereas a service corporation's marginal tax rate is 46%. . . ."Mr. Chairman, the Bulletin then describes to thrifts how they can use this uneven tax treatment to their advantage. It says: "Service Corporations thus

should undertake activities that will reduce parent expenses or generate income otherwise not available to the association." Further, this would seemingly allow service corporations to minimize profit margins to maximize the lower taxed parent institution's profit. This could create the situation where an independent small business could not compete with a service corporation that accepts lower profits due to the beneficial taxation of the parent institution, rather than any inherent efficiencies. There are no inherent advantages in claiming efficiencies when in reality these "efficiencies" are only another loophole in the tax law.

3. Access to Special Credit

Access to credit from federal regulatory agencies such as advances from the Federal Home Loan Banks and the Federal Reserve's discount window also give financial institutions an important tool not available to other businesses. These federally supported benefits for depository institutions are very important to assure this nation of a stable and secure system of depository institutions. However, these benefits put them in a special class. Any changes to make these institutions competitors rather than resources for the commerce of this nation must take into account these benefits and a likelihood that they would provide unequal and unfair competition.

In its testimony presented to this Committee on February 22, 1984, the American Bankers Association went to great length in attempting to explain that the aforementioned benefits do not provide depository institutions with any competitive advantages. However, on page 6 of that testimony, the ABA stated:

> "Recent history, including the well publicized problems of some banks with Real Estate Investment Trusts in the mid 1970s and the problems of the trift industry in 1981-82, indicates that federal deposit insurance programs and federal agencies as lenders of last resort are sufficient to maintain public confidence."

Further, in the Chase/Waage study submitted by the ABA, page 19, the authors state:

> "If a bank is properly managed and supervised, it ought to be able to handle any liquidity problems that might arise because of trouble in affiliates through access to the FED's discount window."

These two excerpts clearly indicate access to these federal benefits permits companies which might otherwise have failed to remain viable competitors, a benefit enjoyed by no other type of corporate entity.

TYING ARRANGEMENTS AND CONFLICTS OF INTEREST

The banking industry argues that tie-in sales are prohibited by current law and that no evidence exists that banks have been able to evade this law. The following cases brought to our attention by the Iowa State Association of REALTORS®, where state chartered institutions are permitted to broker real estate, highlight tie-in abuses and provide the foundation for our opposition to entry into real estate brokerage by federally insured and supported depository institutions:

- A broker in a western Iowa metropolitan board made several visits to southwest Iowa to assist one of his sales persons in listing a property. The client wanted to list, but informed the salesperson that a banker in the community was also licensed, and the banker had informed the prospective client that financing would not be available if they listed with someone other than him.

- A sales person with a firm in a western Iowa metropolitan board took a client into a Savings and Loan for a loan application. A vice president of the S & L called the buyer later in the day and said that before they could proceed on that particulart house, that their trust department had some properties to show them.

- A Waterloo REALTOR® had a house listed for several months. The sellers were several months behind in payments and could not come up with the money. While the listing was still in effect, the S & L who held the mortgage called on the sellers and said they were going to foreclose. However, they said they would give them an additional three months if they would list the property with them. The listing firm, not wanting to place the sellers in jeopardy, released them from the listing.

These abuses clearly indicate that the net commission from third party real estate brokerage provides depository institutions strong incentive to use mortgage credit to secure broker listings and sales. While these examples are indicative of violations of current anti-tying laws, we would suggest to the Committee that the same results could be accomplished through more subtle practices by depository institutions.

Further, when a depository institution as lender has a monetary incentive to make the loan over and above what it expects to collect in interest, it is put in a position where exercise of its independent judgment may be difficult. To authorize real estate brokerage affiliations may tempt the bank or savings and loans to make loans it does not consider safe and sound because of the extra inducement of aiding a business in which it has a direct financial interest. Where the institution's renumeration is a percentage of commissions, the institution has a direct as well as an indirect interest in making loans to customers of the affiliated brokerage irrespective of whether such loans represent a sound investment.

In addition, where, as is often the case in small communities, banks or savings and loans decision makers such as officers, directors, and loan committee members are also real estate brokers, it is even less likely that impartial judgments on the merits of each loan application could be made. If such individuals are participants in the institution's franchise operation, they have a personal incentive to approve loans to customers of the franchise; where they are in competition with the franchise, they may find it difficult to consider objectively loans to the customers of their competitors. The result, at best, will be decisions not entirely based on the objective criteria the institution has selected.

The potential for abuse is not limited to outright ownership. The NATIONAL ASSOCIATION OF REALTORS® has been writing the FHLBB about a federal savings and loan in Lincoln, Nebraska that, without seeking prior FHLBB approval, entered into a contractual arrangement with a real estate brokerage firm. More recently, we have read about another federally chartered savings and loan, Glendale Federal Savings and Loan Association's purchase of the southern California franchising license of Realty World. While Congress deliberates on this issue, de facto, federally chartered institutions are engaging in third party real estate brokerage, despite the fact that approximately two years ago, the Board withdrew proposed regulations which would have made third party brokerage a pre-approved activity for savings and loan service corporations.

We have attached for your review copies of local newspaper ads which clearly show that First Federal of Lincoln, Nebraska and MidAmerica Partners are affiliated. These ads also suggest that preferential lending rates are available for MidAmerica customers through First Federal of Lincoln.

UNDUE CONCENTRATION OF RESOURCES

While the banking industry appears to wear one face on the issue of expanded powers, there is great divisiveness amongst large and small banks on the issue of geographic deregulation. In response to Chairman Garn's question on February 22nd regarding regional interstate banking, Jack King, the witness for IBAA responded in the following manner:

> This is no good--concentration of assets and powers is no good--regional banks want their hunting grounds improved but want protection against New York bank predators.

This response clearly indicates that depository institutions want authority to compete in industries which they could dominate, but do not want to have to compete against each other. The NATIONAL ASSOCIATION OF REALTORS® is of the belief that allowing depository institutions to expand into new areas when coupled with the federal benefits they enjoy will permit banks to wield excessive power and drive out smaller independent competitors. In its testimony submitted to this Committee on February 22, 1984, the American Bankers Association notes that two of the markets which the proposed legislation would permit banks to enter, securities and insurance, are more concentrated than commercial banking. The American Bankers Association makes no such claim regarding the real estate brokerage industry.

While one may find some market areas around the country served by only one depository institution, to our knowledge, there exists no market area where you will find only one real estate brokerage company.

In conclusion, Mr. Chairman, we would reiterate the need for Congress to take a broad and open-minded look at the issue of additional depository institution deregulation. Both the banking industry and the public are still adjusting to the deregulation initiatives enacted in 1980 and 1982. Further, the record is unclear as to what, if any benefits the concept of a financial supermarket may bring to consumers. We leave you with one last thought, Mr. Chairman . . . the public can not afford banks to be the losers in commercial competitive markets.

Mr. Chairman, I thank the Committee for this opportunity to present the NATIONAL ASSOCIATION OF REALTORS® views and will be pleased to respond to your questions and comments.

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MEMORANDUM

TO: Members of the Joint Study Committee on Savings & Loan Laws

FROM: Thomas & Fiske, P.C.

DATE: January 15, 1985

SUBJECT: New Savings Institutions Act

This Memorandum will serve to summarize the provisions of the new Virginia Savings Institutions Act, which is intended to replace the Virginia Savings & Loan Act of 1972 (Chapter 3.1 of Title 6.1 of the Code of Virginia). Also, the drafting of the Act will be discussed and significant changes will be highlighted.

Background and Development of the New Act

During the last five years, significant changes have occurred in the federal law and the laws of various other states with regard to the operations of savings institutions (*i.e.*, savings and loan associations, building and loan associations and savings banks). During this period, a large number of states have completely rewritten their savings institutions laws.

Spurred by the difficulties encountered by the savings industry in the late 1970's, Congress substantially revised the federal law regulating savings institutions when it enacted the Depository Institutions Deregulation Act of 1980, Public Law 96-221, and the Garn-St. Germain Depository Institutions Act of 1982, Public Law 97-320.

The 1980 federal Act established the Depository Institutions Deregulation Committee and began the process of deregulating the interest rates which depository institutions are permitted to charge. The 1980 Act also preempted State usery laws, substantially expanded savings institutions' ability to make real estate loans, and granted savings institutions the authority to offer negotiable order of withdrawal (NOW) accounts.

The 1982 federal Act further deregulated the activities of savings institutions by granting them a number of powers previously possessed only by commercial banks, authorized depository institutions to offer fully insured money market deposit accounts, and granted authority to the Federal Home Loan Bank Board to permit interstate mergers and acquisitions in certain circumstances. See, Restructuring the Thrift Industry in the 80's -- the Garn-St. Germain Act and Related Changes in Virginia Law, The Virginia Bar Association Journal (Vol. IX, No. 4, Fall, 1983), copy attached

However, even prior to the enactment of the Depository Institutions Deregulation Act and the Garn-St. Germain Act, the Federal Home Loan Bank Board adopted regulations significantly changing the manner in which federal savings and loan associations and federally-insured state savings institutions were permitted to conduct their business activities.

In the past three years, a number of amendments have been made to the Virginia statutes governing savings and loan associations. These amendments were made in an effort to keep pace with changes in the federal law and in the laws of other states. However, because of the patchwork nature of these amendments, it has become apparent that a total revision of the Virginia Savings & Loan Act is necessary in order to consolidate and more concisely set forth Virginia's savings and loan laws. It was also felt by members of the savings and loan industry that additional changes in the Virginia law were necessary in order to enable State associations to effectively compete with other segments of the financial institutions industry. As a result, Delegate George Heilig agreed to introduce House Joint Resolution No. 30 for purposes of establishing a Joint Subcommittee to study the revision of Virginia's savings and loan laws.

The Drafting of the Proposed New Act

At the request of the Virginia League of Savings Institutions, Thomas & Fiske, P.C., the League's legislative counsel, undertook to draft a new Act for submittal to the Joint Subcommittee as the League's proposal for legislation to replace the present Virginia Savings & Loan Act.

The first step in the drafting process was to collect and review the statutes and published regulations of all of the other states of the United States in order to identify those statutory provisions which differed from the present Virginia Act. These provisions were then reviewed for purposes of determining their usefulness for incorporation in the new Virginia Act. The Model Savings Association Act published by the United States League of Savings Associations was also reviewed and a number of useful provisions were found in the Model Act. Finally, all of the current federal statutes and regulations were reviewed for purposes of identifying any additional provisions which might serve as a basis for the revision of the present Virginia law.

In reviewing these various sources of legislative materials, it was found that a number of provisions currently found in the Virginia law also appear in the statutes of other states, as well as in the federal statutes and regulations. Therefore, the new proposed Act was drafted on the premise that, wherever possible, provisions appearing in the present Virginia law would be continued in the new Act. However, if a provision from the statutes and regulations of another state, or from the federal law, appeared to be better than the present Virginia law, the Virginia provision was either replaced or revised to incorporate the concepts contained in the law of the other jurisdiction. In some instances, the laws of other jurisdictions contained provisions which have no counterpart in the present Virginia law, which were included because it was felt that such provisions were desirable for the new Virginia Act.

A first draft was prepared by League counsel and submitted to a special drafting committee of the League composed of savings and loan executives from across the State. This special committee

reviewed the Act and suggested a number of revisions which were incorporated in a second draft.

The second draft was then submitted to the Commissioner of Financial Institutions and his staff for review. A number of suggestions made by the Commissioner were incorporated to revise the second draft into a third and final draft for presentation to the Joint Subcommittee.

As a result of the hearings held before the Joint Subcommittee and comments received from the various parties who appeared at the Subcommittee's hearings, additional changes in the proposed Act have been made. This Memorandum will serve to summarize the new Act, including all changes made as a result of the hearings of the Joint Subcommittee.

Highlights of the Proposed Act

Reorganization. Because of the many amendments which have been made to the 1972 Act, various provisions relating to the same subject matter are found scattered throughout the present statutes. The new Act has been organized into eleven separate articles, so that the statutory provisions within each article deal with the same subject matter. These eleven articles are as follows:

- Article 1 - General Provisions and Definitions
- Article 2 - Incorporation; Certificate of Authority; Corporate Administration
- Article 3 - Main Office, Branches, and Other Offices and Facilities
- Article 4 - Change in Corporate Form; Conversions
- Article 5 - Foreign Savings Institutions
- Article 6 - Accounts
- Article 7 - Real Estate Loans
- Article 8 - Other Loans and Investments
- Article 9 - Supervision
- Article 10 - Miscellaneous
- Article 11 - Acquisitions by Out-of-State Savings Institutions or Out-of-State Savings Institution Holding Companies

Included within these eleven articles are a total of 106 separate sections, numbered §§ 6.1-194.1 through 6.1-194.106.

Accounts. At present, savings and loan associations offer negotiable order of withdrawal (NOW) accounts rather than checking accounts. There are only minor technical distinctions between NOW accounts and checking accounts and the general public perceives the two types of accounts as being one and the same. However, it is not clear under present law that the protections provided to the general public by the Virginia Uniform Commercial Code for bank checking accounts also apply to savings and loan "checking" accounts. Therefore, the new proposed Act eliminates these minor distinctions and, for purposes of the depository activities of savings and loan associations, incorporates the provisions of Article 3 and 4 of the Virginia Uniform Commercial Code. This change is designed to eliminate the artificial distinctions between the depository activites of banks and savings institutions so that the law with respect to both types of financial institutions will be uniform throughout.

Real Estate Loans. Virginia law dealing with real estate loans made by savings and loan associations has been consolidated and simplified so as to be more understandable. Rather than have a number of special categories of real estate loans, all real estate loans are simply treated the same. However, there are still some special provisions dealing with home loans. As in the present law, State-chartered associations will continue to be required to invest at least 60% of their assets in real estate loans.

Other Types of Investments. Some changes have been made in the types of investments which State-chartered associations can make. For example, the new Act permits an increased amount of an association's assets to be invested in service corporations. Also, for the first time, State associations will be permitted to invest their assets directly in real estate for purposes of development, leasing, and other profit-making activities. Investment in service corporations and real estate is limited to an aggregate amount of 10% of the association's assets. This limitation corresponds to the limit established in a pending regulation of the Federal Savings and Loan Insurance Corporation which will apply to all federally-insured savings and loan associations. The ability to make certain other investments has been clarified.

Foreign Savings Institutions. The proposed Act provides for interstate operations on a "regional reciprocal" basis. This means that, first of all, the principal place of business of the foreign institution would have to be located in the southeast region of the United States (i.e., Alabama, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, West Virginia, or the District of Columbia) and, secondly, the home state of the institution would have to permit Virginia savings institutions to operate in the foreign institution's home state on the same basis as the foreign institution is permitted to operate in Virginia. The proposed region is the same region as is proposed by the interstate banking bill to be introduced in the 1985 session of the General Assembly.

Under the provisions of the proposed Act, a foreign savings institution or savings institution holding company could enter Virginia in three ways. First, a foreign savings institution holding company could acquire an existing Virginia savings institution. Secondly, a foreign stock savings institution could merge or consolidate with an existing Virginia savings institution. Finally, a foreign mutual savings institution (i.e., non-stock savings institution) could branch into Virginia. In all three cases, the approval of the State Corporation Commission is required, and the Bureau of Financial Institutions is empowered to supervise and regulate the activities of the foreign institution.

Summary of Individual Sections of the New Act

The following is a brief summary of the sections of the new Act, in the order in which they appear in the Act. Any significant changes from present Virginia law are pointed out.

Article 1 - General Provisions and Definitions

§ 6.1-194.1. Short Title.

§ 6.1-194.2. Definitions. -- Most of the definitions in the new Act appear in the old Act. Since the real estate loan

provisions have been simplified, a number of the definitions in the old Act distinguishing between various types of real estate loans have been elimianted. Conversely, because of the interstate operation aspects of the new Act, several new definitions dealing with foreign savings institutions have been added. For ease of reference, all of the definitions are placed in alphabetical order.

§ 6.1-194.3. Membership in Federal Home Loan Bank and Federal Savings and Loan Insurance Corporation. -- Permits membership in FHLB and FSLIC. This is present Code § 6.1-196.20 without substantial revision.

§ 6.1-194.4. Facilitating organizations or instrumentalities. -- This section comes from the Model Act and allows State associations to join organizations, such as clearing houses and trade groups, in order to further their business purposes.

§ 6.1-194.5. State Association May Purchase, Convey or Manage Property in Which it Has a Security Interest; Time Limitation. -- This section comes from Missouri law and designates what a State association can do to reduce or eliminate a loss to the association where the association has to acquire and manage property which has served as security for a loan on which there has been a default.

§ 6.1-194.6. Rate of Interest Chargeable by Savings Institutions. -- This is present Code § 6.1-195.3:1 which is subtantially unchanged.

§ 6.1-194.7. Applicability of Virginia Uniform Commercial Code to commercial paper and depository activities of savings institutions. -- This section makes it clear that the Uniform Commercial Code will apply to the checking account activities of State-chartered S&Ls.

Article 2 - Incorporation; Certificate of Authority; Corporate Administration

§ 6.1-194.8. Application of Virginia Stock Corporation Act and Virginia Nonstock Corporation Act. -- This is present Code § 6.1-195.5 without substantial change.

§ 6.1-194.9. Formation of State savings and loan association. -- This is present Code § 6.1-195.7 without substantial change.

§ 6.1-194.10. Corporation name. -- This is present Code § 6.1-195.8 without substantial change.

§ 6.1-194.11. Par value of shares; payment of shares; reacquisition of shares or acceptance thereof as security; how subscriptions to stock to be paid; disposition of money received before institution opens; stock option plans. -- This section represents a substantial revision of present Code § 6.1-195.11. Portions of § 6.1-14 of the Virginia Banking Act have been incorporated in subsections B and C of this Section to provide for the bonding of incorporators of a new stock association who are entrusted with the funds of investors in the new association. However, the language from the Banking Act has been modified to further clarify the bonding and repayment requirements.

§ 6.1-194.12. Certificate of authority to do business. -- This is present Code § 6.1-195.47 with minor modifications adopted from the Virginia Banking Act.

§ 6.1-194.13. Commissions, fees, etc., for sale of stock not permitted. -- This is present Code § 6.1-195.11:1 to which a second sentence has been added for clarification.

§ 6.1-194.14. Board of directors generally. - This is present Code § 6.1-195.41, essentially unchanged.

§ 6.1-194.15. Meetings of board of directors. -- § 6.1-52 of the Virginia Banking Act has been adopted. However, that provision has been changed to allow the stockholders or members of the association to designate the number of directors which constitute a quorum.

§ 6.1-194.16. Notice of meetings of members; determining members entitled to notice or to vote. -- This is present Code § 6.1-195.45 without substantial change.

§ 6.1-194.17. Voting rights; proxies. -- Present Code § 6.1-195.10 has been modified by adding certain provisions from § 11 of the Model Act to more clearly identify the manner in

which voting rights of members of a mutual association may be exercised.

§ 6.1-194.18. Access to books and records; communication with members. -- This section is a modification of present Code § 6.1-195.46. The privacy protection portions of the statute have been strengthened.

§ 6.1-194.19. Audit of association; report. -- This is present Code § 6.1-195.44, essentially unchanged.

§ 6.1-194.20. Bonds of officers and employees. -- This is present Code § 6.1-195.43, essentially unchanged.

§ 6.1-194.21. Loans to Officers, Directors or Employees. -- This is present Code § 6.1-195.40:1, without substantial change.

§ 6.1-194.22. Overdrafts by savings institution officers, directors or employees. -- This is present Code § 6.1-195.40.2, without substantial change.

§ 6.1-194.23. Reserves; surplus and undivided profits. -- Present Code § 6.1-195.33 has been substantially modified by including provisions from § 22 of the Model Act. The present Virginia statute is unclear and not realistic in light of present practices in the industry. Therefore, the new section clarifies the manner in which the reserve requirement is calculated and sets the reserve at a minimum of 5% of deposits. However, as a practical matter, the reserve requirement for State associations in Virginia will continue to be prescribed by the regulations of the FSLIC.

§ 6.1-194.24. Liability of members of mutual savings institution. -- This section has been adopted from § 24 of the Model Act and provides that the liability of a member of a mutual association to creditors of the association is limited to the amount of the member's savings deposits. That is, the liability of a member is limited to the amount of his or her investment in the association in the same manner as applies to stockholders of a corporation.

§ 6.1-194.25. Mutual capital certificates. -- This section permits mutual savings and loan associations to raise capital in

the same manner as stock associations do when they issue debentures. The language of this section comes from § 23(e) of the Model Act.

Article 3 - Main Office, Branches, and Other Offices and Facilities

§ 6.1-194.26. Offices and other facilities of State associations and foreign savings institutions; approval of branch offices required. -- This is a new section which simplifies the manner in which State associations are permitted to open and close their offices. Under this Section, a State association need not obtain the prior approval of the SCC before opening a new office, so long as the new office does not accept deposits. This is because, from a supervisory and public interest point of view, only the locating and relocating of depository offices should be regulated. It is not necessary to strictly regulate the locating of other types of offices, such as administrative offices and loan origination offices.

§ 6.1-194.27. Facilities Associated with Home or Branch Office. -- This section is based on a federal regulation and allows a State association to have a drive-in teller window.

§ 6.1-194.28. Change of Branch Office Location. -- This section incorporates the principles contained in present Code § 6.1-195.48. However, as is the case with federal savings and loans, the new section permits short distance relocations without the necessity of obtaining the approval of the SCC.

§ 6.1-194.29. Remote Service Units. -- This is a new section and is essentially the same as the federal regulation on remote service units.

§ 6.1-194.30. Home Financial Services. -- This is a new section patterned after the corresponding federal regulation.

§ 6.1-194.31. Suspension of Business During Actual or Threatened Emergency. - This section is essentially the same as present Code § 6.1-195.75.

Article 4 - Change in Corporate Form; Conversions

§§ 6.1-194.32 through 6.1-194.40. These sections are essentially unchanged from the corresponding sections presently found in the Virginia Code, which sections are §§ 6.1-195.51 through 6.1-195.57:2.

Article 5 - Foreign Savings Institutions

§ 6.1-194.41. Foreign savings institutions; certificate of authority. -- This section indicates the steps which must be taken before a foreign savings institution can obtain a certificate of authority to do business in Virginia. These provisions are essentially the same as similar provisions in the Oregon Code. Subsection E of this section allows only foreign savings institutions located in the southeast region to operate in Virginia. (Additional limitations on interstate operations are contained in Article 11.)

§ 6.1-194.42. When operation of foreign savings institution in the Commonwealth is prohibited. -- This section requires reciprocity before a foreign savings institution can be permitted to do business in Virginia.

§ 6.1-194.43. Applicability of Virginia Stock and Nonstock Corporation Acts. -- This section applies the same requirements to foreign savings institutions coming into Virginia as are applied to other types of foreign corporations doing business in the Commonwealth, e.g., appointment of a registered agent, filing copy of charter with the SCC, etc.

§ 6.1-194.44. Law applicable to contracts of foreign savings institutions. -- This section is derived from Oregon Code § 722.508 and provides that contracts made by foreign savings institutions in Virginia shall be interpreted under Virginia law.

§ 6.1-194.45. Examination and supervision of foreign savings institutions. -- This section incorporates features of the Model Act and some of the regional interstate compact acts, and explains the responsibilities of the Commissioner of Financial

Institutions with regard to foreign savings institutions admitted into Virginia.

§ 6.1-194.46. Revocation of certificate of authority of foreign savings institution. -- This section is derived from Oregon Code § 722.516 and includes a provision which, as a practical matter, requires continuing reciprocity once the savings institutions of another state have been admitted into Virginia.

§ 6.1-194.47. Unapproved foreign savings institutions. --This section is derived from the Model Act and authorizes the Commissioner to act against foreign savings institutions which attempt to do business in Virginia without authority.

§ 6.1-194.48. Activities which are not considered "doing business." -- This section is essentially the same as § 59(f) of the Model Act.

Article 6 - Accounts

§ 6.1-194.49. Accounts of State associations. -- This section is new and permits the board of directors of an S&L to determine what accounts will be offered by the association, subject to any limitations on the payment of interest which are contained in either the federal or state law. This section conforms with the present trend to do away with artificial distinctions between deposit accounts offered by S&Ls and by banks.

§ 6.1-194.50. Rules governing withdrawal. -- This is essentially the same as present Code § 6.1-195.21.

§ 6.1-194.51. Redemption. -- This is essentially the same as present Code § 6.1-195.15.

§ 6.1-194.52. Accounts of savings institutions as legal investments and as security. -- This is essentially the same as present Code § 6.1-195.50, except that language has been added to further clarify that public funds can be deposited in savings institutions.

§ 6.1-194.53. Deposits of federal taxes and United States Treasury tax and loan accounts. -- This is the same as present Code § 6.1-195.22:2, with some archaic language deleted.

§ 6.1-194.54. Accounts under Federal Self-Employed Individuals Tax Retirement Act and Federal Employee Retirement Security Act of 1974. - This section combines present Code §§ 6.1-195.49 and 6.1-195.49:1.

§ 6.1-194.55. Accounts issued in name of minor. - This section is new and is derived from § 28 of the Model Act. It allows minors to have control over funds deposited by them in S&Ls.

§ 6.1-194.56. Powers of attorney on accounts. -- This section is essentially the same as present § 6.1-195.27, with minor modifications.

§ 6.1-194.57. Accounts of deceased or incompetent persons. -- This is similar to present § 6.1-195.28 except for the inclusion of certain provisions from § 32 of the Model Act which clarify the responsibilities of S&Ls with regard to such accounts.

§ 6.1-194.58. Payment of small balances to next of kin of decedent. -- Present § 6.1-195.29, substantially unchanged.

§ 6.1-194.59. Accounts of fiduciaries. -- This section is derived from § 31 of the Model Act. It is designed to limit the liability of an association which acts in good faith in paying out fiduciary funds.

§ 6.1-194.60. Savings institution need not inquire as to fiduciary funds deposited in fiduciary's personal account. -- Persent § 6.1-195.27:1, with minor changes.

§ 6.1-194.61. Accounts held by various trustees for same beneficiary. -- Present § 6.1-195.24, unchanged.

Article 7 - Real Estate Loans

§ 6.1-194.62. Real Estate Loans; Required Investment. -- This section states in concise terms a State-chartered association's

authority to make real estate loans. As in the present law, a State association is required to invest at least 60% of its assets in real estate loans. The section also identifies certain types of investments which are to be considered real estate loans for meeting the 60% requirement.

§ 6.1-194.63. Appraisals; Loan-to-Value Ratios. -- This section is adopted from two federal regulations. Present Virginia law limits the amount of a real estate loan to 95% of appraised value. Federal law and the laws of most other states now permit a 100% loan-to-value ratio, with the further provision that, where the principal amount of the loan is increased due to negative amortization, the loan-to-value ratio may go over 100%. These concepts are incorporated in this new section.

§ 6.1-194.64. Initial Repayments on Real Estate Loans. -- This section is derived from a federal regulation and states loan repayment requirements.

§ 6.1-194.65. Adjustable Real Estate Loans. -- This section indicates the authority of State associations to make adjustable real estate loans so that the interest rate, term, and other features can be adjusted during the life of the loan.

§ 6.1-194.66. Special Provisions for Home Loans. -- This is a special provision pertaining to home loans which essentially requires repayment in not more than 40 years.

§ 6.1-194.67. Dealing With Successors in Interest. -- This section is the same as present Code § 6.1-195.38.

§ 6.1-194.68. Trustees on loans secured by deed of trust. -- Present Code § 68.1-195.18, with minor changes.

Article 8 - Other Loans and Investments

§ 6.1-194.69. General Investment Authority. -- This section is very similar to present Code § 6.1-195.34. Subsections (b), (c) and (d) permit up to 10% of the assets of a State association to be invested in service corporations and real estate. The remaining subsections are substantially the same as in the present Code and SCC regulations.

§ 6.1-194.70. Effect of Repeal or Amendment of Statute or Regulation on Existing Loan or Investment. -- This provision is presently contained in § 6.1-195.35.

§ 6.1-194.71. Limitation on Liability of Savings Institutions Making Loans for Certain Purposes. -- This section is essentially the same as present § 6.1-195.6, except that the limitation on liability has been extended to also include loans made for the purchase of property as well as for the design, manufacture, construction, etc. of property.

§ 6.1-194.72. Perfection of Certain Security Interests. -- Present § 6.1-195.22:3, with minor changes.

Article 9 - Supervision

§ 6.1-194.73. General Supervisory Powers of Commissioner. -- This section is derived from § 51 of the Model Act.

§ 6.1-194.74. Regulations of Commission. -- These provisions are derived from present Code § 6.1-195.35. The last sentence of the first paragraph has been added for clarification.

§ 6.1-194.75. Regulations to permit State associations to have powers comparable to federal savings institutions. -- This section is also derived from Present § 6.1-195.35.

§ 6.1-194.76. Publication of Regulations. -- Present § 6.1-195.72, with minor changes.

§ 6.1-194.77. Statements to be furnished by Commission to directors of savings institutions. -- Essentially the same as present Code § 6.1-195.69.

§ 6.1-194.78. State associations to furnish financial statements and reports. -- Essentially the same as present Code § 6.1-195.67.

§ 6.1-194.79. Examination of Savings Institutions by Commissioner; Report of Examination. -- Present Code § 6.1-195.64.

§ 6.1-194.80. Savings institution to give examiners access to books, etc.; examination of directors, officers and employees under oath. -- Present Code § 6.1-195.66, with minor changes.

§ 6.1-194.81. False statements by officers or agents. -- Present Code § 6.1-195.73, with minor changes.

§ 6.1-194.82. Audits. -- Present Code § 6.1-195.68, with minor changes.

§ 6.1-194.83. Powers of Commission in case of nonobservance of law, noncompliance with orders, insufficient reserves or insolvency, etc.; appointment of Federal Savings and Loan Insurance Corporation as receiver. -- This section is similar to present § 6.1-195.70. However, some provisions from the Virginia Banking Act have been included to expand the authority of the Commissioner to act in certain circumstances where the stability of an association is threatened.

§ 6.1-194.84. Removal of director or officer; appeal; penalty for acting after removal. -- This section is new and is derived from §§ 6.1-49, 6.1-50 and 6.1-51 of the Virginia Banking Act. It allows the Commissioner to remove an officer or director of an association who is violating the law.

§ 6.1-194.85. Fees for Supervision and Regulation; Investigations. -- This section is essentially the same as present § 6.1-195.65. In the case of examination of out-of-state branches of State Associations, the Commission is permitted to set the fee since the cost of such examinations may vary depending on the distance to the out-of-state location. By the same token, the fee charged to a foreign association applying for authority to do business in Virginia is to be set by the Commission since the expenses involved may vary based on the location of the foreign institution.

§ 6.1-194.86. Examination of books, etc., of persons believed to be doing business without authority; doing business without authority a misdemeanor. -- This section is essentially the same as present §§ 6.1-195.60 and 6.1-195.61.

§ 6.1-194.87. Regulation of savings institution holding companies. -- This section is derived from present § 6.1-195.5:1

except that holding companies which do not have any State-chartered subsidiary S&Ls need only comply with the regulations of FSLIC.

§ 6.1-194.88. Merger, consolidation or transfer of assets of insolvent or financially unstable association; notice and hearing; final order; priorities; examinations of resulting institutions. -- This section is essentially the same as present § 6.1-195.70:2. However, the sunset provision on supervisory interstate mergers has been removed.

Article 10 - Miscellaneous

§ 6.1-194.89. Construction of Act. -- This section is patterned after sections contained in the Model Act and the provisions of current Virginia Code § 6.1-195.76.

§ 6.1-194.90. Application to Federal and Foreign Savings Institutions. -- This section is essentially the same as present § 6.1-195.3 allowing Virginia law to control the activities of federal and foreign institutions to the greatest extent possible.

§ 6.1-194.91. Effect of Act as to Preexisting Savings Institutions. -- This section is essentially the same as present § 6.1-195.2.

§ 6.1-194.92. Statement by Savings Institution that its Accounts are Insured or Guaranteed; Misleading Advertising. -- This section is essentially the same as present § 6.1-195.63.

§ 6.1-194.93. False Statements and Similar Actions Prohibited. -- This section is derived from § 63 of the Model Act. A similar provision is contained in the Criminal Code of Virginia.

§ 6.1-194.94. Defamation of Savings Institutions and Certain Federal Agencies Prohibited. -- This section is derived from § 3 of the Model Act and is similar to present Code § 6.1-195.62.

§ 6.1-194.95. Prohibitions on conduct of savings institution business; use of certain terms prohibited; exceptions; penalty.

-- This section is derived from §§ 6.1-195.58 and -195.59 of the present Code.

Article 11 - Acquisitions by Out-of-State Savings Institutions or Out-of-State Savings Institution Holding Companies

§ 6.1-194.96. Definitions. -- This section provides additional definitions for use in the interstate provisions of the Act. The definitions are similar to those contained in the interstate banking bill, with certain changes so as to make the definitions conform with the differences between banks and savings institutions.

§ 6.1-194.97. Acquisitions by a Regional Savings Institution Holding Company. -- This section sets forth the requirements for an acquisition of a Virginia savings institution or Virginia savings institution holding company by an out-of-state savings institution holding company.

§ 6.1-194.98. Acquisitions by a Regional Savings Institution. -- This section sets forth the requirements for an acquisition of a Virginia savings institution or Virginia savings institution holding company by an out-of-state savings institution which is not operating in the holding company form.

§ 6.1-194.99. Same; Investigation of Application; Prescribed Investigation Period; Shortening, Lengthening or Waiving of Period; Hearing; Appeal. -- This section provides for investigation and approval by the State Corporation Commission of applications by a foreign savings institution or foreign holding company for permission to acquire a Virginia institution or Virginia holding company.

§ 6.1-194.100. Exceptions. -- This section provides that, if a holding company or savings institution acquires a subsidiary outside of the southeast region as a result of debt-collection efforts, the non-regional subsidiary must be divested within two years, or an extended period permitted by the SCC, in order for the holding company or institution to continue to do business in Virginia.

§ 6.1-194.101. Prohibitions. -- This section prevents savings institutions and holding companies located outside the region from acquiring subsidiaries in Virginia.

§ 6.1-194.102. Applicable Laws, Rules and Regulations. -- This section empowers the SCC to regulate out-of-state institutions and holding companies doing business in Virginia.

§ 6.1-194.103. Periodic Reports; Interstate Agreements. -- This section gives the SCC additional supervisory authority and provides for cooperative agreements between the SCC and the regulatory authorities of other states.

§ 6.1-194.104. Enforcement. -- This section gives the SCC the same enforcement powers authorized with regard to savings institutions chartered in the Commonwealth.

§ 6.1-194.105. Notice of Intent to Acquire Out-of-State Savings Institution. -- This section requires a Virginia savings institution or Virginia holding company to notify and obtain the approval of the SCC prior to acquiring an out-of-state subsidiary.

§ 6.1-194.106. Non-severability. -- This section provides that, if any portion of Article 11 is declared invalid by a final court order, the entire article shall be invalid, except as to transactions consummated prior to the court order. The purpose of this section is to prevent a court order from, in effect, altering Virginia law to permit nationwide branching into Virginia. However, interstate operations begun before the effective date of any such court order will be permitted to continue.

SMD/rcp

APPENDIX IV

SENATE BILL NO. .... HOUSE BILL NO. ....

A BILL to amend the Code of Virginia by adding in Title 6.1 a chapter numbered 3.01, consisting of articles numbered 1 through 11, containing sections numbered 6.1-194.1 through 6.1-194.106, and to repeal Chapter 3.1 of Title 6.1 of the Code of Virginia, consisting of sections numbered 6.1-195.1 through 6.1-195.76, in order to revise the savings and loan laws of Virginia; penalties.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 6.1 a chapter numbered 3.01, consisting of articles numbered 1 through 11, containing sections numbered 6.1-194.1 through 6.1-194.106 as follows:

CHAPTER 3.01.

VIRGINIA SAVINGS INSTITUTIONS ACT.

Article 1.

General Provisions.

§ 6.1-194.1. Short title.–The short title of the law embraced in this chapter is the Virginia Savings Institutions Act of 1985.

§ 6.1-194.2. Definitions.–As used in this chapter, the following definitions shall apply unless a different meaning is required by the context:

"Account" means any account with a savings institution and includes a checking, time, interest, or savings account.

"Association" means a savings and loan association, building and loan association or building association.

"Branch office" means an office of a savings institution where, in addition to conducting other business activities of the institution, the institution accepts deposits.

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of Financial Institutions.

"Federal savings institution" means a savings institution incorporated or organized under the laws of the United States.

"Financial institution" means a savings institution, commercial bank, trust company, industrial loan association or credit union.

"Foreign savings institution" means a savings institution incorporated under the laws of a state, territory or possession of the United States, other than the Commonwealth of Virginia, the principal business office of which is located outside the territorial limits of the Commonwealth. The term "foreign savings institution" does not include a savings institution incorporated under the laws of United States.

"Home loan" means a real estate loan the security for which is a lien on real estate comprising a single-family dwelling or a dwelling unit for four or fewer families in the aggregate.

"Insured savings institution" means a savings institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, Federal Deposit Insurance Corporation, other federal agency, or other insurer approved by the Commission.

"Liquid assets" means cash on hand; cash on deposit in Federal Home Loan Banks, Federal Reserve Banks, savings institutions, or in commercial banks, which is withdrawable upon not more than thirty days' notice and which is not pledged as seurity for indebtedness; the liquid

asset fund of the United States League of Saving Institutions; obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States; or any other asset which the Commissioner designates as a liquid asset. Any deposits in financial institutions under the control or in the possession of any supervisory authority shall not be considered as liquid assets.

"Main office" means the office at which a savings institution first commences to do business or, where the savings institution has more than one office, the office designated by the institution's board of directors as the institution's main office.

"Manufactured building" means a mobile home or other building or structure designed for use as a dwelling or business facility which is manufactured and assembled at a location other than the site where such mobile home, building or structure is placed for use as a dwelling or business facility, or both.

"Member" means a person holding a savings account of a mutual association, and a person borrowing from or assuming or obligated upon a loan or interest therein held by such association, or a person purchasing real estate securing a loan or interest therein held by such association. A joint and survivorship or other multiple owner or borrower relationship constitutes a single membership.

"Mutual association" means an association which is organized and operated exclusively for the benefit of its members and which does not issue shares of capital stock.

"Mutual savings institution" means a savings institution which is organized and operated exclusively for the benefit of its members and which does not issue shares of capital stock.

"Real estate loan" means a loan on the security of any instrument, whether a mortgage, deed of trust, or land contract, which makes the interest in real estate described therein, whether in fee or in a leasehold or subleasehold extending or renewable automatically or at the option of the holder, or at the option of the savings institution, for a period of at least ten years beyond the maturity of the loan, specific security for the payment of the obligations secured by such instrument. The term also includes a loan, or interest therein, secured by cooperative housing units on the security of (i) a security interest in the stock or membership certificate issued to a tenant-stockholder or resident member of a cooperative housing corporation (as defined in paragraph (1) subsection (l) of § 13.1-501) coupled with (ii) the assignment by way of security of the borrower's interest in the proprietary lease or other right of tenancy in the property owned by such corporation.

"Savings account" means an interest bearing account not subject to withdrawal by check or other negotiable instrument.

"Savings institution" means a savings and loan association, a building and loan association, building association, or savings bank, whether organized as a captial stock corporation or a nonstock corporation.

"Service corporation" means a stock corporation the entire stock of which is owned directly by one or more savings institutions, or any such corporation which is owned indirectly through a subsidiary or subsidiaries of one or more savings institutions.

"State association" means a savings and loan association or building and loan association incorporated under the laws of the Commonwealth of Virginia. "State association" also means a savings and loan association incorporated under the laws of the Commonwealth which uses the term "savings bank" as a part of its corporate name.

"Stock association" means an association which issues shares of capital stock.

"Stock institution" means a savings institution which issues shares of capital stock.

"Withdrawal value" means the amount credited to an account less lawful deductions therefrom, as shown by the records of the savings institution.

§ 6.1-194.3. Membership in Federal Home Loan Bank and Federal Savings and Loan Insurance Corporation.–A savings institution shall be empowered to become a member of the Federal Home Loan Bank and the Federal Savings and Loan Insurance Corporation, and to conform to the provisions, rules and regulations thereof.

§ 6.1-194.4. Facilitating organizations or instrumentalities.–Every savings institution shall

have the power to become a member of, deal with, maintain reserves or deposits with, or make reasonable payments or contributions to any organization or instrumentality, government or private, to the extent that such organization or instrumentality assists in furthering or facilitating the institution's purposes, powers, services or community responsibilities, and to comply with any reasonable requirements or conditions of eligibility. However, this section shall not be construed so as to permit a savings institution to establish deposit or reserve accounts with any financial institution or other entity the accounts of which are not insured by federal agency or other insurer approved by the Commissioner.

§ 6.1-195.5. State association may purchase, convey or manage, property in which it has a security interest; time limitation.–A. A state association may purchase at any sale, public or private, any real estate or personal property upon which it has a mortgage, judgment, deed of trust, pledge, lien or other encumbrance or in which it has any interest. It may acquire any real or personal property which may be conveyed or transferred to it in full or partial satisfaction, discharge or release or loans for which such property is security.

B. An association may sell, convey, lease, exchange, improve, repair, mortgage, convey in trust, pledge or encumber any real or personal property purchased or acquired by it as authorized by subsection A of this section.

C. An association may invest its funds, operate a business, manage or deal in property when any of these actions are reasonably necessary to avoid loss on a loan or investment previously made or an obligation previously created in good faith. Such property or business is not to be held or operated by the association for a period in excess of six years, unless specifically authorized by the Commissioner.

§ 6.1-194.6. Rate of interest chargeable by savings institutions.–In addition to the permissible interest rates and charges specifically granted to savings institutions by this title, savings institutions may take, receive, reserve, and charge on any loan any rate of interest permitted to any other lender under the laws of the Commonwealth, other than those rates or charges permitted to small loan companies.

§ 6.1-194.7. Applicability of Virginia Uniform Commercial Code to commercial paper and depository activities of savings institutions.–The definitions and provisions contained in Title 8.3 (§ 8.3-101 et seq.) and Title 8.4 (§ 8.4-101 et seq.) shall apply to the commercial paper and deposit account activities of savings institutions doing business in the Commonwealth, to the extent that such definitions and provisions are not inconsistent with the provisions of this Act. As applied to savings institutions, whenever the term "bank" shall appear in the provisions of Title 8.3 (§ 8.3-101 et seq.) and Title 8.4 (§ 8.4-101 et seq.), such term shall be deemed to include savings institutions, unless the context otherwise requires.

Article 2.

Incorporation; Certificate of Authority;

Corporate Administration.

§ 6.1-194.8. Application of Virginia Stock Corporation Act and Virginia Nonstock Corporation Act.–The provisions of the Virginia Stock Corporation Act (§ 13.1-601 et seq.) shall apply to all stock savings institutions in all cases not inconsistent with the provisions of this chapter, except the provisions of Article 15 (§ 13.1-729 et seq.) of Chapter 9 of Title 13.1 shall not apply. The provisions of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) shall apply to all mutual savings institutions in all cases not inconsistent with the provisions of this chapter including mutual savings and loan associations heretofore incorporated under the Virginia Stock Corporation Act or prior laws relating to stock corporations.

§ 6.1-194.9. Formation of state savings and loan associations.–A stock savings and loan association may be formed by being incorporated as provided in the Virginia Stock Corporation Act. A mutual savings and loan association may be formed by being incorporated as provided in the Virginia Nonstock Corporation Act.

§ 6.1-194.10. Corporation name.–Every association incorporated under the laws of this Commonwealth shall have as a part of it corporate name the words "building and loan association" or "savings and loan association." In lieu of the foregoing provisions of this section, and notwithstanding the provisions of § 6.1-112, a state association may also use the

words "savings bank" as a part of its corporate name. No association, however, need comply with the provisions of subsection A of § 13.1-630.

§ 6.1-194.11. Par value of shares; payment of shares; reacquisitions of shares or acceptance thereof as security; how subscriptions to stock to be paid; disposition of money received before institution opens; stock option plans.—A. Shares of stock issued by a stock association shall be paid for in full in cash at not less than their par value upon issuance or, in the case of an association then actively conducting operations, in property or services valued, with the approval of the Commission, at an amount not less than the aggregate par value of the shares issued in exchange therefor. An association may not purchase, redeem or otherwise reacquire shares of stock that it has issued and may not accept its shares of stock as security; provided, that a stock association shall have the power to redeem or otherwise reacquire shares of its common or preferred stock to the same extent as commercial banks incorporated under the laws of the Commonwealth are permitted to do under this title.

B. Subscriptions to the capital stock of a stock institution shall be paid in money at not less than par. No stock institution shall begin business until the amount specified in its certificate of authority to commence business has been received by it.

All money received for subscriptions to or for purchases of stock of a stock institution before it opens for business shall be deposited in an escrow account in an insured financial institution or invested in United States government obligations, under the joint control of two organizing directors of the stock institution, both of whom shall be bonded for an amount not less than the total amount of money under their control. Such funds, together with any income thereon, less such organizational expenses as have been approved by the association's board of directors, shall be remitted to the stock institution on the day it opens for business. In the event the stock institution is denied a certificate of authority, is refused insurance of accounts, or it is otherwise determined that the stock institution will not open for business, such funds, after payment of any amount owing for expenses in connection with such attempted organization, including reasonable consulting fees, attorneys' fees, salaries, filing fees and other expenses, shall be refunded to subscribers or shareholders. The directors of the institution, individually, jointly and severally, shall be liable for any failure of the institution to refund such funds to the subscribers or shareholders. This liability may be enforced by a suit in equity instituted by one or more of the subscribers or stockholders on behalf of all against the institution and one or more of its directors.

C. The requirement that capital stock be paid in money shall not be construed to prohibit the establishment, as otherwise authorized by law, of stock option plans and stock purchase plans, and the issuance of stock pursuant to such plans. Such plans shall be established only after the stock institution has opened for business. Any such plan shall be established as follows:

1. The board of directors shall by resolution propose the stock option or stock purchase plan. The plan shall describe any effect the adoption of the plan is expected to have on the value of issued and outstanding shares of the association.

2. Notice of a meeting of stockholders, stating that the purpose or one of the purposes of the meeting is to consider the plan so proposed by the board of directors, shall be given to each stockholder of record entitled to vote thereon within the time and in the manner provided in Chapter 9 of Title 13.1 of the Code of Virginia for giving of notice of meetings of stockholders. A copy of the plan shall be included with such notice.

3. At such meeting, the plan shall be adopted if approved by the affirmative vote of the holders of more than two-thirds of the shares entitled to vote thereon.

§ 6.1-194.12. Certificate of authority to do business.—A. Before any state association may begin business in the Commonwealth, it shall obtain from the Commission a certificate of authority to do so and prior to the issuance of such certificate the Commission shall ascertain that:

1. All applicable provisions of law have been complied with;

2. Deposits to a value deemed by the Commission to be sufficient to warrant successful operation but not less than $500,000, have been pledged or deposited and that such deposits shall not be withdrawable for at least one year, or that financially responsible persons have subscribed for capital stock, surplus and a reserve for operation in an amount deemed by the Commission to be sufficient to warrant successful operation, provided that the capital stock shall have a paid-in value of not less than $500,000;

3. Regulations governing directors of the association have been complied with;

4. The public interest will be served by the addition of the proposed savings institution facilities in the community where the savings institution is to be located; and

5. The officers and directors of the proposed savings institution are of (i) moral fitness, (ii) financial responsibility, and (iii) business ability.

As used herein, "public interest" shall have the meaning set forth in paragraph 4 of subsection A of § 6.1-13.

B. No certificate of authority shall be issued on or after June 1, 1973, unless the applicant for such certificate:

1. Submits evidence of being fully insured by the Federal Savings and Loan Insurance Corporation or other insuring agency approved by the Commission; or

2. Submits sufficient evidence of commitment by the Federal Savings and Loan Insurance Corporation or other approved insuring agency that the applicant will be issued insurance of accounts immediately subsequent to the issuance of the certificate of authority.

The Commission may issue such certificate conditioned upon the fact that the association shall not commence to do business until it is issued insurance of accounts by the Federal Savings and Loan Insurance Corporation or other approved insuring agency.

C. Any interested person may appeal to the Supreme Court of Virginia from any order of the Commission granting or denying such certificate of authority.

§ 6.1-194.13. Commissions, fees, etc., for sale of stock not permitted.—The State Corporation Commission shall not issue a certificate of authority to any state association to commence business if commissions, fees, brokerage, or other compensation, by whatever name it may be called, have been paid or contracted to be paid by the savings and loan association, or by anyone in its behalf, either directly or indirectly, to any person, partnership, association or corporation for the sale of stock in such savings and loan association. Nothing herein shall be construed to prohibit an association which has been issued a certificate of authority and has commenced operations from paying or contracting to pay such commissions or fees in connection with the issue or reissue of shares of stock of the association.

§ 6.1-194.14. Board of directors generally.—A. The affairs of every association shall be managed by a board of directors of not less than five nor more than twenty-five persons. Every director of a stock association shall be the owner in his own name and have in his personal possession or control, shares of stock in the association of which he is a director which have a book value of not less than $500. Such shares of stock shall be unpledged, except as required to be pledged to a Federal Home Loan Bank, and unencumbered at the time of his becoming a director and during the whole of his term as such. When a stock association is controlled by a savings institution holding company as defined in § 6.1-194.87, a director may comply with the provisions of this section for each stock association of which he is a director by ownership, in similar manner, of shares of capital stock of the holding company which have a book value of not less than $500.

B. Every director of a mutual association shall have a savings account in the association of which he is a director, in his own name or jointly with his spouse, of not less than $500. Such account must be unpledged, except as required to be pledged to a Federal Home Loan Bank, and unencumbered at the time of his becoming a director and during the whole term as such. The office of any director violating the provisions of this section shall immediately become vacant.

§ 6.1-194.15. Meetings of board of directors.—The board of directors of every state association shall hold meetings at least once in every calendar month, at which meeting a majority of the whole board shall be necessary for the lawful transaction of business, except that the stockholders or members, by bylaw, may fix any number as a quorum. The Commission may allow less frequent meetings, but not less than quarterly.

§ 6.1-194.16. Notice of meetings of members; determining members entitled to notice or to vote.—A. A mutual savings and loan association shall give notice of its meetings of members as required by § 13.1-842, and, in addition, a copy of the notice shall be posted in a conspicuous place in each office of the association during the fourteen days preceding the date of the meeting.

B. For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other purpose, the board of directors of a mutual association may provide that the membership shall be closed for a stated period but not to exceed, in any case, fifty days. In lieu of closing the membership, the bylaws, or in the absence of any applicable bylaw the board of directors, may fix in advance a date as the record date for any such determination of membership, such date in any case not to be more than fifty days prior to the date on which the particular action, requiring such determination of members, is to be taken. If the membership is not closed and no record date is fixed for the determination of members entitled to notice of or to vote at a meeting of members, the date on which notice of the meeting is mailed shall be the record date for such determination of membership. When a determination of members entitled to vote at any meeting of members has been made as provided in this section, such a determination shall apply to any adjournment thereof.

§ 6.1-194.17. Voting rights; proxies.–In mutual savings and loan associations the right of members to vote may not be conferred or limited by the articles of incorporation. In the determination of all questions requiring action by the members, each member shall be entitled to cast one vote, plus an additional vote for each $100 or fraction thereof of the withdrawal value of savings accounts, if any, held by such member. No member, however, shall be entitled to cast more than fifty votes. At any meeting of the members, voting may be in person or by proxy, provided that no proxy shall be eligible to be voted at any meeting unless such proxy shall have been filed with the secretary of the association, for verification, at least five days prior to the date of such meeting. Each proxy shall be in writing and signed by the member or his duly authorized attorney-in-fact and, when filed with secretary, shall, unless otherwise specified in the proxy, continue in force from year to year until revoked by a writing duly delivered to the secretary of the association or until superseded by subsequent proxies or upon the member's ceasing to be a member of the association.

§ 6.1-194.18. Access to books and records; communication with members.–A. 1. Every person having an account or loan with a savings institution shall have the right to inspect such books and records of the institution insofar as they pertain to his loan or account. Otherwise, the right of inspection and examination of the institution's books and records shall be limited:

a. To the Commissioner or his duly authorized representatives;

b. To persons duly authorized to act for the institution; and

c. To any federal or state instrumentality or agency authorized to inspect or examine the books and records of such institution.

2. The books and records pertaining to the accounts and loans of a savings institution shall be kept confidential by the institution, its directors, officers, and employees, and by the Commissioner, his examiners and representatives, except where the disclosure thereof shall be compelled by a court of competent jurisdiction or otherwise required by law. No person shall have access to the books and records of the institution or shall be furnished or shall possess information concerning individual accounts or loans of the institution or concerning the owners of such accounts or borrowers, except as provided herein or otherwise expressly authorized by law. However, a savings institution is authorized to release, publish or furnish general information and statistical data concerning its accounts and loans, so long as the identity of individual account owners or borrowers, or other confidential information, is not revealed.

B. In the event, however, that any member or members of a mutual savings institution desire to communicate with other members with reference to any questions pending or to be presented for consideration at a meeting of the members, the institution shall furnish upon request a statement of the approximate number of members of the institution at the time of such request, and an estimate of the cost of forwarding such communication. The requesting member or members shall then submit the communication, together with a sworn statement that the proposed communication is not for any reason other than the business welfare of the institution, to the Commissioner. If the Commissioner finds the communication to be appropriate, truthful and in the best interest of the institution and its members, he shall execute a certificate setting out such findings, forward the certificate together with the communication to the institution, and direct that the communication be prepared and mailed by the institution to the members upon the requesting member's or members' payment to it of the expenses of such preparation and mailing. If the Commissioner finds such proposed communication to be inappropriate, untruthful, or contrary to the best interest of the institution and its members, he shall have the discretion to make any disposition of the request to communicate which he deems proper and he shall execute a certificate setting out such findings and deliver it to the requesting member together with his order making disposition of the

request.

C. Insofar as the provisions of this section are not inconsistent with federal law, such provisions shall apply to federal savings institutions whose home offices are located in the Commonwealth, except that the communication and statement provided for in subsection B of this section shall be tendered to the Federal Home Loan Bank Board in the case of a federal savings institution and forwarded only upon the board's certificate and direction.

§ 6.1-194.19. Audit of association; report.—The directors of every savings institution shall, at least once in each calendar year, cause an independent audit by a certified public accountant to be made of the institution, its operation and its general books of account. The report of such audit shall be presented to the institution's board of directors at its next regular meeting after completion of the audit. The minutes of such meeting shall reflect that the audit report was presented and reviewed by the board, and a copy of the audit report shall be filed with the Bureau of Financial Institutions within two weeks from the date such report is received by the institution from the auditor.

§ 6.1-194.20. Bonds of officers and employees.—A. The directors of every savings institution shall require a bond with corporate surety from each of the active officers and employees of the institution as an indemnity for any loss the institution may sustain as a result of such person's fraud, dishonesty, theft or embezzlement. In lieu of individual bonds a blanket bond with corporate surety covering all active officers and employees of the institution may, with the approval of the board of directors, be obtained. The Commission shall, not less than twice during any period of three consecutive calendar years, examine all such bonds and pass on their sufficiency and either the board of directors or the Commission may require new or additional bonds at any time. The corporate surety shall have a license issued by the Commission.

B. The institution, at its cost, may also obtain insurance to protect its directors, officers and employees against law suits arising out of claims of negligence or misconduct.

§ 6.1-194.21. Loans to officers, directors or employees.—A. No officer, director or employee of any savings institution shall borrow any amount more than $25,000 from the institution until such loan has been approved (i) by a majority of the directors of the institution or (ii) by a committee of officers and directors, which shall include at least one director appointed by the board of directors with authority to approve loans. The board of directors may by proper resolution authorize certain officers to handle renewals of such loans of less than $25,000.

B. 1. The following loans or lines of credit shall be specifically approved by a majority of the directors of the institution or by the committee of officers and directors as described in subsection A of this section, in which case such approval shall be reported to the board of directors at its next regular meeting;

a. Any loan in an amount of $25,000 or more made to any officer, director or employee of an institution or any entity which the Commission determines is controlled by one or more officers, directors or employees;

b. Any loan made to the persons or entities described in paragraph 1a of this subsection, the amount of which together with all other obligations, direct or indirect, of such officer, director, employee or controlled entity is $100,000 or more;

c. Any line of credit for $25,000 or more made to the persons or entities described in paragraph 1a of this subsection; or

d. Any line of credit made to the persons or entities described in paragraph 1a of this subsection, which with all the other obligations, direct or indirect, of such officer, director or employee or controlled entity is $100,000 or more.

2. No extension, renewal or renegotiation of any loan or line of credit described in paragraph 1 of this subsection shall be made to any of those individuals, entities or their interests, unless it is approved by a majority of the board of directors or by the committee of officers and directors appointed by the board. In the case of approval by the committee, such approval shall be specifically reported to the board of directors at its next regular meeting.

3. The prohibitions set forth in this subsection shall not be construed to require approval by the board of directors for advances under previously authorized lines of credit.

C. The aggregate amount of a savings institution's loans to its officers, directors, employees

or their interests shall not be excessive. The Commission may promulgate such rules and regulations as may be required to prevent excessive aggregate amounts of lending by savings institutions to those individuals or entities.

§ 6.1-194.22. Overdrafts by savings institution officers, directors or employees.—A. No savings institution shall pay an overdraft of an officer, director or employee of the institution on any account or accounts at the institution unless the payment of funds is made in accordance with (i) a written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment or (ii) a written, preauthorized transfer of funds from another account of the account holder at the institution.

B. The prohibition set forth is subsection A of this section does not apply to the payment of inadvertent overdrafts on an account in an aggregate amount of $1,000 or less, provided that (i) the account is not overdrawn for more than five business days, and (ii) the savings institution charges the officer, director or employee the same fee charged any other customer of the institution in similar circumstances.

§ 6.1-194.23. Reserves; surplus and undivided profits.—A. Every savings institution doing business in the Commonwealth shall maintain an adequate net worth appropriate for the conduct of its business and the protection of its account holders. Every savings institution shall set up and maintain the reserves required by, and may set up and maintain such additional reserves as are permitted by, this Act. On or before the closing date of each accounting period, after payment of or provision for all expenses, every savings institution shall transfer to a separate reserve account, which shall be set up and maintained for the sole purpose of absorbing losses, termed in this section "general reserve," an amount equal to at least five percent of its net income. In the case of a savings institution which at the close of such accounting period has assets in excess of twenty million dollars or which has done business as a savings institution in the Commonwealth for more than twenty years, such savings institution shall transfer to such separate reserve account the greater of five percent of its net income or an amount obtained by subtracting an amount equal to its general reserve at the beginning of the period from an amount equal to four percent of its assets, excluding liquid assets, at the end of the period, until the general reserve is equal to at least five percent of the total amount of its deposit accounts at the beginning of such accounting period. Upon advanced written application of a savings institution, the Commissioner may approve the transfer to the general reserve of a lesser amount for such accounting period. In the event that any credit to the general reserve is made following the effective date of this Act in excess of the minimum requirement, the dollar amount of any such excess may be carried over as a credit toward the minimum requirement of any subsequent period. If and whenever the general reserve of a savings institution is not equal to at least five percent of the deposit account liability of the institution, credits, as above provided, shall again be made to the general reserve until it shall again be equal to at least five percent of the institution's deposit account liability. In the case of stock savings institutions, the capital stock account, to the extent that the capital has not been impaired, shall be treated as part of the reserve and the board of directors may, by resolution, permanently or conditionally designate all or part of the capital stock, capital surplus, earned surplus or undivided profit accounts as a part of its general reserve. A savings institution may retain its undivided profits in such amounts as may from time to time be fixed by resolution of its board of directors. The Commission may temporarily reduce the reserve requirements for a savings institution if it finds such reduction to be in the best interest of the institution and its stockholders or members.

B. Notwithstanding the requirements of this section, an insured savings institution may maintain its reserves in accordance with the requirements of the Federal Savings and Loan Insurance Corporation or other insuring agency.

§ 6.1-194.24. Liability of members of mutual savings institutions.—No member of a mutual savings institution shall be responsible for any losses which his savings account deposits shall not be sufficient to satisfy, and no savings account shall be subject to assessment, nor shall the holder thereof be liable for any unpaid installments on his account. No preference between savings account members of a mutual savings institution shall be created with respect to the distribution of assets upon voluntary or involuntary liquidation, dissolution, or winding up of such institution.

§ 6.1-194.25. Mutual capital certificates.—A mutual association shall have the power to issue and to sell, directly or through underwriters, capital certificates which shall represent nonwithdrawable capital contributions, and constitute part of the reserves and net worth of the association. Such certificates shall have no voting rights, shall be subordinate to all savings accounts, debt obligations and claims of creditors of the association and shall constitute a claim in liquidation against any reserves, surplus and other net worth accounts remaining after the

payment in full of all savings accounts, debt obligations and claims of creditors. Such capital certificates shall be entitled to the payment of earnings prior to the allocation of any income to surplus or other net worth accounts of the association and may be issued with a fixed rate of earnings or with a prior claim to distribution of a specified percentage of any net income remaining after required allocations to reserves, or a combination thereof. Losses shall be charged against capital certificates only after reserves, surplus, and other net worth accounts have been exhausted.

Article 3.

Main Office; Branches; Other Offices

and Facilities.

§ 6.1-194.26. Offices and other facilities of state associations and foreign savings institutions; approval of branch offices required.—A. A state association may establish and operate such offices and other facilities as are authorized by its board of directors. However, a state association shall not establish a branch office, or other office or facility where deposits are accepted, without obtaining the prior approval of the Commission as provided in paragraph B of this section. Prior to establishing or permanently closing any office or other facility, the association shall give at least thirty days' written notice to the Commissioner, in such form as may be prescribed by the Commissioner. The association shall also give written notice to the Commission in such form as may be prescribed by the Commission within ten days after it has established or permanently closed an office or other facility.

B. Applications for authorization to establish a branch office, or other office or facility where deposits are accepted, shall be made in writing, in such form as may be prescribed by the Commission. Upon review of an association's application and any other information which the Commission may reasonably require, the Commission shall approve the establishment of such office or facility if it is satisfied that the public interest will be served thereby. Such offices or facilities may be closed without the prior approval of the Commission. However, written notice of the closing of such an office shall be given to the Commissioner as provided in subsection A of this section.

C. The requirements of subsections A and B of this section shall also apply to the establishment and closing of the offices of a foreign savings institution authorized to transact business in the Commonwealth.

§ 6.1-194.27. Facilities associated with home or branch office.—A state association or foreign savings institution authorized to transact business in the Commonwealth may establish without prior approval of the Commission a drive-in or pedestrian office opened in conjunction with an approved branch office of the institution, if such drive-in or pedestrian office is to be located within 500 feet of a public entrance of the approved office and closer to that entrance than to a public entrance of any other financial institution. The functions of such drive-in or pedestrian office shall be limited to the ordinary functions performed at a teller-window.

§ 6.1-194.28. Change of branch office location.—A. A state association shall not change the permanent location of a branch office without the prior approval of the Commission. An application to change the location of a branch office shall be made in writing in such form as may be prescribed by the Commission. Such application shall be approved by the Commission if the Commission finds that the change in location is in the public interest.

B. 1. Notwithstanding the provisions of subsection A of this section, a state association may change the permanent location of a branch office, without applying for the approval of the Commission, if the new location will be within a one mile radius of the old location of such branch office.

2. An association shall notify the Commissioner in writing, in such form as may be prescribed by the Commissioner, at least sixty days before such office relocation and may proceed with the relocation unless, within thirty days of receipt of the notice, the Commissioner notifies the association that the relocation does not satisfy the criteria set forth in the last sentence of subsection A of this section, in which case the association must file an application and obtain the approval of the Commission in accordance with subsection A of this section. The association shall also notify the Commissioner in writing that the office relocation has been completed within ten days after the opening of the office at its new location.

C. The provisions of subsections A and B of this section shall also apply to foreign savings institutions authorized to transact business in the Commonwealth.

D. The provisions of this section shall also apply to the relocation of the main office of a state association if the association intends to accept deposits at the new location of the main office.

§ 6.1-194.29. Remote service units.—A. As used in this section, the following terms shall have the meanings indicated:

"Remote service unit" or "RSU" means an information processing device, including associated equipment, structures and systems, by which information relating to financial services rendered to the public is stored and transmitted, instantaneously or otherwise, to a financial institution. Any such device not on the premises of a state association that, for activation and account access, requires use of a machine-readable instrument and personal security identifier in the possession and control of an account holder, is an RSU. The term includes, without limitation, point-of-sale terminals, merchant-operated terminals, cash-dispensing machines, and automated teller machines. It excludes automated teller machines on the premises of a state association, unless shared with other financial institutions. An RSU shall not be considered to be a branch office of an association.

"Personal security identifier" or "PSI" or "PIN" means any word, number, or other security indentifier essential for an account holder to gain access to an account through a remote service unit.

B. Subject to the requirements of the Electronic Funds Transfer Act (15 U.S.C. § 1693, et seq.) and Regulation E of the Federal Reserve Board, a state association may establish or use remote service units and participate with others in remote service unit operations on an unrestricted geographic basis. A state association may establish a remote service unit without prior approval of the Commission, provided that notice is given to the Commissioner in accordance with the provisions of subsection A of § 6.1-194.26. No remote service unit may be used to open a savings account, a demand account or establish a loan account.

C. Before permitting an account holder to use a remote service unit, the association shall provide a personal security identifier to the account holder and require its use when accessing a remote service unit. An association may not employ RSU access techniques that require the account holder to disclose a PSI to another person.

D. A state association shall not share an RSU with any financial institution or other entity which is not insured by an agency of the federal government or by some other insuring agency approved by the Commissioner.

E. A state association shall not share an RSU located in the Commonwealth with any foreign savings institution, or other financial institution which is not incorporated under the laws of the Commonwealth, unless such foreign savings institution or other financial institution has been authorized by the Commission to conduct its business in the Commonwealth. Nothing herein shall be deemed to prohibit a state association from sharing an RSU with a federal savings institution, or other federally chartered financial institution, authorized to conduct its business in the Commonwealth.

§ 6.1-194.30. Home financial services.—A state association may utilize any electronic technology to provide its customers with home financial services. Any such services provided under this section are subject to the Electronic Funds Transfer Act (15 U.S.C. § 1693, et seq.) and Regulation E of the Federal Reserve Board. As used in this section, the term "home financial services" means the transfer of funds or financial information, or the performance of other transactions initiated by the customer by means of an electronic terminal located in such customer's residence, such as a telephone, a computer terminal or a television set that is linked to an association's computer by telephone or cable television lines.

§ 6.1-194.31. Suspension of business during actual or threatened emergency.—In the event of an actual or threatened enemy attack or civil insurrection or fire, flood, hurricane, earthquake or other similar natural disaster, affecting the community in which a savings institution is doing business, the offices of the savings institution thereby affected may be temporarily closed by appropriate officers of the savings institution without prior approval of the board of directors or the Commissioner.

Article 4.

Change in Corporate Form; Conversions.

§ 6.1-194.32. Conversion from mutual to stock association.—With the approval of the Commissioner, and in acccordance with provisions of this section and regulations promulgated hereunder, a state association which is a mutual association may convert to a stock association. Such conversion shall be conducted in a manner equitable to all parties thereto in the following manner: the board of directors of such mutual association shall first adopt by two-thirds vote a conversion plan the provisions of which shall comply with requirements set forth in regulations promulgated by the Commission. Such plan shall provide that holders of savings accounts in the mutual association will be afforded the opportunity to preserve their interest in the association's net worth by subscribing to stock. The Commissioner shall approve any such plan of conversion if the Commissioner ascertains that such conversion will not have an adverse effect on the stability of the association and that all other rules and regulations of the Commission relating to the conversion of a mutual association to a stock association have been complied with. The Commission shall adopt regulations governing the procedures to be followed in completing the conversion once a satisfactory plan has been adopted. Such regulations shall ensure that any association in so converting shall continue to have its accounts insured by the Federal Savings and Loan Insurance Corporation.

§ 6.1-194.33. How state association may convert into federal savings institution.—A state association may convert into a federal savings institution as follows:

1. At any meeting of the members or stockholders called and held in accordance with the Virginia Stock Corporation Act (§ 13.1-601 et seq.) or the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) to consider such action, the members or stockholders, by an affirmative vote of those holding and voting two-thirds of the votes present in person or by proxy, may resolve to convert the association into a federal savings institution;

2. A copy of the minutes of the meeting duly certified by the president or vice-president and the secretary or assistant secretary of the state association shall be transmitted to the Commission;

3. Thereafter, the state association shall take such action as is necessary under federal law to make it a federal savings institution;

4. It shall file with the Commission a certified copy of the charter issued to it by the Federal Home Loan Bank Board, or a certificate of the Board showing the organization of the state association as a federal savings institution, and the association shall thereupon cease to be a state association;

5. No state association shall convert into a federal savings institution until it has been in operation as a state association for a period of at least five years.

§ 6.1-194.34. Effect of conversion of state association into federal savings institution.—When such conversion becomes effective, the state association shall cease to be a Virginia corporation and all its property shall by operation of law and without any further act or deed continue to be vested in it under its new name as a federal savings institution and under its federal charter. The federal savings institution shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by it as a state association. Such federal savings institution, at the time of the taking effect of the conversion, shall become and continue responsible for all of the obligations of the state association including taxes and other liabilities created by law or incurred by it before becoming a federal savings institution to the same extent as though the conversion had not taken place.

§ 6.1-194.35. How federal savings institution may convert into state association.—A federal savings institution doing business in the Commonwealth may become a state association as follows:

1. It shall take such action as will effect its dissolution as a federal savings institution on a specified date;

2. Its directors, before its dissolution becomes effective, shall organize a corporation under this chapter and the Virginia Stock Corporation Act or the Virginia Nonstock Corporation Act; and

3. The new corporation shall apply for a certificate of authority to do business under § 6.1-194.12.

§ 6.1-194.36. When former federal savings institution may do business as state association.—The former federal savings institution converting to a state association shall transact no business as a state association other than that relating to its organization until its certificate of authority to do business has been granted and its dissolution as a federal savings institutions has become effective.

§ 6.1-194.37. Effect of conversion of federal savings institution into state association on property rights, obligations, etc.—As soon as the certificate of authority to do business has been granted and its dissolution as a federal savings institution has become effective, all the property of the federal savings institution shall by operation of law and without any further act or deed, be vested in and become the property of the state association, which shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held or enjoyed by the federal savings institution. The state association shall become and continue responsible for all the obligations, duties and agreements of the federal savings institution including taxes and other liabilities created by law or incurred by it before becoming a state association to the same extent as though the conversion had not taken place.

§ 6.1-194.38. Conversion from stock association to bank; conversion from bank to stock association.—A. A state stock association may be converted into a bank by the amendment of its articles of incorporation in compliance with the procedure established by Title 13.1, provided that such conversion is approved in advance by the Commission. Prior to approving or disapproving a conversion, the Commission shall investigate the application to convert as if it were an application for a certificate of authority to begin a banking business, and approval shall not be granted unless the applicant meets the standards established by § 6.1-13. The order granting a certificate of authority to do a banking business shall designate the main office of the association as the main office of the resulting bank, and the resulting bank shall be permitted to operate all branch offices of the association that could have been established de novo by a bank having its main office at such location or which were in operation for at least five years prior to the date of the order permitting conversion. Within one year of the date of a conversion, the resulting bank shall conform its assets and operations to the provisions of law regulating the operation of banks. The Commission may grant such resulting bank additional one-year periods, not to exceed a total of four additional years, in which to conform its assets and operations to the provisions of laws regulating the operation of banks.

B. A bank may be converted into a stock association by the amendment of its articles of incorporation in compliance with the procedure established by Title 13.1 of the Code of Virginia, provided that such conversion is approved in advance by the Commission. Prior to approving or disapproving a conversion, the Commission shall investigate the application to convert as if it were an application for a certificate of authority to begin a savings and loan business, and approval shall not be granted unless the applicant meets the standards established by § 6.1-194.12. Within one year of the date of the conversion, the resulting stock association shall conform its assets and operations to the provisions of law regulating the operation of savings and loan associations. The Commission may grant such resulting stock association additional one-year periods, not to exceed a total of four additional years, in which to conform its assets and operations to the provisions of law regulating the operation of savings and loan associations.

§ 6.1-194.39. Consolidation or merger.—Two or more mutual associations or two or more stock associations may consolidate or merge, subject to the approval of the Commission, when the Commission finds that the merger or consolidation will be in the public interest and in accordance with applicable laws and regulations. The order approving the merger or consolidation shall specify which office is to be the main office and which office or offices may be operated as branch offices.

§ 6.1-194.40. State association or association holding company acquiring bank; association acquired by bank or bank holding company; merger or consolidation of association and bank.—A. Notwithstanding the provisions of §§ 6.1-58.1 or 6.1-60.1, and subject to the prior approval of the Commission, the following acquisitions, mergers, or consolidations may occur:

1. A state association may become a subsidiary of (i) a state bank or a national bank whose main office is located within this Commonwealth or (ii) a bank holding company whose banking subsidiaries principally conduct their operations within this Commonwealth;

2. A state bank may become a subsidiary of (i) a state association or a federal association whose main office is located within this Commonwealth or (ii) a savings and loan holding company whose principal place of business is located within this Commonwealth; and

3. A state association may merge into or consolidate with a state bank or a national bank

whose main office is located within this Commonwealth or a state bank may merge into or consolidate with a state association or a federal association whose main office is located within this Commonwealth. If the resulting entity is to do business as a bank, the Commission shall not approve the merger or consolidation unless the applicant meets the standards established by § 6.1-13. If the resulting entity is to do business as an association, the Commission shall not approve the merger or consolidation unless the applicant meets the standards established by § 6.1-194.12. In either case, the order granting a certificate of authority to do business shall designate the main office of the resulting entity. The resulting entity shall be permitted to operate all branch offices of the merging or consolidating entities that could have been established de novo by the resulting entity or which were in operation at least five years prior to the date of the order permitting merger or consolidation. Within one year of such merger or consolidation, the resulting entity shall conform its assets and operations to the provisions of law regulating the operation of associations if the resulting entity is operated as an association or to the provisions of law regulating the operation of banks if the resulting entity is operated as a bank. The Commission may grant the resulting entity additional one-year periods, not to exceed a total of four additional years, in which to conform its assets and operations as provided herein.

B. As used in this section, the term "state bank" shall mean a bank incorporated under the laws of the Commonwealth which has its main office in the Commonwealth.

Article 5.

Foreign Savings Institutions.

§ 6.1-194.41. Foreign savings institutions; certificate of authority.—A. A foreign savings institution shall not transact a savings institution business in the Commonwealth unless it first receives from the Commission a certificate of authority to do so.

B. A foreign savings institution may apply to the Commission for a certificate of authority by paying the filing fee prescribed by the Commission and filing an application which shall include:

1. A copy of its articles of incorporation and bylaws certified as a true copy by the public officer having custody of the original articles and bylaws;

2. Evidence satisfactory to the Commission that its accounts are insured by the Federal Savings and Loan Insurance Corporation, Federal Deposit Insurance Corporation, other federal agency, or such other insurer as is satisfactory to the Commissioner; and

3. Such other information as the Commission may require.

C. The Commission shall issue a certificate of authority to the foreign savings institution when:

1. The Commissioner has examined the application of the institution and investigated and determined that the institution meets the requirements of § 6.1-194.12;

2. The Commissioner has verified the financial status of the institution by conducting such examination of its assets and its records as the Commission shall deem appropriate for the purpose of ascertaining whether they meet the requirements of this Act with regard to state associations;

3. The Commissioner is satisfied that the institution is in sound financial condition, and that it is conducting its business, and will conduct its business in the Commonwealth, in a manner consistent with the laws of the Commonwealth; and

4. The Commissioner is satisfied that the laws, regulations or administrative actions of the state or territory where the principal office of the applicant is located do not prohibit or unfairly impede a state association from transacting business in such state or territory.

D. In meeting the requirements set out in paragraphs 1, 2 and 3 of subsection C of this section, the Commissioner may rely on examinations, audits and other information provided by the federal and state supervisory authorities charged with the responsibility of regulating and supervising savings institutions in the state where the applicant's principal place of business is located.

E. No foreign mutual savings institution shall be authorized to transact a savings institution business in the Commonwealth unless at least eighty percent of the deposits of such foreign savings institution were initially deposited in offices of the savings institution located in a geographic region consisting of the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia, and the District of Columbia. No foreign stock savings institution shall be authorized to conduct a savings institution business in the Commonwealth except as a result of the acquisition of a state stock association under the provisions of Article 11 (6.1-194.96 et seq.) of this chapter. No foreign savings institution which is a subsidiary (as defined in § 6.1-194.96) of a savings institution holding company, shall be authorized to conduct a savings institution business in the Commonwealth unless such savings institution is a subsidiary of a Virginia savings institution holding company, as defined in § 6.1-194.96.

§ 6.1-194.42. When operation of foreign savings institution in the Commonwealth is prohibited.–When the laws, regulations or administrative actions of another state or territory of the United States prohibit or unfairly impede a state association from transacting business in such state or territory, then the savings institutions of such other state or territory are prohibited from transacting business in the Commonwealth.

§ 6.1-194.43. Applicability of Virginia Stock and Nonstock Corporation Acts.–Except as otherwise provided in this Act, a foreign savings institution conducting a savings institution business in the Commonwealth shall comply with the provisions of the Virginia Stock Corporation Act and the Virginia Nonstock Corporation Act governing the admission and transaction of business by foreign corporations in the Commonwealth.

§ 6.1-194.44. Law applicable to contracts of foreign savings institutions.–Any contract made by a foreign savings institution with a resident of the Commonwealth or a foreign corporation authorized to do business in the Commonwealth, shall be considered a Virginia contract, and shall be construed according to the laws of the Commonwealth.

§ 6.1-194.45. Examination and supervision of foreign savings institutions.–A. Each foreign savings institution authorized to transact business in the Commonwealth shall furnish to the Commissioner a copy of all periodic reports of examinations of the institution conducted by all supervisory agencies which examine the institution to determine its financial soundness. Such reports shall include, but are not limited to, the examination reports of the Federal Savings and Loan Insurance Corporation. Such report copies shall be furnished to the Commissioner within ten days after the institution receives the report and shall be in certified form or such other form as is acceptable to the Commissioner. In determining whether such institution is in sound financial condition, the Commissioner shall be entitled to rely solely on such examination reports.

B. The Commission may enter into cooperative agreements with other supervisory authorities for purposes of determining the financial soundness of the foreign savings institutions doing business in the Commonwealth. The Commission may enter into joint actions with other supervisory authorities having concurrent jurisdiction over foreign savings institutions doing business in the Commonwealth or may take such actions independently to carry out its responsibilities under this Act and assure compliance with the provisions of this Act and the applicable financial institution laws of the Commonwealth.

§ 6.1-194.46. Revocation of certificate of authority of foreign savings institution.–A. The Commission may revoke a certificate of authority of a foreign savings institution if:

1. The institution fails to conduct its business in the Commonwealth in a manner consistent with the laws of the Commonwealth;

2. The affairs of the institution are in an unsafe condition;

3. The institution refuses to comply with the orders of the Commission or refuses to comply with a request by the Commissioner to review the books and records of the institution; or

4. The institution fails to pay any fees or taxes imposed by the laws of the Commonwealth.

B. The Commission may also revoke the certificate of authority of a foreign savings institution at any time that the Commission determines that the state or territory where the principal office of the foreign savings institution is located has enacted or amended its laws or regulations, or taken administrative action, so as to prohibit or unfairly impede a state association from transacting business in such state or territory.

§ 6.1-194.47. Unapproved foreign savings institutions.–The Commissioner is authorized to obtain an injunction or to take any other action necessary to prevent any foreign savings institution from doing any business of a savings institution in the Commonwealth without appropriate approval.

§ 6.1-194.48. Activities which are not considered "doing business."–For the purposes of this Act and any other law of the Commonwealth prohibiting, limiting, regulating, charging or taxing the doing of business in the Commonwealth by foreign savings institutions or foreign corporations of any type, any federal savings institution the principal office of which is located outside the Commonwealth, and any foreign savings institution which is subject to state or federal supervision, or both, which by law is subject to periodic examination by such supervisory authority and to a requirement of periodic audit, shall not be considered to be doing business or to have a tax situs or nexus in or with the Commonwealth by reason of engaging in any of the following activities:

1. The purchase, acquisition, inspection, appraisement, holding, sale, assignment, transfer, collecting and enforcement of obligations or any interest therein secured by real estate mortgages, deeds of trust or other similar instruments, covering real property located in the Commonwealth, or the foreclosure of such instruments, or the acquisition of title to such property by foreclosure, or otherwise, as a result of default under such instruments, or the holding, protection, rental, maintenance and operation of said property so acquired, or the disposition thereof.

2. The advertising or solicitation of deposit accounts, or the making of any representations with respect thereto in this Commonwealth through the media of the mail, radio, television, magazines, newspapers or any other media which are published or circulated within the Commonwealth, provided that such advertising, solicitation or the making of such representations shall be accurately descriptive of fact, and provided further, that no such advertising, solicitation or the making of such representations shall contain any reference to insurance or guarantee of accounts, unless the accounts of such institution are insured by the Federal Savings and Loan Insurance Corporation or other insurer approved by the Commissioner.

Article 6.

Accounts.

§ 6.1-194.49. Accounts of state associations.–Notwithstanding any restriction in its articles of incorporation limiting the number, kinds and classes of accounts that it may offer, a state association may offer such accounts, including checking accounts, time deposit accounts and savings accounts, as its board of directors may authorize from time to time. A state association may pay interest on such accounts at such rates and under such terms and conditions as its board of directors may direct from time to time, subject to any restrictions and limitations imposed by state or federal law on the payment of interest.

§ 6.1-194.50. Rules governing withdrawal.–A. The holder of a savings account in an association shall have the right to withdraw all or any part of his account provided that an association shall have the right to establish the rules govering the withdrawals and may from time to time fix the period of notice required to be given for withdrawal. In no event shall an association delay or postpone the whole or partial payment of the value of any savings account pursuant to a written withdrawal application by a savings account holder for a period exceeding thirty days following the receipt of such application without first securing written permission from the Commissioner.

B. The holder of a federal tax and loan account or note account as defined in the regulations of the Federal Home Loan Bank Board and the United States Treasury Department shall have the right of immediate withdrawal of all or any part of such account. In no event shall an association delay or postpone the whole or partial payment of such an account pursuant to a written application by the account holder.

§ 6.1-194.51. Redemption.–At any time funds are on hand for the purpose, a mutual association shall have the right to redeem by lot or otherwise, as the board of directors may determine, all or any part of any of its savings accounts on an earnings date by giving thirty days' notice by certified mail addressed to each affected account holder at his last address as recorded on the books of the association. No association shall redeem any of its savings accounts when its liabilities exceed its assets or when it has applications for withdrawal which

have been on file more than thirty days and have not been reached for payment. The redemption price of savings accounts redeemed shall be the full value of the account redeemed, as determined by the board of directors, but in no event shall the redemption price be less than the withdrawal value. If the aforesaid notice of redemption has been duly given, and if on or before the redemption date the funds necessary for such redemption have been set aside so as to be and continue to be available therefor, interest upon the accounts called for redemption shall cease to accrue from and after the date specified as the redemption date, and all rights with respect to such accounts shall forthwith, after such redemption date, terminate, excepting only any right of the account holder of record to receive the redemption price without interest. Accounts called for redemption, if unclaimed, shall be subject to the Uniform Disposition of Unclaimed Property Act.

§ 6.1-194.52. Accounts of savings institutions as legal investments and as security.– Administrators, executors, custodians, conservators, guardians, trustees, and other fiduciaries of every kind and nature, insurance companies, business and manufacturing companies, banks, trust companies, credit unions and other types of similar financial organizations, charitable, educational, and eleemosynary funds and organizations, and all agencies, cities, counties, towns, and other subdivisions and governmental units of the Commonwealth hereby are specifically authorized and empowered to invest funds held by them, without any order of any court, in accounts of savings institutions authorized to do business in the Commonwealth. Such investments shall be deemed and held to be legal investments for such funds. The provisions of this section are supplemental to any and all other laws relating to and declaring what shall be legal investments for the persons, fiduciaries, corporations and organizations referred to in this section.

§ 6.1-194.53. Deposits of federal taxes and United States Treasury tax and loan accounts.– Associations may serve as depositories for federal taxes and for United States Treasury tax and loan deposits and may satisfy the requirements in connection therewith such as maintaining tax and loan accounts and note accounts, as defined by regulation of the Federal Home Loan Bank Board and the United States Department of the Treasury, pledge collateral and satisfy the requirements of the United States Treasury Department in connection with such deposits.

§ 6.1-194.54. Accounts under Federal Self-Employed Individuals Tax Retirement Act and Federal Employee Retirement Security Act of 1974.–A. To the extent allowed by federal law, an insured savings institution may act as trustee or custodian within the contemplation of the Federal Self-Employed Individuals Tax Retirement Act of 1962, as amended. Funds held as such trustee or custodian may be invested in accounts of the association to the extent that the trust, custodial or other plan does not prohibit such investment.

B. To the extent allowed by federal law, an insured savings institution may act as trustee or custodian of individual retirement accounts under the Federal Employee Retirement Security Act of 1974, as amended. Contributions may be accepted and interest thereon retained by such institution pursuant to forms provided by it and must be invested in accounts of the institution in accordance with the terms upon which such contributions were accepted.

§ 6.1-194.55. Accounts issued in name of minor.–A savings institution may issue accounts to a minor as sole and absolute owner of such account, and receive deposits by or for such owner, and pay withdrawals, accept pledges to the association, and act in any other manner with respect to such accounts on the order of such minor. Any payment or delivery of funds from such account to the owner thereof, or payment of a check or other written order for withdrawal signed by such minor owner, shall be a valid and sufficient release and discharge of such institution for any payment or delivery so made. The parent or guardian of such minor shall not in his capacity as parent or guardian have the power to withdraw or transfer funds in any such account unless the minor has given written notice to the association to accept the signature of such parent or guardian.

§ 6.1-194.56. Powers of attorney on accounts.–Any savings institution may continue to recognize the authority of an attorney-in-fact authorized in writing to manage or to make withdrawals, either in whole or in part, from any account until it receives written notice or is on actual notice of the revocation of his authority. For the purposes of this section, written notice of death of the owner of the account shall constitute written notice of revocation of the authority of his attorney. Written notice of the adjudication of incompetency of an account owner shall constitute written notice of revocation of the authority of his attorney unless under the laws of the Commonwealth the authority of the attorney-in-fact survives such adjudication. Payment of the account in accordance with the provisions of this section shall constitute a full discharge and acquittance of the association as to such account.

§ 6.1-194.57. Accounts of deceased or incompetent persons.–A savings institution may pay

funds held in the account of a deceased person or a person under disability to the personal representative, committee, conservator, guardian or curator of such person upon proper proof of the appointment and qualification of such fiduciary. Any savings institution making such payment shall no longer be liable for the amount thereof to any person whomsoever. The presentation of a duly certified letter or certificate of qualification as personal represenative or other fiduciary shall be conclusive proof of the jurisdiction of the court issuing the same.

A savings institution which has received no written notice and is not on actual notice that an account owner is deceased or has been adjudicated incompetent, may pay or deliver funds held in such person's account in accordance with the provisions of the account contract without liability to any person whomsoever for the amounts so paid or delivered.

§ 6.1-194.58. Payment of small balances to next of kin of decedent.–When the account of a deceased person upon whose estate there has been no qualification does not exceed $5,000, it shall be lawful for a savings institution, after sixty days from the death of such person, to pay such balance to his or her spouse, and if none, to his or her next of kin, whose receipt therefor shall be a full discharge and acquittance of the institution as to all persons on account of such account. Provided, such balance or any part thereof not to exceed the amount given a priority under the provisions of § 64.1-157 after thirty days from the death of such person, at the written request of the spouse, or if there is none, then of the next of kin, may be paid to the undertaker or mortuary handling the funeral of such decedent and a receipt of the payee shall be a full and final release of the institution.

§ 6.1-194.59. Accounts of fiduciaries.–A savings institution may issue accounts in the name of any administrator, executor, custodian, conservator, guardian, trustee or other fiduciary for a named beneficiary or beneficaries. The payment of funds from any such account pursuant to a check or other written order of withdrawal signed by the fiduciary, or delivery of funds in such account to such fiduciary, or a receipt signed by any such fiduciary with regard to the payment of funds from such account, shall be a valid and sufficient release and discharge of the institution for the payment or delivery so made.

§ 6.1-194.60. Savings institution need not inquire as to fiduciary funds deposited in fiduciary's personal account.–If any fiduciary or agent makes a deposit in a savings institution to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks drawn by him upon account in the name of his principal, if he is empowered to draw checks thereto, or of checks payable to his principal and endorsed by him as fiduciary, the institution receiving such deposit shall not be bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the institution is authorized to pay the amount of the deposit or any part thereof upon the withdrawal by the fiduciary without being liable to the principal, unless the institution receives the deposit or pays the withdrawal with actual knowledge that the fiduciary, in making such deposit or in making such withdrawal, is committing a breach of his obligation as fiduciary, or with knowledge of such facts that its action in receiving the deposit or paying the withdrawal amounts to bad faith.

§ 6.1-194.61. Accounts held by various trustees for same beneficiary.–Whenever trust interests or accounts are created for the same beneficiary, but each such interest or account is in the name of a separate and distinct trustee, or combination of trustees, each such trust interest or account shall constitute a separate, distinct and valid trust entity for all purposes.

Article 7.

Real Estate Loans.

§ 6.1-194.62. Real estate loans; required investment.–A state association may originate, invest in, sell, purchase, service, participate, or otherwise deal in loans secured by a lien on real estate, subject to the requirements of this Act. However, such loans which are insured, guaranteed or made under a firm commitment to be sold, assigned or otherwise transferred to an agency or instrumentality of the federal government or to a corporation organized under the laws of the United States, including, but not limited to, the Department of Housing and Urban Development, the Veterans Administration, the Federal National Mortgage Association, the Government National Mortgage Association or the Federal Home Loan Mortgage Corporation, may be made in accordance with the requirements of such federal agencies, instrumentalities or corporations. At least sixty percent of assets of a state association shall be invested in real estate loans. For purposes of meeting this sixty percent requirement, an association may include loans secured by a lien on a manufactured building or buildings, the value of securities held by it which represent a beneficial interest, participation interest or other similar interest in loans

secured by a lien on real estate. Such securities may include, but are not limited to, participation certificates issued by the Federal National Mortgage Association, Government National Mortgage Association or the Federal Home Loan Mortgage Corporation, and the value of liquid assets equal to the minimum liquid asset requirement of the Federal Savings and Loan Insurance Corporation. A state association may not purchase, participate in or acquire an interest in any real estate loan which it could not legally make, without the prior approval of the Commissioner.

§ 6.1-194.63. Appraisals; loan-to-value ratios.—A. An association may make a real estate loan only after a qualified person designated by the association has submitted a signed appraisal of the security property, except that an insured or guaranteed loan may be made on the basis of a valution of the security property furnished to the association by the insuring or guaranteeing agency.

B. At the time of origination, a real estate loan may not exceed 100 percent of the appraised fair market value of the security property. During the term of the loan, the loan-to-value ratio may increase above the maximum permissible percentage if the increase results from an adjustment authorized by § 6.1-194.65. In the case of a home loan secured by borrower-occupied property, the loan balance may not exceed 125 percent of the original appraised value of the property during the term of the loan, unless the loan contract provides that the payment shall be adjusted at least once every five years, beginning no later than the tenth year of the loan, to a level sufficient to amortize the loan at the then-existing interest rate and loan balance for the remaining term of the loan. The 125 percent limitation shall not apply to that portion of a loan balance that is interest received in the form of a percentage of the appreciation in value of the security property.

§ 6.1-194.64. Initial repayments on real estate loans.—Repayments on real estate loans shall begin not later than sixty days after the loan proceeds are disbursed. However, if such loan is for construction, substantial alteration, repair, or improvement of the real estate securing the loan, repayments may begin not later than sixty months after the date of the first loan disbursement, and interest shall be payable at least semiannually until regular periodic payments begin. In the case of a home loan where the loan proceeds are to be used for construction, substantial alteration, repair, or improvement of the security property, repayments must begin not later than thirty-six months after the date of first disbursement, with interest payable at least semiannually until regular periodic payments begin.

§ 6.1-194.65. Adjustable real estate loans.—A state association may adjust the interest rate, payment, balance, or term to maturity on any real estate loan as authorized by the loan contract, and may receive a portion of the consideration for making a real estate loan in the form of a percentage of the amount by which the current market value of the property, during the loan term or at maturity, exceeds the original appraised value.

§ 6.1-194.66. Special provisions for home loans.—The loan term of a home loan shall not exceed forty years, with interest payable at least semiannually, except as expressly authorized elsewhere in this Act. Payments on the loan balance, for other than nonamortized and line-of-credit loans, shall be made in at least semiannual installments, except that loans made on the security of farm residences and combinations of farm residences and commercial farm real estate may be repayable in annual installments. The loan may be fully amortized, partially amortized, nonamortized, or a line-of-credit loan. The loan contract may provide for the deferral of principal and capitalization of a portion of interest, or of all interest on loans to natural persons secured by borrower-occupied property and on which periodic advances are being made.

§ 6.1-194.67. Dealing with successors in interest.—In the case of any investment made by a savings institution in a real estate loan, in the event the ownership of the real estate security or any part thereof becomes vested in a person other than the party or parties originally executing the security instruments, and provided there is not an agreement in writing to the contrary, a savings institution may, without notice to such party or parties, deal with such successor or successors in interest with reference to that mortgage and the debt thereby secured in the same manner as with such party or parties. The savings institution may forbear to sue or may extend time for payment of or otherwise modify the terms of the debt secured thereby, without discharging or in any way affecting the original liability of such party or parties thereunder or upon the debt thereby secured.

§ 6.1-194.68. Trustees on loans secured by deed of trust.—Any savings institution in connection with making loans secured by deed of trust is empowered to elect a trustee, which may be a service corporation as defined in § 6.1-194.2 or trustees at such times and for such terms as may be prescribed by its charter or bylaws. All the rights, titles, duties and obligations of such a trustee relating to loans secured by deed of trust shall pass by operation of law to

his successor or successors in office. Every right of the savings institution required to be exercised by or through such trustee or trustees, whether it is the sale of property or some other act or acts, shall be done, enforced and carried out by the trustee or trustees in office at the time when such rights are exercised by or for the savings institution. All sales or conveyances heretofore or hereafter made by a trustee or trustees appointed in the manner designated above shall be as valid and binding as though the sale or sales, conveyance or conveyances had been made by the trustee or trustees named in the deed or deeds of trust. A majority of the trustees in office are empowered to conduct sales and make conveyances in pursuance thereof with the same force and effect as though all the trustees had acted; and when there are two trustees either one may act.

Article 8.

Other Loans and Investments.

§ 6.1-194.69. General investment authority.–Subject to the powers and limitations set forth in § 6.1-194.62, the assets of a state association may be invested only in the following ways:

1. In real and personal property necessary for the conduct of its business and in real estate to be held for its future accommodation. Such association may invest in an office building or buildings and appurtenances for the transaction of such association's business, or for the transaction of such business and for rental. No such investment may be made without the prior approval of the Commissioner if the total amount of the investment exceeds the aggregate amount of the association's general reserve and surplus.

2. In stock and other securities or obligations of a service corporation or corporations. Such service corporation or corporations may charge and collect such finance charges, fees and interest rates as are authorized to state associations. Such service corporation or corporations, directly or indirectly, may engage in providing real estate brokerage services for property owned by an association owning capital stock in the service corporation, by the service corporation, or a joint venture in which the service corporation is a participant, but not for property owned by third parties.

3. In the purchase of real estate for the purpose of producing income or for inventory and sale or for improvement including the erection of buildings thereon, for sale or rental purposes, and such an association may hold, sell, lease, operate or otherwise exercise the rights of an owner of any such property.

4. Unless specifically authorized by the Commissioner, a state association shall not invest more than ten percent, in the aggregate, of its assets in the investments specified in paragraphs 2 and 3 of this section.

5. In obligations which are fully guaranteed as to principal anad interest by the United States or the Commonwealth; in stock or obligations of any Federal Home Loan Bank or Banks; in stock or obligations of the Federal Savings and Loan Insurance Corporation; in stock or obligations of Federal Reserve Banks; in obligations of, or issued by, any other state, territory or possession of the United States or political subdivision thereof, so long as such obligations continue to hold one of the four highest national investment grade ratings; in obligations of, or issued by, any city, town, county, district or other municipal corporation or political subdivision of the Commonwealth, or any public instrumentality or public authority created by Act of the General Assembly, so long as such obligations continue to hold one of the four highest national investment grade ratings; in deposits in banks for savings and loan associations; in stock, obligations or other instruments of the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or any successor or successors thereto; in obligations of, or guaranteed as to principal and interest by, the Dominion of Canada or any province thereof, provided that the principal and interest of any such obligations are payable in United States funds; in demand, time, or savings deposits, shares or accounts, or other obligations of any financial institution the accounts of which are insured by a federal agency or other insurer approved by the Commissioner; in bankers' acceptances and commercial paper which are eligible for purchase by Federal Reserve Banks.

6. In loans to individuals for personal, family or household purposes and loans reasonably incident thereto, to include loans to dealers in consumer goods for purposes of financing inventory and floor planning. Such loans may be evidenced by installment consumer paper which is transferred to an association by an endorser or guarantor, provided that such paper shall carry a full or limited endorsement or guarantee of the person, partnership, association or

corporation transferring the same and the association shall have a certificate of a responsible officer designated by its board for that purpose stating that the responsibility of the maker of such obligation has been evaluated and the association is relying primarily upon such maker for the payment of such obligation.

7. In loans secured by savings accounts of the association.

8. An association may issue credit cards, extend credit in connection therewith and otherwise engage in or participate in credit card operations.

9. In unsecured loans with maturity of not more than six months.

10. In personal property, which term as used herein shall include fixtures acquired upon the specific request of and for lease to a customer, subject to the following limitations:

a. The rentals receivable by the association under the initial lease of any item of personal property shall at least equal the cost to the association of such item of personal property;

b. The association shall have a certificate of a resposible officer designated by its board for that purpose stating that the responsibility of the lessee has been evaluated and approved by such officer;

3. Upon the expiration of any lease, whether by virtue of the lease agreement or by virtue of the retaking of possession by the association, such personal property shall be relet, sold or otherwise disposed of, or charged off within one year from the time of expiration of such lease.

11. In secured or unsecured credit to cover payment of checks, drafts or other fund transfer orders in excess of the available balance of an account on which they are drawn, provided that such extensions of credit must be paid off within thirty days after the extension of credit is made.

12. Unless specificallly authorized by the Commissioner, a state association shall not invest more than ten percent of its assets in loans for commercial, corporate, business or agricultural purposes. The percentage-of-assets limitation in this paragraph shall not apply to overdraft loans, commercial real estate loans, loans to a service corporation the stock of which is owned by the association, or loans to dealers in consumer goods for inventory or floor planning financing.

13. A state association may issue commercial and standby letters of credit in conformance with the Uniform Commercial Code or the Uniform Customs and Practice for Documentary Credits and may pledge collateral to secure its obligations thereunder, subject to the following requirements:

a. Each letter of credit must conspicuously state that it is a letter of credit;

b. The issuer's undertaking must contain a specified expiration date or be for a definite term, and must be limited in amount;

c. The issurer's obligation to pay must be solely dependent upon the presentation of conforming documents as specified in the letter of credit, and not upon the factual performance or nonperformance by the parties to the underlying transaction; and

d. The account party must have an unqualified obligation to reimburse the issuer for payments made under the letter of credit.

14. In corporate debt securities as defined in paragraph (a) of subsection (1) of § 8.8-102, shares in open-end management investment companies and corporate debt securities convertible into stock.

15. A state association may invest in any other obligations, instruments or investments which are specifically approved by the Commissioner.

16. The Commission may promulgate such rules and regulations as may be required to prevent excessive aggregate amounts of lending by an association to any one individual or entity.

§ 6.1-194.70. Effect of repeal or amendment of statute or regulation on existing loan or investment.—Any investment or loan which was in compliance with the provisions of this Act or

a regulation of the Commission in existence when such investment or loan was made shall remain a legal investment or loan even though the power to make such investment or loan in the future is amended or revoked by regulation or by action of the General Assembly of Virginia.

§ 6.1-194.71. Limitation on liability of savings institutions making loans for certain purposes. —A savings institution which makes a loan, the proceeds of which are used or may be used by the borrower to finance the purchase, design, manufacture, construction, repair, modification or improvement of real or personal property for personal use, or for sale or lease to others, shall not be held liable to such borrower or to any third persons (i) for any loss or damage occasioned by any defect in the real or personal property so purchased, designed, manufactured, constructed, repaired, modified or improved, or (ii) for any loss or damage resulting from the failure of the borrower to use due care in the design, manufacture, construction, repair, modification or improvement of any such real or personal property, unless such loss or damage is a result of an action of the savings institution outside the scope of its business as a savings institution, or unless the institution has knowingly been a party to misrepresentations with respect to such real or personal property.

§ 6.1-194.72. Perfection of certain security interests.—When securities are sold by a savings institution subject to an obligation of repurchase, any security interest or interest of ownership therein may be perfected (i) as specified by Title 8.9 (§ 8.9-101 et seq.) or (ii) by designation to the person holding physical custody thereof (which shall include a person keeping the master records, in case of securities identified by book entry only) that certain securities identified by serial number or dollar amount are held for the benefit of third parties other than the savings institution, who may, but need not be, identified by name; or (iii) by physical separation on the premises of the savings institution in a separate drawer, compartment, or other facility. The savings institution may, from time to time, instruct any third party holding such securities that the previously identified securities or an amount of such securities previously identified as pledged or belonging to third parties, have been released from such pledge by payment of all or part of the amount due, or have been repurchased. There shall be an identification on the records of the savings institution of the persons who are pledgees or owners of such securities.

Article 9.

Supervision.

§ 6.1-194.73. General supervisory powers of Commissioner.—The Commissioner shall have general supervision over all state associations and foreign savings institutions transacting business in the Commonwealth, savings institution holding companies whose principal place of business is located in the Commonwealth, service corporations the principal offices of which are located in the Commonwealth or which are owned or controlled by one or more state associations, and any other persons which are subject to the provisions of this Act.

§ 6.1-194.74. Regulations of Commission.—The Commission may adopt such regulations as it deems appropriate to effect the purposes of this Act. Before promulgating any regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to present evidence and be heard, in accordance with the Rules of Practice and Procedure of the Commission.

Regulations adopted by the Commission shall continue in effect until amended or revoked by the Commission or by action of the General Assembly of Virginia.

§ 6.1-194.75. Regulations to permit state associations to have powers comparable to federal savings institutions.—The Commissioner is authorized to adopt such regulations as may be necessary to permit state associations to have powers comparable with those of federal savings institutions, regardless of any then existing statute, regulation or court decision limiting or denying such powers to state associations. The requirement of a public hearing shall not automatically apply to regulations promulgated under this section, but the Commission may have such hearing as it deems appropriate.

§ 6.1-194.76. Publication of regulations.—The Commissioner shall publish and mail to each state association and foreign savings institution doing business in the Commonwealth a copy of all regulations of the Commission in effect pertaining to such savings institutions at such times as he may deem proper.

§ 6.1-194.77. Statements to be furnished by Commission to directors of savings institutions.—

The Commission shall prepare and make available to each member of the board of directors of every state association a statement describing generally their duties and responsibilities. The statement shall include a brief outline of the examining procedure employed by the Commission, an explanation of the distinction between an examination and an audit, and any information which the Commission deems necessary to apprise the directors of the necessity for an adequate system of internal controls.

§ 6.1-194.78. State associations to furnish financial statements and reports.—Every state association shall furnish the Commission within thirty days after the close of its fiscal year a statement of its financial condition on forms supplied by the Commission. In addition, every state association shall either mail to each of its members or shall publish in some newspaper having general circulation in the county or city where its main office is located a statement in condensed form of its financial condition. Such statements shall be made and published in accordance with forms prescribed by the Commission, certified under oath by the president or treasurer of the association, and attested by at least three of its directors. Insofar as practicable, the reports required by this section shall conform to those required of associations insured by any instrumentality of the federal government.

Every state association shall make such other reports as the Commission may from time to time require.

§ 6.1-194.79. Examination of savings institutions by Commissioner; report of examination.—The Commissioner shall, not less than twice during any period of three consecutive calendar years, or at such additional times as he deems necessary, with or without previous notice, examine each state association. A copy of the report of all examinations shall be furnished to the savings institution and such report shall be presented by the president or other chief executive officer to the directors at their next meeting.

§ 6.1-194.80. Savings institution to give examiners access to books, etc.; examination of directors, officers and employees under oath.—The officers, directors and employees of every savings institution doing business in the Commonwealth shall, upon the demand of the person designated by law to make any examination of the institution:

1. Give to such examiner full access to all money, books, papers, notes, bills and other evidence of debt of the savings institution;

2. Disclose fully and truly all of its indebtedness and liability; and

3. Furnish the examiner with all information which the examiner deems necessary to a full investigation into the affairs of the savings institution.

The Commission is empowered to examine under oath any and all of the directors, officers, clerks, and employees of a savings institution touching any matter or thing connected with the operation of the savings institution. Any duly authorized examiner shall have the authority to administer oaths to the persons examined.

§ 6.1-194.81. False statements by officers or agents.—Any officer or agent of a savings institution who knowingly makes a false statement of the condition of the institution to the Commission shall be guilty of a Class 6 felony.

§ 6.1-194.82. Audits.—The Commission may require a savings institution doing business in the Commonwealth to have an audit made of its books, records and methods of operation, whenever it appears to the Commission that the system of internal controls is not adequate or that the savings institution is engaging in dangerously unsound practices or that the financial condition of the institution makes it necessary.

§ 6.1-194.83. Powers of Commission in case of nonobservance of law, noncompliance with orders, insufficient reserves or insolvency, etc.; appointment of Federal Savings and Loan Insurance Corporation as receiver.—A. If the Commission finds: (i) that the laws of this Commonwealth are not being fully observed by a savings institution doing business in the Commonwealth; or (ii) that a savings institution is being operated in an unsafe or unsound manner; or (iii) that the institution has failed to comply with the lawful orders of the Commission; or (iv) that the reserve of the institution is insufficient for the protection of account holders or (v) that a savings institution is, or is about to become, insolvent, it shall give immediate notice thereof to the officers and directors of the institution. If necessary to conserve the assets of the institution or to protect the interests of its account holders or the public interest, the Commission may, after reasonable notice to the institution and opportunity for it to be heard:

1. Close the institution for a period not exceeding sixty days, which period may be further extended for a like period or periods as the Commission deems necessary;

2. Require the officers and directors of the institution to liquidate, insofar as is required, its outstanding loans;

3. Require that all lawful orders of the Commission be complied with;

4. Require the institution to make reports daily or at such other times as it may require as to the results achieved in carrying out its orders;

5. Temporarily suspend the right of such institution to receive any further deposits;

6. Without examination, close, for such period or periods as the Commission may deem necessary, any savings institution facing an emergency due to withdrawal of deposits or otherwise, or, without closing such savings institution, grant to it the right to suspend or limit the withdrawal of deposits, for such period as the Commission may determine; or

7. Require that the savings institution desist from those activities which have resulted in the unsafe or unsound operation of the institution.

B. If the Commission determines that a receiver should be appointed for a savings institution, the Commission may close the doors of the institution, take charge of the books, assets and affairs of the institution, and apply to any court in the Commonwealth having jurisdiction to appoint receivers for the appointment of a receiver to take charge of the institution's business and assets. Proceedings for the appointment of a receiver of a savings institution shall not be entertained by any court except on the application of the Commission.

C. In any case where the Commission finds that an insured savings institution is insolvent or about to become insolvent, the Commission may seek the appointment of the Federal Savings and Loan Insurance Corporation as receiver for the savings institution, and the court may appoint the Federal Savings and Loan Insurance Corporation as such, if it finds that to do so would be in the public interest. Upon its being appointed, the Federal Savings and Loan Insurance Corporation shall not be required to post bond, and it shall have as receiver all those powers afforded the Federal Deposit Insurance Corporation when it is appointed receiver pursuant to Article 10.1 (§ 6.1-110.1 et seq.) of Chapter 2 of this title.

§ 6.1-194.84. Removal of director or officer; appeal; penalty for acting after removal.—A. 1. Whenever any director or officer of a savings institution doing business in the Commonwealth has knowingly continued to violate any law relating to such savings institution or has knowingly continued any unsafe or unsound practice in conducting the business of such institution, after the director or officer, and the board of directors of the institution of which he is a director or officer, have been warned in writing by the Commissioner to discontinue such violation of law or such unsafe or unsound practice, the Commissioner shall certify the facts to the Commission, which shall thereupon enter an order requiring such director or officer to appear before the Commission, within not less than ten days, to show cause why he should not be removed from office and thereafter restrained from participating in any manner in the management of such savings institution. Such order shall contain a brief statement of the facts certified to the Commission by the Commissioner. A copy of such order shall be served upon such director or officer, and a copy thereof shall be sent by certified or registered mail to each director of the savings institution affected.

2. If, after granting the accused director or officer a reasonable opportunity to be heard, the Commission finds that he has knowingly continued to violate any law relating to such savings institution, or has knowingly continued any unsafe or unsound practice in conducting the business of such institution, after he and the board of directors of the institution of which he is a director or officer have been warned in writing by the Commissioner to discontinue such violation of law or unsafe or unsound practice, the Commission shall enter an order removing such director or officer from office and restraining such director or officer from thereafter participating in any manner in the management of such savings institution. A copy of such order shall be served upon such director or officer and upon the savings institution of which he is a director or officer, whereupon such director or officer shall cease to be a director or officer of such institution and shall thereafter cease to participate in any manner in the management of such institution.

B. Any director or officer aggrieved by any order of the Commission entered under this section removing and restraining such officer or director, and any person aggrieved by any order of the Commission refusing to remove a director or officer from office, shall have, of

right, an appeal to the Supreme Court of Virginia.

C. Any director or officer removed and restrained under the provisions of this section who thereafter participates in any manner in the management of such savings institution, except as a stockholder therein, shall be guilty of a Class 6 felony.

§ 6.1-194.85. Fees for supervision and regulation; investigations.—A. For the purpose of defraying the expenses of supervision and regulation of state associations and foreign savings institutions doing business in the Commonwealth, the Commission shall, on or before July 1 of each year, assess against every such savings institution fees in accordance with a schedule to be set by the Commission. Such schedule shall bear a reasonable relationship to total assets and number of branches of various individual savings institutions and to the costs of their respective supervision, regulation, and examination.

B. All fees so assessed shall be paid into the state treasury on or before July 31 following. The Commission shall mail the assessments to each association on or before July 1 of each year.

C. Before investigating an application for authority to establish a branch, the Commission shall charge a fee of $1,000 if the branch is to be located within the Commonwealth and a fee as prescribed by the Commission if the branch is to be located outside the Commonwealth. A fee of $500 shall be charged before investigating an application for authority to change the location of an existing main office or branch office. Before investigating an application for a certificate of authority the Commission shall charge a fee of $3,500 in the case of a state association and a fee as prescribed by the Commission in the case of a foreign savings institution. For investigating an application for merger or consolidation, the Commission shall charge a fee of $3,000 and shall not be entitled to any further fees for investigating any application to retain existing branches of the applying savings institution as branches of the merged or consolidated institutions. Such fees may be waived by the Commission in the case of supervisory mergers or consolidations made pursuant to § 6.1-194.88.

§ 6.1-194.86. Examination of books, etc., of persons believed to be doing business without authority; doing business without authority a misdemeanor.—A. The Commissioner is authorized and directed to examine the accounts, books and papers of any person or entity which he has reason to believe is doing the business of a savings institution in the Commonwealth without legal authority to do so. Any person having possession, custody or control of such accounts, books and papers refusing to produce such documents for examination by the Commissioner shall be guilty of a Class 1 misdemeanor.

B. Every person who does the business of a savings institution in the Commonwealth without authority, and every officer and agent of a corporation doing such business without authority who knowingly participates therein, shall be guilty of a Class 1 misdemeanor.

§ 6.1-194.87. Regulation of savings institution holding companies.—A. Any person which, directly or indirectly, or acting in concert with one or more other companies or with one or more subsidiaries or affiliates, acquires, owns, controls or holds with power to vote twenty-five percent or more of the voting shares of a stock savings institution, or which controls in any manner the election of a majority of the directors of such institution, shall for purposes of this chapter be deemed to be a savings institution holding company.

B. The Commission may promulgate regulations governing savings institution holding companies doing business in the Commonwealth, including the activities of such companies and their subsidiaries. Any savings institution holding company which does not have any subsidiaries which are state associations and which is subject to regulations adopted by the Federal Savings and Loan Insurance Corporation shall be deemed to be in substantial compliance with the regulations promulgated by the Commission if it is in compliance with the regulations promulgated by the Federal Savings and Loan Insurance Corporation.

C. Notwithstanding the provisions of subsection B of this section, no person, whether acting alone or in concert with others, shall acquire ownership or control of twenty-five percent or more of the voting shares of a state stock association, or otherwise control the election of a majority of the directors of such association, without the approval of the Commission. The Commission shall not approve the proposed acquisition unless the Commission determines that the proposed acquisition is in the public interest.

§ 6.1-194.88. Merger, consolidation or transfer of assets of insolvent or financially unstable association; notice and hearing; final order; priorities; examinations of resulting institutions.—A. If the Commission finds (i) that any state association is insolvent, or that, in its opinion, the

financial stability of a state association is threatened, (ii) that the merger or consolidation of such state association into another savings institution or into a bank is desirable for the protection of the stockholders, members or depositors of such association, and that such merger or consolidation is in the public interest, and (iii) that an emergency exists, and if the board of directors of such state association approves a plan of merger or consolidation of such association into another savings institution or bank, compliance with the requirements of §§ 13.1-718 or 13.1-895 shall be dispensed with as to such state association and the approval by the Commission of such plan of merger or consolidation shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such state association for all purposes of Article 12 (§ 13.1-716 et seq.) of Chapter 9 of Title 13.1 or the approval of two-thirds of the members for all purposes of Article 11 (§ 13.1-894 et seq.) of Chapter 10 of Title 13.1.

B. If the Commission finds (i) that a state association is insolvent, or that, in its opinion, the financial stability of a state association is threatened, (ii) that the acquisition of the assets and liabilities of such association by another savings institution or by a bank is in the best interests of the stockholders, members or depositors of such state association, and that such acquisition of the assets and liabilities is in the public interest, and (iii) that an emergency exists, it may, with the consent of the board of directors of both institutions as to the terms and conditions of such transfer, including the assumption of all or certain liabilities, enter an order transferring some or all of the assets and liabilities of such state association to such other savings institution or bank and no compliance with the provisions of §§ 13.1-723 or 13.1-724 or §§ 13.1-899 or 13.1-900 shall be required, nor shall § 13.1-730 be applicable to such transfer.

C. In the case either of such a merger, consolidation or a transfer of assets and liabilities, the Commission shall provide that prompt notice of its findings, and plan of merger, consolidation or transfer of assets and liabilities, be sent to the stockholders or members of record of such insolvent association or association threatened with financial instability for the purpose of providing such shareholders or members an opportunity to challenge the findings of the Commission and the plan of merger, consolidation or transfer of assets and liabilities. The relevant books and records of such state association shall remain intact and be made available to such shareholders or members for a period of thirty days after such notice is sent. The Commission's findings and plan of merger, consolidation or transfer of assets and liabilities shall become final if a hearing before the Commission is not requested by any such shareholder or member in a written request delivered to the Commission within fifteen days after the notice specified by this section is sent. Any such request for a hearing shall contain a statement of the specific grounds for such shareholder's or member's challenge to the Commissioner's findings and plan of merger, or consolidation or transfer of assets and liabilities.

D. If, after such hearing provided in subsection C of this section, the Commission finds that good cause has been shown for the reversal or modification of its initial findings, or for rescission or modification of its initial plan for merger, consolidation or transfer of assets and liabilities, the Commission shall enter its final order accordingly. But if, after such hearing, the Commission affirms its original findings and plan for merger, or consolidation or transfer of assets and liabilities, its order shall be final.

E. Notwithstanding any other provision of law, any institution resulting from a merger, consolidation or a transfer of assets and liabilities under the provisions of this section shall have the right to retain and operate all offices of the association so merged, consolidated or acquired which were in operation at the time of such merger, or consolidation or acquisition. This section shall not be construed to allow the establishment of additional branches by any institution resulting from such merger, consolidation or transfer than would otherwise be allowed by the laws of the Commonwealth.

F. For the purposes of this section the word "insolvent" shall mean that the current book value of liabilities is in excess of the current book value of assets.

G. For the purposes of this section, the terms "association," "bank," or "savings institution" shall mean institutions incorporated or established under the laws of (i) the Commonwealth of Virginia, (ii) the United States, (iii) any other state of the United States, (iv) a territory of the United States, or (v) the District of Columbia, which institutions' deposits are insured as required by this title for the issuance of a certificate of authority to do business.

H. The Commission shall authorize transactions under this section according to the following priorities:

1. First, between financial institutions of the same type located within the Commonwealth of Virginia;

2. Second, between financial institutions of different types located within the Commonwealth of Virginia;

3. Third, between financial institutions of the same type including depository institutions located outside the Commonwealth of Virginia; and

4. Fourth, between financial institutions of different types including depository institutions located outside the Commonwealth of Virginia.

I. In considering transactions involving financial institutions located outside the Commonwealth of Virginia, the Commission shall give priority to plans of merger, consolidation or asset acquisition involving financial institutions located in states adjoining the Commonwealth of Virginia or located in the District of Columbia.

J. Any institution resulting from a transaction authorized by this section whose main office is located outside of the Commonwealth of Virginia shall, as a condition of being able to do business in this Commonwealth, allow the Commission to examine such institution from time to time as the Commission deems necessary. In conducting such examinations, the Commission shall have all of the powers provided by this title relating to the examination of financial institutions.

K. The provisions of Article 5 (§ 6.1-194.41 et seq.) and Article 11 (§ 6.1-194.96 et seq.) of this chapter shall not apply to mergers, consolidations, and acquisitions authorized by the provisions of this section.

Article 10.

Miscellaneous.

§ 6.1-194.89. Construction of Act.—This Act, being a general act intended as a comprehensive coverage of its subject matter, shall not be deemed to be impliedly repealed in whole or in part by subsequent legislation not specifically repealing it if such construction can be avoided. It is the intention of the General Assembly that this Act shall be liberally construed to effect the purposes set out herein. If any provision, clause, or phrase of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared to be separable.

§ 6.1-194.90. Application to federal and foreign savings institutions.—The provisions of this Act shall apply to federal savings institutions and foreign savings institutions doing business in the Commonwealth insofar as the Commonwealth has the power to enact legislation with regard to them.

§ 6.1-194.91. Effect of Act as to preexisting savings institutions.—A. The powers, privileges, duties and restrictions conferred and imposed upon any savings and loan association existing under the laws of this State on July 1, 1985, are hereby abridged, enlarged or modified, as each particular case requires, to conform to the provisions of this chapter, but nothing in this chapter shall affect the legality of any investment heretofore made or transaction heretofore had under authority of any provision of law in force when such investment was made or transaction had.

B. Notwithstanding any other provision of law with respect to the rates of interest which may be charged, an association which on September 1, 1959, was operating on a share accumulation loan plan whereby its earnings were equitably distributed to both its borrowers and its shareholders may continue to operate upon the same plan, but no additional loans shall be made or shares issued under such plan after July 1, 1974.

C. A savings institution, which prior to July 1, 1977, does not have its accounts insured by the Federal Savings and Loan Insurance Corporation, or by such other insurer as may be approved by the Commission, shall not thereafter issue any shares or accept any deposits.

§ 6.1-194.92. Statement by savings institution that its accounts are insured or guaranteed; misleading advertising.—No savings institution shall, without the written approval of the Commission, make any representation, oral or written, that any of its accounts are insured or guaranteed unless such accounts are insured or guaranteed by an instrumentality of the United States or other insurer approved by the Commission. No savings institution shall publish any

misleading advertisement.

§ 6.1-194.93. False statements and similar actions prohibited.—Whoever knowingly makes or causes to be made, directly or indirectly, or through any agency whatsoever, any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of any savings institution upon any application, advance, discount, purchase or repurchase agreement, commitment, or loan or any change or extension of the same, by renewal, deferment of action or otherwise, or the acceptance, release of substitution of security therefor, shall be guilty of a Class 1 misdemeanor.

§ 6.1-194.94. Defamation of savings institutions and certain federal agencies prohibited.—Whoever willfully and knowingly makes, issues, circulates, transmits or causes or knowingly permits to be made, issued, circulated, or transmitted, any statement or rumor, written, printed, reproduced in any manner, or by word of mouth, which is untrue in fact and is directly or by inference false, malicious in that it is calculated to injure reputation or business, or derogatory to the financial condition or standing of any savings institution, Federal Home Loan Bank, the Federal Home Loan Bank Board, or the Federal Savings and Loan Insurance Corporation, shall be guilty of a Class 2 misdemeanor.

§ 6.1-194.95. Prohibitions on conduct of savings institution business; use of certain terms prohibited; exceptions; penalty.—A. No person shall engage in the savings institution business in the Commonwealth except entities which are state associations, federal savings institutions or foreign savings institutions which have been authorized to transact a savings institution business in the Commonwealth pursuant to the provisions of Article 5 (§ 6.1-194.41 et seq.) of this chapter. However, nothing in this chapter shall prevent any person who is not authorized to engage in the savings institution business from lending money on real estate or personal security or collateral, or from guaranteeing the payment of bonds, notes, bills or other obligations, or from purchasing or selling stocks and bonds, so long as such person does not hold himself out as being engaged in the savings institution business.

B. No person not engaged in the business of a saving institution in the Commonwealth under the provisions of this Act shall use any sign having thereon any assumed or corporate name containing the words "savings and loan," "building and loan," "savings bank," or other words indicating that its office is the office of a savings institution; nor shall any such person use or circulate any written or printed material having thereon any assumed or corporate name or word or words indicating that the business of such person is that of a savings institution. However, the use of any of these terms in the name of any other corporation or in connection with any other business is not prohibited when additional words show clearly and definitely that the corporation is not, and that the business is not that of, a savings institution.

C. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

D. The provisions of this section as to the use of a corporate name shall not apply to any industrial loan association which was authorized to do business in this Commonwealth on January 1, 1960, and which on that date had the words "savings and loan" or "building and loan" as part of its corporate name.

Article 11.

Acquisitions by Out-of-State Savings Institution or

Out-of-State Savings Institution Holding Companies.

§ 6.1-194.96. Definitions.—As used in this article and in Article 5 (§ 6.1-194.41 et seq.) of this chapter, unless a different meaning is required by the context, the following words or phrases shall have the following meanings:

"Acquire" means:

1. The merger or consolidation of one stock savings institution with another stock savings institution or of a savings institution holding company with another savings institution holding company;

2. The acquisition by a savings institution holding company or savings institution of direct

or indirect ownership or control of voting shares of another savings institution holding company or a savings institution, if, after such acquisition, the savings institution holding company or savings institution making the acquisition will directly or indirectly own or control more than twenty-five percent of any class of voting shares of the other savings institution holding company or savings institution;

3. The direct or indirect acquisition by a savings institution holding company or by a savings institution of all or substantially all of the assets of another savings institution holding company or of another savings institution;

4. Any other action that would result in direct or indirect control by a savings institution holding company or by a savings institution of another savings institution holding company or another savings institution.

"Savings institution" shall have the same meaning as set forth in § 6.1-194.2.

"Savings institution holding company" shall have the same meaning as set forth in subsection A of § 6.1-194.87.

"Principal place of business of a savings institution" shall be the state in which the largest amount of the deposits of the savings insitution is located at the end of the last calendar year.

"Principal place of business of a savings institution holding company" shall be the state in which the largest amount of the deposits of the holding company's subsidiaries is located as of the end of the last calendar year.

"Region" means the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia, and the District of Columbia (which for the purposes of this article shall be considered a state).

"Regional savings institution" means a savings institution

1. That is organized under the laws of The United States or of one of the states in the region other than Virginia; and

2. At least eighty percent of whose deposits were initially deposited in offices located in states within the region.

"Regional savings institution holding company" means a savings institution holding company:

1. That has its principal place of business in a state within the region other than Virginia;

2. Whose financial institution subsidiaries located outside the region hold not greater than twenty percent of the total deposits held by all of its financial institution subsidiaries; and

3. That is not controlled by a savings institution holding company other than a regional savings institution holding company.

"Subsidiary" with respect to a savings institution holding company means:

1. Any company twenty-five percent or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such savings institution holding company, or is held by it with power to vote;

2. Any company the election of a majority of whose directors is controlled in any manner by such savings institution holding company; or

3. Any company with respect to the management or policies of which such savings institution holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the Commission, after notice and opportunity for hearing.

"Virginia savings institution" means a savings institution that:

1. Is organized under the laws of this Commonwealth or of the United States; and

2. Has deposit-taking offices located only in this Commonwealth.

"Virginia savings institution holding company" means a savings institution holding company:

1. That has its principal place of business in this Commonwealth:

2. Whose financial institution subsidiaries located outside the region hold not greater than twenty percent of the total deposits held by all of its financial institution subsidiaries: and

3. That is not controlled by a savings institution holding company other than a Virginia savings institution holding company.

§ 6.1-194.97. Acquisitions by a regional savings institution holding company.—A. Any regional savings institution holding company that does not have a Virginia savings institution subsidiary, except as acquired in the regular course of securing or collecting a debt previously contracted in good faith, may acquire a Virginia savings institution holding company or a Virginia savings institution with the approval of the Commission. A regional savings institution holding company shall submit to the Commission an application for approval of such acquisition, which application shall be approved in the event:

1. The Commission determines that the laws of the state in which the regional savings institution holding company making the acquisition has its principal place of business do not prohibit or unfairly impede a Virginia savings institution holding company meeting the criteria in this article from acquiring savings institutions or savings institution holding companies in that state:

2. The Commission determines that the laws of the state in which the regional savings institution holding company making the acquisition has its principal place of business permits such regional savings institution holding company to be acquired by the Virginia savings institution holding company or Virginia savings institution sought to be acquired. For purposes of this subsection, a Virginia savings institution shall be treated as if it were a Virginia savings institution holding company:

3. The Commission determines either that the Virginia savings institution sought to be acquired has been in existence and continuously operating for more than five years or that all of the savings institution subsidiaries of the Virginia savings institution holding company sought to be acquired have been in existence and continuously operating for more than five years. The Commission may approve the acquisition by a regional savings institution holding company of all or substantially all of the shares of a savings institution organized solely for the purpose of facilitating the acquisition of a savings institution that has been in existence and continuously operating as a savings institution for more than five years: and

4. The Commission makes the acquisition subject to any conditions, restrictions, requirements or other limitations that would apply to the acquisition by a Virginia savings institution holding company of a savings institution or savings institution holding company in the state where the regional savings institution holding company making the acquisition has its principal place of business but that would not apply to the acquisition of a savings institution or savings institution holding company in such state by a savings institution holding company all the savings institution subsidiaries of which are located in that state.

B. A regional savings institution holding company that has a Virginia savings institution subsidiary, except as acquired in the regular course of securing or collecting a debt previously contracted in good faith, may acquire any Virginia savings institution or Virginia savings institution holding company with the approval of the Commission. The regional savings institution holding company shall submit to the Commission an application for approval of such acquisition, which application shall be approved in the event:

1. The Commission determines either that the Virginia savings institition sought to be acquired has been in existence and continuously operating for more than five years or that all of the savings institution subsidiaries of the Virginia savings institution holding company sought to be acquired have been in existence and continuously operating for more than five years.

The Commission may approve the acquisition by a regional savings institution holding company of all or substantially all of the shares of the savings institution organized solely for the purpose of facilitating the acquisition of a savings institution that has been in existence and continuously operating as a savings institution for more than five years: and

2. The Commission makes the acquisition subject to any conditions, restrictions, requirements or other limitations that would apply to the acquisiton by a Virginia savings institution holding company or a savings institution or a savings institution holding company in

the state where the regional savings institution holding company making the acquisition has its principal place of business but that would not apply to the acquisition of a savings institution or a savings institution holding company in such state by a savings institution holding company all the savings institution subsidiaries of which are located in that state.

§ 6.1-194.98. Acquisitions by a regional savings institution.—A. Any regional savings institution may acquire a Virginia savings institution holding company or a Virginia savings institution with the approval of the Commission. A regional savings institution shall submit to the Commission an application for approval of such acquisition, which application shall be approved in the event:

1. The Commission determines that the laws of the state in which the regional savings institution making the acquisition has its principal place of business do not prohibit or unfairly impede a Virginia savings institution meeting the criteria in this acticle from acquiring savings institutions or saving institution holding companies in that state;

2. The Commission determines that the laws of the state in which the regional savings institution making the acquisition has its principal place of business permits such regional savings institution to be acquired by the Virginia savings institution holding company or Virginia savings institution sought to be acquired;

3. The Commission determines that the Virginia savings institution sought to be acquired has been in existence and continuously operating for more than five (5) years. The Commission may approve the acquisition by a regional savings institution of all or substantially all of the shares of a savings institution organized solely for the purpose of facilitating the acquisition of a savings institution that has been in existence and continuously operating as a savings institution for more than five (5) years; and

4. The Commission makes the acquisition subject to any conditions, restrictions, requirements or other limitations that would apply to the acquisition by a Virginia savings institution of a savings institution or savings institution holding company in the state where the regional savings institution making the acquisition has its principal place of business but that would not apply to the acquisition of a savings institution or savings institution holding company in such state by a savings institution located in that state.

B. A regional savings institution that has previously acquired a Virginia savings institution may acquire any additional Virginia savings institution or Virginia savings institution holding company with the approval of the Commission. The regional savings institution shall submit to the Commission an application for approval of such acquisition, which application shall be approved in the event:

1. The Commission determines that the Virginia savings institution sought to be acquired has been in existence and continuously operating for more than five (5) years. The Commission may approve the acquisition by a regional savings institution of all or substantially all of the shares of a savings institution organized solely for the purpose of facilitating the acquisition of a saving institution that has been in existence and continuously operating as a savings institution for more than five (5) years; and

2. The Commission makes the acquisition subject to any conditions, restrictions, requirements or other limitations that would apply to the acquisition by a Virginia savings institution of a savings institution or a savings institution holding company in the state where the regional savings institution making the acquisition has its principal place of business but that would not apply to the acquisition of a savings institution or a savings institution holding company in such state by a savings institution located in that state.

§ 6.1-194.99. Same; investigation of application; prescribed investigation period; shortening, lengthening or waiving of period; hearing; appeals.—A. For ninety days following receipt of a complete application under §§ 6.1-194.97 or § 6.1-194.98, the Commission shall be empowered to conduct an investigation for the purpose of determining whether:

1. The proposed acquisition would be detrimental to the safety and soundness of the applicant or the Virginia savings institution or Virginia savings institution holding company which the applicant seeks to acquire or control;

2. The applicant, its directors and officers, if applicable, and any proposed new directors and officers, of the Virginia savings institution or Virginia savings institution holding company which the applicant seeks to acquire, are qualified by character, experience and financial responsibility to control and operate a Virginia savings institution or Virginia savings institution

holding company;

3. The proposed acquisition would be prejudicial to the interests of the depositors, creditors, beneficiaries of fiduciary accounts or shareholders of the Virginia savings institution holding company or any Virginia savings institution which the application seeks to acquire or control ; and

4. The acquisition is in the public interest.

B. 1. The ninety-day investigation period may be shortened or waived by the Commission, as it deems appropriate, if the Commission finds that it must act immediately in order to prevent the probable failure of a Virginia savings institution involved.

2. The ninety-day investigation period may be extended if the Commission determines that the applicant has not furnished all the information necessary to make the determination under §§ 6.1-194.97 or 6.1-194.98 or that the information submitted is substantially inaccurate or misleading.

C. Within the prescribed investigation period, or any extension thereof, and upon request of the applicant or the Virginia savings institution or Virginia savings institution holding company which the applicant seeks to acquire or control , or upon its own motion, the Commission may order a hearing concerning the proposed acquisition.

D. Within the prescribed investigation period, or any extension thereof, the Commission, by giving written notice of its decision and the reasons therefor to the applicant and to the Virginia savings institution or Virginia savings institution holding company which the applicant seeks to acquire or control , may: (i) approve the application, (ii) disapprove the application, or (iii) impose such conditions on the acquisition as the Commission may deem advisable to effect the purpose of this article.

E. Any party in interest aggrieved by any decision of the Commission may, as a matter of right, appeal to the Supreme Court of Virginia in the manner provided by law.

§ 6.1-194.100. Exceptions.—A Virginia savings institution holding company, a Virginia savings institution, a regional savings institution holding ompany, or a regional savings institution may acquire or control, and shall not cease to be a Virginia savings institution holding company, a Virginia savings institution, a regional savings institution holding company, or a regional savings institution, as the case may be, by virtue of its acquisition or control of a savings institution having offices in a state not within the region, if such savings institution has been acquired in the regular course of securing or collecting a debt previously contracted in good faith, and if the savings institution or savings institution holding company divests the securities or assets acquired within two years of the date of acquisition. A Virginia savings institution, a Virginia savings institution holding company, a regional savings institution holding company, or a regional savings institution may retain these interests for up to three additional periods of one year each if the Commission determines that the required divestiture would create undue financial difficulties for that savings institution or savings institution holding company.

§ 6.1-194.101. Prohibitions.—A. Except as expressly permitted by federal law, or by § 6.1-194.88, no savings institution holding company that is neither a Virginia savings institution holding company nor a regional savings institution holding company and no stock savings institution which is neither a regional savings institution nor a Virginia savings institution shall acquire a Virginia savings institution holding company or a Virginia savings institution.

B. Except as required by federal law, a Virginia savings institution holding company or a regional savings institution holding company that ceases to be a Virginia savings institution holding company or a regional savings institution holding company shall, as soon as practicable and, in all events, within one year after such event, divest itself of control of all Virginia savings institution holding companies and all Virginia savings institutions. Such divestiture shall not be required if the Virginia savings institution holding company or the regional savings institution holding company ceases to be a Virginia savings institution holding company or a regional savings institution holding company, as the case may be, because of an increase in the deposits held by savings institution subsidiaries not located within the region and if such increase is not the result of the acquisition of a savings institution or savings institution holding company.

§ 6.1-194.102. Applicable laws, rules and regulations.—A. Any Virginia savings institution that is controlled by a savings institution holding company that is not a Virginia savings institution holding company shall be subject to all laws of this Commonwelath and all rules and

regulations under such laws that are applicable to Virginia savings institutions controlled by Virginia savings institution holding companies.

B. The Commission shall promulgate such rules and regulations, including the imposition of a reasonable application and administration fee, as it finds necessary to implement and effect the provisions of this article.

§ 6.1-194.103. Periodic reports; interstate agreements.—The Commission shall have the authority to examine such regional savings institution holding companies owning a Virginia savings institution and each of its Virginia or non-Virginia savings institution subsidiaries and shall require reports under oath in such scope and detail of each regional savings institution holding company subject to this chapter for the purpose of assuring continuing compliance with the provisions of this chapter.

The Commission may enter into cooperative agreements with other regulatory authorities for the periodic examination of any regional savings institution holding company or any affiliate that has a Virginia savings institution subsidiary and may accept reports of examination and other records from such authorities in lieu of conducting its own examinations. The Commission may enter into joint actions with other regulatory authorities having concurrent jurisdiction over any regional savings institution holding company that has a Virginia savings institution subsidiary or may take such actions independently to carry out its responsibilities under this chapter, assure the safety and soundness of any Virginia savings institution, and assure compliance with the provisions of this chapter and the applicable savings institution laws of this Commonwealth.

§ 6.1-194.104. Enforcement.—The Commission shall have the same powers to enforce the provisions of this article as those granted under Article 9 (§ 6.1-194.73 et seq.) of this chapter.

§ 6.1-194.105. Notice of intent to acquire out-of-state savings institution.—A Virginia savings institution, a Virginia savings institution holding company or a regional savings institution holding company owning subsidiaries which conduct a savings institution business in the Commonwealth shall file with the Commission notice of its intention to acquire a savings institution outside Virginia, together with such information as the Commission may request. The Commission shall within thirty days or an extended period, not exceeding fifteen days, disapprove such acquistion if it determines that the acquisition could affect detrimentally the safety or soundness of the Virginia savings institution or a Virginia savings institution subsidiary of the same savings institution holding company. The Commission may approve such acquisition prior to the expiration of the thirty-day period if it determines that the acquisition will not affect detrimentally the safety or soundness of such Virginia savings institution.

§ 6.1-194.106. Nonseverability.—It is the purpose of this article to facilitate orderly development of savings institution organizations that have savings institution offices in more than one state within the region. It is not the purpose of this article to authorize acquisitions of Virginia savings institution holding companies or Virginia savings institutions by savings institutions or savings institution holding companies that do not have their principal place of business in this Commonwealth on any basis other than as expressly provided in this article. Therefore, notwithstanding the provisions of § 6.1-194.89, if any portion of this article pertaining to the terms and conditions for and limitations upon acquisition of Virginia savings institution holding companies and Virginia savings institutions by savings institutions and savings institution holding companies that do not have their principal place of business in this Commonwealth is determined to be invalid for any reason by a final non-appealable order of any Virginia or federal court of competent jurisdiction, then this article shall be void and of no further effect from the effective date of such order. However, any transaction that has been lawfully consummated pursuant to this article prior to a determination of invalidity shall be unaffected by such determination.

2. That Chapter 3.1 of Title 6.1 of the Code of Virginia, consisting of sections numbered 6.1-195.1 through 6.1-195.76, is repealed.

APPENDIX V

INTERSTATE BANKING

Walter Ayers, Executive Vice President
Virginia Bankers Association

Introduction

Interstate banking is a phenomenon that is fast exploding around us. This paper reviews some of those developments. Specifically, the paper will discuss inroads that have already been made, legislation being considered by the U.S. Congress, constitutional implications, developments in other states, and possible alternatives for Virginia.

Already Existing Inroads

At least part of the impetus for interstate banking has occurred because of the opportunity that already exists for certain types of interstate operations. Diversified firms like Merrill Lynch, Sears, Prudential, American Express and others that operate on an interstate basis, are already offering bank-type services. Some are advertising "complete financial centers" that can deposit one's money in a savings type investment, offer checkwriting privileges, make loans, provide securities and real estate brokerage services, and meet one's insurance needs, all at one location. And they operate on an interstate basis in direct competition with banks, but unfettered by the restrictions imposed on banks.

At the same time, some traditional banks have taken advantage of loopholes in existing laws, grandfather arrangements, and/or intended provisions of state or federal laws to set up interstate-type operations. Interstate loan orginzation offices and ATM networks are but one example. North Carolina National Bank's presence in Florida is an example of the kind of full service interstate bank operations that have occurred under grandfather provisions of some state laws. Another example has been the success of Citicorp, through the failing institution's provisions of law, to purchase large S&Ls in California, Illinois and Florida. Citicorp has also moved to establish industrial banks under existing provisions of law in Kentucky and Tennessee.

More recently, and following a decision by the Fed to permit U. S. Trust Corporation of New York to convert its Florida trust office to a consumer bank, some 280 applications have been filed to establish "consumer banks" or "nonbank banks" on an interstate basis. Generally speaking, a consumer bank will take deposits and make consumer loans. The operation is not a bank in the legal sense because the Bank Holding Company Act says a bank is not a bank unless it offers both demand accounts and makes

commercial loans. Thus, a consumer bank or nonbank bank skirts the law against interstate banking. Among the out-of-state banks applying to locate in Virginia are Citicorp, NCNB, First Union, Mellon, Chase, Chemical, First Railroad and Banking Co. and Security Pacific of Los Angeles.

Some would conclude, then, that interstate banking already exists, and that we should free banks to compete on the same interestate basis already available to the nonbank banks and other diversified forms. Others would argue that it is still not too late to close the door on the nonbank banks, divest non-banking institutions of their bank type services, restrict further interstate expansion of existing banks, and continue to maintain the integrity of state lines.

Developments in other States

The legislatures of Florida, Georgia, South Carolina, Kentucky, Connecticut, Massachusetts, Rhode Island, Utah, New York, Maine and Alaska have enacted interstate banking statutes. New York authorizes out-of-state bank holding companies or subsidiaries to acquire in-state financial institutions if reciprocal rights are granted by the other state. Maine and Alaska simply allow out-of-state banks to locate in their states. Kentucky authorizes operations with contiguous states for two years, then expands to nationwide. Georgia authorizes interstate operations on a reciprocal basis with other southern states. South Carolina and Florida authorize a reciprocal arrangement with other southern states, plus Maryland and District of Columbia. Connecticut, Massachusetts, and Rhode Island allow a bank holding company or subsidiary located in one of the New England states to acquire a bank in their states on a reciprocal basis. The Rhode Island provision limiting reciprocity to other New England states expires on July 1, 1986. The Utah measure creates a western region, but excludes California.

Other states are considering legislation. A Legislative Study Committee has recommended a regional reciprocal bill in North Carolina. A regional reciprocal bill has been prefiled in Maryland. One is expected to be introduced in the District of Columbia in July. A proposed bill has been drafted in New Jersey.

The attached chart shows the states covered by the bills that have been passed or proposed.

INTERSTATE BANKING BILLS PASSED OR PROPOSED

Florida Enacted Effective 7/1/85 (1)	Georgia Enacted Effective 7/1/85 (2)	South Carolina Enacted Effective 7/1/86 (3)	Kentucky Enacted Effective 1984 (4)	Proposed North Carolina	Proposed D.C.	Proposed Maryland	Proposed New Jersey
Alabama	Alabama	Alabama		Alabama	Alabama	Alabama	
Arkansas		Arkansas		Arkansas		Arkansas	
Florida	Florida	Florida		Florida	Florida	Florida	
Georgia	Georgia	Georgia		Georgia	Georgia	Georgia	
	Kentucky	Kentucky	Kentucky	Kentucky		Kentucky	
Louisiana	Louisiana	Louisiana		Louisiana	Louisiana	Louisiana	
Maryland		Maryland		Maryland	Maryland	Maryland	Maryland
Mississippi	Mississippi	Mississippi		Mississippi	Mississippi	Mississippi	
N. Carolina	N. Carolina	N. Carolina		N. Carolina	N. Carolina	N. Carolina	
S. Carolina	S Carolina	S. Carolina		S. Carolina	S. Carolina	S. Carolina	
Tennessee	Tennessee	Tennessee		Tennessee	Tennessee	Tennessee	
Virginia	**Virginia**	**Virginia**	**Virginia**	**Virginia**	**Virginia**	**Virginia**	**Virginia**
W. Virginia		W. Virginia	W. Virginia	W. Virginia	W. Virginia	W. Virginia	W.Virginia
D. C.		D. C.	D. C.	D. C.	D. C.	D. C.	D. C.
							New Jersey
						Penn.	Penn.
						Delaware	Delaware
			Ohio				Ohio
			Missouri				
			Indiana				
			Illinois				
13 Total	10 Total	14 Total	8 Total	14 Total	12 Total	16 Total	8 Total

(1) Effective Jan. 1, 1985 if states having 20% or more of deposits in region, excluding Florida, enact similar legislation prior to January 1, 1985
(2) (Effective Jan. 1, 1985 if two contiguous states enact similar legislation prior to Jan. 1, 1985)
(3) Includes S&L's and/or credit unions
(4) The contiguous state provision expires after 2 years/bill would then be national in scope

Massachusetts Effective 7/83	Connecticut Effective 1983	Rhode Island Effective 1983	Utah Effective 3/14/84	New York Effective 1982	Maine Effective 1983	Alaska Effective 1982
	(3)	(3) (4)	(3)		(3)	
Connecticut	Connecticut	Connecticut	Alaska	National	National	National
Maine	Maine	Maine	Arizona	Reciprocal		
Massachusetts	Massachusetts	Massachusetts	Colorado			
New Hampshire	New Hampshsire	New Hampshsire	Idaho			
Rhode Island	Rhode Island	Rhode Island	Montana			
Vermont	Vermont	Vermont	Hawaii			
			Nevada			
			New Mexico			
			Oregon			
			Utah			
			Washington			
			Wyoming			
6 Total	6 Total	6 Total	12 Total			

(3) Includes S&L's and/or credit unions
(4) The New England limitation expires on July 1, 1986

Legislation Pending in Congress

In addition to state level initiatives, legislation is also pending at the national level.

Congressman Fauntleroy has introduced a bill that would create an experimental region consisting of Virginia, Maryland, and the District of Columbia. Senator D'Amato, on the other hand, has introduced a bill that would allow bank holdiong companies to acquire or set up one bank in each of two states each year for five years, so that a bank holding company could expand into ten states within five years. After five years, the existing prohibition on the interstate acquisitions of banks by bank holding companies, contained in the Douglas amendment to the Bank Holding Company Act, would be repealed.

Senator Garn has introduced an omnibus bill that deals with many aspects of banking and banking powers. One provision of that bill would give congressional sanction to regional interstate compacts voluntarily entered into by states. Senator Mattingly has also introduced a bill to sanction the regional approach. Generally, these bills are perceived as resolving the constitutional questions that have been raised.

Constitutional Implications

A potential cloud still hangs over the regional approach to interstate banking. Citicorp has challenged the constitutionality of the New England reciprocal region. The basis of the Citicorp challenge is that once a state determines to allow out-of-state banks from certain states to operate within its boundaries, it must allow all states to operate to be in keeping with the Commerce Clause of the Constitution.

In short, whether or not regional arrangements are, in fact, constitutional is yet to be finally determined. The decisions of the courts and possible Congressional action will ultimately be the key in answering the question.

Alternatives for Virginia

It would appear that Virginia has four principal alternatives as relates to interstate banking. Virginia could:

1. take no position

2. oppose interstate banking

3. adopt national or national reciprocal

4. adopt regional or regional reciprocal

Take no position

Virginia could simply let "nature take its course." Under this scenario, whether or not Virginia ultimately became a participant in interstate banking would be determined by marketplace response to existing regulatory loopholes and imprecise regulations, and by whatever action the Congress and various regulatory agencies might take.

Oppose interstate banking

Virginia could oppose interstate banking, on the assumption that there is still ample opportunity for banking within Virginia, and that interstate banking can yet be stopped. Under this scenario, both state and federal laws would probably need amendment to insure that no loopholes exist and to deal with the issues of the nonbank financial institutions.

Adopt national or national reciprocal

Virginia could allow interstate banking on a national basis. That is, Virginia could permit any bank from any state to locate in Virginia. Or, Virginia could include a reciprocal provision that would only allow an out-of-state bank to locate in Virginia if the state in which such a bank was domiciled allowed Virginia banks to locate in that state. The argument might be made that Virginia banks would have a higher sale value in a national arena than in a regional arena--that stockholders would be better served. The validity of this argument may depond upon the number of states that finally pass national reciprocal legislation. Currently, only three states have passed national bills.

Adopt regional or regional reciprocal

Virginia could allow interstate banking on a regional basis. As with the national approach, a reciprocal provision could be included. A decision to support regional interstate banking, however, would have to include a subsequent decision on the configuration of the region. Among the alternatives that might be considered are:

1. Virginia, Maryland and D.C.

2. Virigna, Maryland, D.C., West Virginia, Kentucky and Tennessee.

3. Any contiguous states.

4. Virginia and all of the states in Federal Reserve Districts five and six. (Florida, Tennessee, Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, West Virginia, District of Columbia,

Maryland)

5. Any variation of the above and/or trigger dates bringing in additional states.

Different regions appear to have different perceived advantages to different people. In any event, the principal argument for a regional approach would be that Virginia banks might then have an opportunity to be the surviving purchaser in a merger situation, or at a minimum, have the opportunity to merge with an equal. Under a national arrangement, on the other hand, big money center banks could potentially take over even Virginia's largest banking institutions.

And, of course, the Commonwealth must decide whether or not it will treat banks, S&L's and credit unions the same on the interstate question or adopt separate laws or approaches for each.

Summary

The decisions to be made are as complex as they are important in terms of the future structure of Virginia's financial institutions. The issue deserves the very best study and consideration that can be given it.

INTERSTATE BANKING PAPER

By:

Walter C. Ayers
Executive Vice President
Virginia Bankers Association
Richmond, Virginia

INTERSTATE BANKING
Recommendations for Virginia

This paper has been prepared by the Virginia Bankers Association to summarize, as briefly and objectively as possible, current interstate banking issues and to recommend a legislative course of action for Virginia.

Background

The McFadden Act and the Douglas Amendment to the Bank Holding Company Act have restricted banks and bank holding companies from establishing deposit-taking facilities outside their headquarters states without the specific legislative approval of states being entered. During the past three years, states in various parts of the country have been moving aggressively to remove these geographic limitations (see attachment A). In most cases, such as New England and the Southeast, the approach being adopted is regional and reciprocal in nature. During the past six months the developments in the Southeast have been rapid. Florida, Georgia, North Carolina, South Carolina, and Kentucky have adopted regional interstate banking bills which permit interstate combinations by July 1, 1985, (in Kentucky, July 13, 1984). A bill has been prefiled in the Maryland legislature, and a proposed bill is under review by a District of Columbia Committee appointed by the D.C. Mayor.

These legislative changes already have resulted in announced mergers in New England and one announced merger in the South, Sun Bank in Florida and Trust Bank of Georgia. Another is being discussed, Southeast Bank in Miami and First Atlanta Corporation. The implication is that these legislative changes are likely to lead to additional mergers of the larger banks in states where the opportunities are made available.

The seeds for these rapid changes were sown in the advent of money market mutual funds during the late 1970s and in the resulting product and interest rate deregulation of the early 1980s. Competition for core deposits increased dramatically as a result of these changes. State boundaries proved to be ineffective barriers to money funds and nonbanking institutions, such as Sears, Merrill Lynch, Prudential, and American Express. Nor have state boundaries prevented bank holding companies, such as Citicorp and NCNB Corporation, from entering attractive markets by acquiring failing thrift institutions, establishing loan origination offices, and by employing other legal loopholes. The vast

majority of banks and bank holding companies, however, remain constrained geographically, whereas nonbanking segments of the financial services are not so constrained. More recently, direct mail solicitations by money centers and regional banks for loans and deposits have become commonplace in Virginia and throughout the country, and discussion of banking-in-the-home electronic networks and nationwide automated teller machine networks give evidence to the growing threat of external competition to Virginia-based financial institutions.

Regardless of one's view on the issue, the actions of others and the reality of geography place Virginia squarely in the midst of interstate banking. The profoundly important question at hand is whether or not Virginia will act to grant its financial institutions equal opportunity to compete in the current and future environment, or whether it will try to remain as an isolated island and attempt to keep from being affected by the irreversible changes already sweeping the financial services industry.

Regional Reciprocal Interstate Banking Recommended

After months of study, the Virginia Bankers Association has concluded that Virginia's financial institutions must be permitted to compete in the evolving environment in which they find themselves, and that regional reciprocal interstate banking legislation is the best means to accomplish that objective. Such legislation will best serve the varied interests of all Virginia commercial banks, their shareholders and customers, and it is likely to have the greatest positive effect on continued growth of the Virginia economy. Specifically, the Virginia Bankers Association recommends a region consisting of the states of the Fifth and Sixth Federal Reserve Districts plus the contiguous state of Kentucky (Alabama, the District of Columbia, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia and Kentucky). The major points considered in reaching this conclusion were:

- The Cost of Nonparticipation
- Local Control and Ownership
- Integrity of Virginia Deposits
- Safety and Soundness
- Concentration of Assets
- Continued Opportunity for Small Banks

- Benefits to the Public

- Benefits to the Stockholders

- State and Regional Growth

Each of these is addressed in the following sections of this paper.

The Cost of Nonparticipation

The Virginia Bankers Association has concluded that failure to participate will not keep regional interstate banking from occurring in our region. Instead, Virginia banks will be restrained from competing in their own natural regional market area on an equal basis with banks from other states, thereby enabling those other banks to grow at the expense of Virginia banks. Failure to participate will effectively eliminate Virginia's influence on the structure of banking in its own region, and almost certainly will result in the major financial centers of the southeastern region being located in other states. This would obviously be a great setback to Virginia and her banks and would result in larger Virginia-based corporations having to seek principle banking relationships outside the boundaries of the State.

In summary, a legislative response to these changes is in order. To take no action will place the future of Virginia banks in a noncompetitive position.

Local Control and Ownership

As the Association that represents banking in Virginia, we take a backseat to no one in our desire to insure the survivability and viability of Virginia's banks, all of which are members of the Association. We do not agree, however, that opposing regional interstate banking will in any way assure local control in the long term. Prohibiting participation by Virginia banks in regional interstate banking may protect Virginia's banks from purchase by out-of-state banks in the short term, but short term protection ultimately leaves our institutions vulnerable to wholesale takeover by large money center banks when national interstate banking is authorized by the United States Congress. Many feel that such authorization may come within five years.

Currently, the largest bank in Virginia has assets in excess of 7 billion. The largest bank in the Southeast, North Carolina National, has assets of $15 billion. By contrast, New York's Citicorp has assets of $143 billion. If national interstate banking were enacted, large money center banks could enter Virginia by wholesale acquisition of our financial institutions with very serious anticompetitive long-range effects. In the future, Virginia could be left with only a two-tier banking system--the small community banks with their small lending limits and the remnants of Virginia's larger banks as nothing more than branches of the money center banks.

If, on the other hand, Virginia banks are permitted to be initial participants in regional interstate banking, some of our large banks may emerge as survivors, or at a minimum, become a part of a regional financial institution that is attuned to the needs and growth potential of the region of which Virginia is a part. The Commonwealth is ideally located to be the site of one or more regional banks. Headquarters of the Fifth Federal Reserve District is in Richmond, and the nation's Capitol is on our northern border. The Washington SMSA is the tenth largest market in the United States. In a strategic sense, Virginia is an ideal northern anchor for a Southeast region, as well as a southern anchor for a Mid-Atlantic region.

In short, the Virginia Bankers Association believes that an opportunity to participate in interstate banking now may be the very step that enables Virginia's institutions to remain viable competitors in the long term.

Integrity of Virginia Deposits

Representing depository institutions in our Commonwealth, the Virginia Bankers Association certainly supports the integrity of Virginia deposits. We have no desire to foster a system of banking that drains deposits from our state, and we do not believe that interstate banking will have that effect.

In our free economy, money flows from suppliers to users based on the law of supply and demand, as reflected in yield and safety criteria. As an example, local banks may acquire funds from nonlocal savers and use them for nonlocal investments. A bank may buy federal funds and brokered deposits. It may put locally or nonlocallay generated funds into nonlocal loans, federal funds sales and securities. Likewise, individual savers may deposit their funds with a local bank, or, as indicated previously, may invest those

funds in bank-type instruments, in many cases insured, with such unregulated competitors as American Express, Prudential, Sears, K-Mart, Penney's, Merrill Lynch, and others that are operating on an interstate basis. In like fashion, the individual borrower may borrow from the local bank, or he may borrow from in-state loan origination offices owned by out-of-state banks, or from other types of out-of-state lending institutions. In either case, the funds borrowed may or may not be locally deposited funds.

With all the competition for funds now and in the future, it is reasonable to expect that funds will move as they have in the past, to wherever the return is highest and the demand is the greatest, regardless of state and national boundaries. As a recent Atlanta Fed report concluded, "American capital markets are already efficient at moving capital to its most productive uses. Savings from local areas have many opportunities to get out to other uses and local areas have many opportunities to acquire savings for profitable projects. Local control of savings and lending does not exist in most markets."

Moreover, the flight of deposit argument totally ignores the probability that Virginia might be the site of some large regional banks. Indeed, the Virginia Bankers Association would not be supporting interstate banking legislation if we thought the result would be that all of our existing banks were going to be consumed by out-of-state banks. Moreover, an opportunity for Virginia's banks to compete on a regionwide basis would enhance their ability to attract deposits in competition with out-of-state unregulated firms that already are offering bank-type services in Virginia on an interstate basis.

Safety and Soundness

Recently, it has been suggested that the problems Continental Illinois has experienced are the best reasons not to move forward with interstate banking...that banks should not be allowed to grow larger. While the Virginia Bankers Association is totally committed to maintaining safety and soundness of our banking system, we believe that Continental is an example of the kind of problems which regulatory restrictions can help generate. To quote William Isaac, Chairman of the FDIC:

> "Continental had a substantial volume of problem loans and relied heavily on volatile funding sources...It's ironic that foes of deregulation are attempting to use the Continental episode to bolster their case. In my

judgment, the situation at Continental simply demonstrate that the policies of the past must be altered. Banks like Continental are hemmed in by branching restrictions which preclude the development of a strong core deposit base and lead to excessive reliance on volatile funding. Even now, in its current plight, Continental's choices of partners for voluntary merger are severely limited by restrictive laws. This is not to argue that Continental would not have gotten into difficulty had the regulatory climate been more benign. Continental's management made serious mistakes and has no one to blame but itself. But the regulatory environment did not give the bank very many attractive alternatives to following the high risk path it chose."

Although the impact of a large bank failure may arguably be greater, to suggest that larger banks are inherently less safe or sound than smaller ones is not supported by analysis. B. Frank King (Economic Review, Federal Reserve Bank of Atlanta, April 1984) concludes after citing studies by David D. Whitehead, Robert L. Schweitzer, and Mark Flannery:

> ". . . both large and small banks have managed their interest rate risk efficiently during the 1970s and early 1980s . . . .small banks seem to have suffered no more than large banks, as deposit interest rates were deregulated over the past five years. . . little evidence exists that banks of any size enjoyed risk advantages over banks of other sizes."

In short, safety and soundness are not assured by restricting growth or expansion. Rather, they are more nearly assured by giving institutions an opportunity to expand into natural markets, coupled with maintaining an adequate examination system to insure proper management of the institutions. National banks are already examined on a national basis. Virginia currently has a very efficient examination system for state chartered banks and the integrity of that system can be maintained with properly constructed interstate banking legislation.

Concentration of Assets

The Virginia Bankers Association supports a competitive marketplace. Under regional interstate banking, fewer banks would probably hold greater resources. The larger institutions that result may enjoy advantages over smaller banks in offering sophisticated services and larger loans,

but studies indicate that larger banks have no cost advantage over smaller banks in their basic product lines. As a result, profit margins of small banks have generally exceeded those of large institutions, and smaller banks have continued to attract customers and realize significant asset growth.

Moreover, new entry into the market continues, both by banks and unregulated intermediaries. New banks continue to be chartered. Five applications are currently pending in Virginia. Such unregulated institutions as department stores, brokerage firms, insurance companies, and national credit card companies are aggressively entering the market and offering bank-type services in competition with banks.

In view of the increasingly competitive nature of the financial marketplace, it is not surprising that an Atlanta Federal Reserve report recently concluded that with interstate banking there was no great danger of monopolistic concentration of assets or freezing out of smaller banks.

Continued Opportunity for Small Banks

With every community bank in the Commonwealth belonging to our Association, we are just as committed to ensuring the viability of the community bank as we are the large holding companies.

The Virginia Bankers Association strongly believes that there will continue to be an opportunity for the smaller community or independent bank. The interstate mergers announced to date in both the New England and Southeast regions have been between large holding company banks, supporting the view of most observers that community banks will not be likely participants or targets. Any bank seeking to create a regional presence will have to be relatively large and likely will recognize that such a regional presence cannot be readily created through the purchase or merger of one or more small banks in another state. The likelihood of small banks selling to large banks would, therefore, appear to be no greater under interstate banking than already exists with statewide holding companies. Fear, then, for the demise of the small bank as a result of regional banking would seem to be unfounded. To the contrary, it would be easier for a community bank with its local identity and service orientation to compete against an out-of-state bank than against an existing in-state institution. This is particularly true when one considers that the smaller community banks frequently outperform large holding companies on traditional measures of profitability.

State and Regional Growth

The twelve-state Southern Growth Policies Board formed a Southern Regional Banking Committee in the late summer of 1982 to review the current and future status of the region's banking industry, especially its role in supporting continued growth and development of Southern Growth Policies Board states.

This committee was charged with reviewing state-imposed restrictions on commercial banking operations and recommending measures to accomplish legislative changes designed to enhance economic development in the region, improve services to the industry's customers, and insure that the region's banks remain healthy and competitive in the changing financial services environment.

The committee concluded that the highly fragmented banking system in the South no longer meets the needs of the public and has actually dampened the South's economic development. The committee noted that the amount of credit available within the region for small and medium sized businesses is not sufficient to support the desired economic growth.

Because the money center banks concentrate on the credit needs of large corporations, the committee recommended that the Southern states enact legislation to permit entry of out-of-state bank holding companies on a regional reciprocal basis. This approach, the report said, would allow banks within the South the opportunity to consolidate resources at the regional level to serve the South's economic needs and prepare for unrestricted interstate banking which the committee felt could occur, whenever the United States Congress is ready to deal with this issue at a national level.

Benefits to the Public

The people and the economy of the Commonwealth will benefit if banks in this state are granted the same powers and competitive opportunity for survival as banks in neighboring states. As previously indicated, failure to participate in regional interstate banking will effectively eliminate Virginia's influence on the structure of banking in our own region and result in the major financial centers of the Southeast being located in other states. If this should occur, it is only reasonable to assume that major industrial prospects would more likely be attracted to those southeastern states that have sent a positive signal on growth and regional cooperation, and that are in a position to serve financial needs on a regional basis through higher lending limits.

The individual consumer benefits from interstate banking are most closely related to the number of actual and potential competitors allowed into local markets. Enhanced competition resulting from interstate banking would suggest the ability to have available in the marketplace a more diversified line of products and newer technologies at more competitive prices. If regional interstate banking were enacted, these customer benefits could be realized without sacrificing all local autonomy and/or identity, as would probably occur if Virginia were later forced to confront national interstate banking with institutions made weak from an inability to participate in the regional competition already underway.

Large regional banks are likely to benefit the public and Virginia's economic growth, because of a greater commitment than money center banks to regional economic development and community involvement and because of their local, stable employment. They are also more likely than money center banks to patronize businesses in Virginia, such as advertising and legal firms, public accountants, and local suppliers.

Benefits to the Shareholders

If Virginia attempts to isolate itself from the interstate banking developments occurring in our own region, bank shareholders will not be well served. Restricting oneself from markets in which others are actively participating cannot help but have a negative effect on current or potential stock values.

Conversely, national reciprocal interstate banking is promoted by some as presenting the greatest opportunity to the stockholder. The greater the number of organizations competing for a Virginia bank, the reasoning goes, the higher the selling price. There are two serious flaws in this argument. First, with only three states having passed national legislation, there are still many opportunities for Virginia to reciprocate within its own region. Second, it is important to consider who the likely acquirors might be under a national arrangement (the money center bankers), and how they would pay for a Virginia bank.

The important considerations for investing in banking organizations are generally recognized to be the quality of the bank's assets -- the loans it makes -- and the growth in earnings and dividends that the banking organization produces. The stock market tends to reward companies that en-

joy both quality and growth characteristics. Southeastern banks have been rewarded for their quality and performance during the past 16 years, whereas the money center banks have been penalized, as demonstrated by the following Merrill Lynch Composite Bank Stock Index comparisons:

Merrill Lynch Composite Bank Stock Index (1967 = 100)

	Index 12/31/83	% Change 1967-1983
Money Center Bank	181	81
Southeastern Banks Index	310	210
Composite Bank Index	265	165

The implication is that if acquisitions or mergers with Virginia banks are accomplished by exchange of common stock, as is customary in larger transactions, it would be better for shareholders to agree to an acquisition by a Southeastern bank, rather than a money center bank.

Two recent research reports by First Boston and Goldman Sachs, respectively, stated:

> "Owing largely to the subpar performance of New York City banks, investors overlook the fact that banks as a group significantly outperformed the general market in 1983, rising 33 percent versus 17 percent for the (Standard & Poor's) 500. Excluding acquisitions, the best market performance was consistently found among banks in the Southeast states, where across-the-board appreciation of 40-50 percent was typical during the year."

> "We remain very negative on the long-term prospects for multinational banks," because ". . .credit quality perceptions and LDC (less developed country) debt limit their attractiveness."

It is apparent that shareholders of Virginia banking organizations could expect investments with higher quality and greater growth potential with the formation of regional banking institutions than they could by withholding themselves from regional interstate banking or by opting for money center bank acquisitions. Quite clearly, at this point, regional interstate banking is in the best interest of shareholders of Virginia banking organizations.

Conclusion

As the states around Virginia continue the rush toward regional interstate banking, Virginia must soon decide whether she is going to be a participant or merely an observer. The Virginia Bankers Association believes that we must be a participant--that the Commonwealth and her institutions simply cannot afford to become an island of isolationism in a sea of regional cooperation. Major reasons for Virginia to act are as follows:

- Five states in the Southeast have passed enabling legislation--momentum is building--Virginia should adopt similar legislation to avoid out-of-state banks having the opportunity to grow at the expense of Virginia and its banks.

- Reciprocal regional interstate banking can best prepare Virginia and its banks to be viable competitors when national interstate banking comes.

- An opportunity for Virginia's banks to compete on a regionwide basis would enhance their ability to attract deposits in competition with other unregulated firms that are already offering bank-type services in Virginia on an interstate basis.

- The role and competitive position of community banks and small holding company banks as providers of locally-oriented services may be enhanced as other banks become regional in scope.

- If Virginia is to keep pace with economic development in neighboring states, regional cooperation rather than regional isolationism will be required. Otherwise, large industrial prospects may be lured to other Southeastern states that have banking institutions of sufficient size to meet their larger loan demands.

- The public would benefit from greater competition and a greater availability of products and services.

- Shareholders of banks would be provided greater opportunities for enhanced values, enabling banks to more easily raise additional capital.

The Virginia Bankers Association urges the adoption of regional reciprocal interstate banking to accomplish these objectives.

ATTACHMENT A

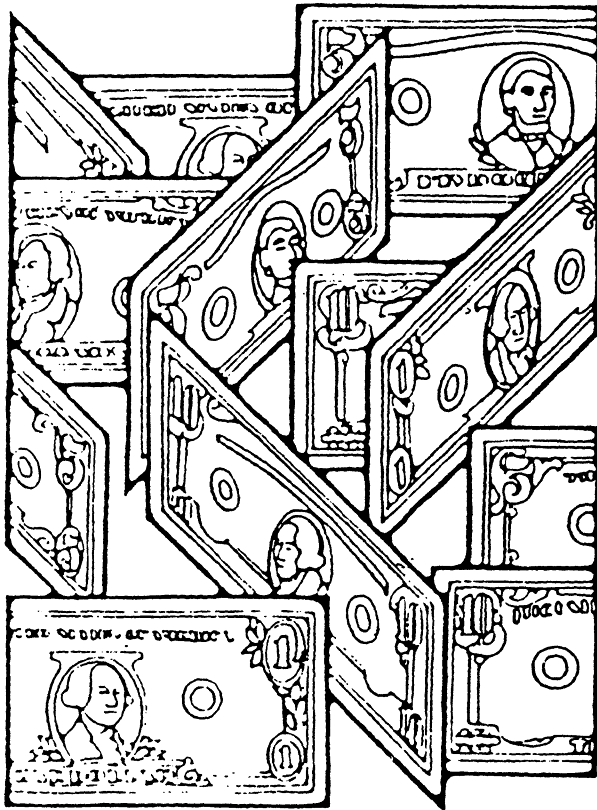
INTERSTATE BANKING BILLS PASSED OR PROPOSED

Florida Enacted Effective 7/1/85 (1)	Georgia Enacted Effective 7/1/85 (2)	South Carolina Enacted Effective 7/1/86 (3)	Kentucky Enacted Effective 1984 (4)	North Carolina Enacted Effective 1/1/85	Proposed D.C.	Proposed Maryland	Proposed New Jersey
Alabama	Alabama	Alabama		Alabama	Alabama	Alabama	
Arkansas		Arkansas		Arkansas		Arkansas	
Florida	Florida	Florida		Florida	Florida	Florida	
Georgia	Georgia	Georgia		Georgia	Georgia	Georgia	
	Kentucky	Kentucky	Kentucky	Kentucky		Kentucky	
Louisiana	Louisiana	Louisiana		Louisiana	Louisiana	Louisiana	
Maryland		Maryland		Maryland	Maryland	Maryland	Maryland
Mississippi	Mississippi	Mississippi		Mississippi	Mississippi	Mississippi	
N. Carolina	N. Carolina	N. Carolina		N. Carolina	N. Carolina	N. Carolina	
S. Carolina	S Carolina	S. Carolina		S. Carolina	S. Carolina	S. Carolina	
Tennessee	Tennessee	Tennessee		Tennessee	Tennessee	Tennessee	
Virginia	**Virginia**	**Virginia**	**Virginia**	**Virginia**	**Virginia**	**Virginia**	**Virginia**
W. Virginia		W. Virginia	W. Virginia	W. Virginia	W. Virginia	W. Virginia	W.Virginia
D. C.		D. C.	D. C.	D. C.	D. C.	D. C.	D. C.
							New Jersey
						Penn.	Penn.
						Delaware	Delaware
			Ohio				Ohio
			Missouri				
			Indiana				
			Illinois				
13 Total	10 Total	14 Total	8 Total	14 Total	12 Total	16 Total	8 Total

(1) Effective Jan. 1, 1985 if states having 20% or more of deposits in region, excluding Florida, enact similar legislation prior to January 1, 1985
(2) (Effective Jan. 1, 1985 if two contiguous states enact similar legislation prior to Jan. 1, 1985)
(3) Includes S&L's and/or credit unions
(4) The contiguous state provision expires after 2 years/bill would then be national in scope

Massachusetts	Connecticut	Rhode Island	Utah	New York	Maine	Alaska
Effective 7/83	Effective 1983	Effective 1983	Effective 3/14/84	Effective 1982	Effective 1983	Effective 1982
	(3)	(3) (4)	(3)		(3)	
Connecticut	Connecticut	Connecticut	Alaska	National	National	National
Maine	Maine	Maine	Arizona	Reciprocal		
Massachusetts	Massachusetts	Massachusetts	Colorado			
New Hampshire	New Hampshsire	New Hampshsire	Idaho			
Rhode Island	Rhode Island	Rhode Island	Montana			
Vermont	Vermont	Vermont	Hawaii			
			Nevada			
			New Mexico			
			Oregon			
			Utah			
			Washington			
			Wyoming			
6 Total	6 Total	6 Total	12 Total			

(3) Includes S&L's and/or credit unions
(4) The New England limitation expires on July 1, 1986



Interstate Banking: Issues and Evidence

Interstate banking promises to offer the public—and banks— more benefits than disadvantages, according to this study. But it suggests that excessive limitations could diminish the potential benefits without helping banking customers.

Debate and action concerning the nation's limitations on interstate banking have increased greatly over the past two years. The attention of Congress and bank regulators increasingly has been drawn to the subject by state governments' actions or proposals. Proponents of interstate banking in several states have taken various initiatives to overcome interstate banking prohibitions. Their proposals have ranged from allowing entry by banks with limited functions, as South Dakota and Delaware have done, to allowing entry by any out-of-state bank holding company, as is the case in Alaska and Maine.

Banks headquartered in one state are prohibited from operating deposit-taking offices in any other state by the McFadden Act of 1927 (amended in 1933); bank holding companies are prohibited from owning a bank in another state without that state's permission by the Douglas Amendment to the Bank Holding Company Act of 1956. Until the last four years, these two laws effectively stopped interstate operation of full-service banks or branches by all domestic banking organizations except for a few "grandfathered" by the Douglas Amendment. Recently, however, emergency takeovers and state laws have breached interstate prohibitions to a greater degree.

The Current Situation

Current proposals and action on interstate banking are driven by a combination of market forces that seem to be breaking down the barriers to interstate banking inexorably despite continued legal prohibitions. Some of these forces and their results were detailed in a 1983 Federal Reserve Bank of Atlanta report by David D. Whitehead.[1] Other forces have come into prominence since that research was done.

The May 1983 study indicates that various banking organizations have used different legal avenues to establish offices outside their home states. By analyzing the location of those offices, Whitehead also concludes that these interstate organizations have followed market forces to attractive markets located primarily in the faster growing states of the Sun Belt.

The report identifies several avenues banking organizations have taken to conduct interstate banking: grandfathered subsidiaries of domestic and foreign bank holding companies, agencies and branches of foreign banks, nonbank subsidiaries of bank holding companies, loan production offices, offices of Edge Act corporations, interstate savings and loan associations and limited service offices opened under special state laws. In all, the research uncovered 7,724 such offices as of late 1982. Comparing this number to the 39,835 within-state branches of all domestically chartered commercial banks at the end of 1982 gives an idea of the significance of interstate banking.

Interstate prohibitions have been challenged further by nonbank companies that have devised ways to offer many or all banking services through interstate offices. The names of the nonbank companies are familiar. Many add deposit services to their lending services through brokered time certificates or transactions accounts offered by a bank under contract. They typically have gained access to the payments system through a commercial bank. A refinement that allows them to offer insured deposits and to access the payments mechanism directly gained considerable attention in 1982 and 1983. This is the nonbank bank, so called because it is a chartered and insured bank, but it is not a bank for purposes of the Bank Holding Company Act.

Since these are not banks for the purposes of that act, their owners are not covered by it and may engage in activities not allowed by the act and operate banks in more than one state. The Federal Reserve Board has attempted to close the loophole in its regulations that allows nonbank banks to operate.[2] The threat posed by nonbank banks to interstate banking prohibitions is demonstrated by Dimension Financial Corp., an organization that has applied to operate nonbank banks in 25 states.

Several states have taken it upon themselves to move toward interstate banking before the federal government decides what is to be done on a national scale. As of the beginning of March 1984, fully 17 states had passed legislation allowing out-of-state bank holding companies to operate within their borders (see "States' Interstate Banking Laws").

Such moves have laid the groundwork for debates in several state legislatures in 1984 and 1985. We might also expect Congress to debate the subject if there is continued state movement toward interstate banking legislation. Federal Reserve Board Chairman Paul Volcker has testified that he prefers a national interstate banking law to a diverse group of state or regional policies.[3] Senator D'Amato of New York has introduced a bill that would provide for the phase-in of national interstate banking while voiding regional interstate compacts. Senator Tsongas of Massachusetts has taken the opposite tack, introducing legislation that would legitimize regional interstate compacts. In this article, we will set out the major interstate banking issues being debated, review and assess the evidence on these issues, detail the prospective costs and benefits of interstate banking and comment on problems of moving to de jure interstate banking.

Public Policy Issues

Public issues that arise in the debate on interstate banking can be classified under three principal headings: competition/efficiency, credit and savings flows, and safety. Each category has several subheads and none is absolutely separate from the others.

Competition and Efficiency

The issues of competition and efficiency generally are related to a stereotypical view of the process by which banking will become interstate. Most observers think that large banks in a few money centers will spread out over the country and become full-service competitors of smaller banks. This view probably overstates the role of money-center banks in the process. Larger regional banks also are likely to attempt expansion on a regional basis at least. Mergers of small banks in multiple state market areas are also likely. Nevertheless, the most relevant picture of interstate banking is one of larger banks entering local markets to compete with smaller banks. Thus, the effects of interstate banking on the costs of bank services, the dynamics of bank competition, the concentration of the banking business and the variety of services available to customers are usually discussed in terms of the advantages and disadvantages of larger and smaller banks.

Bank Costs

A relatively consistent body of evidence on bank costs indicates that large banks have no

Box 1

States With Out-of-State Banking Laws

State	Year Passed	Provisions
Alaska	1982	*De novo*-No *Acquisition of existing banks*-Yes, in business for three years *Branching into state*-Not explicitly stated (N.E.S.) *Acquisition of savings bank, S&L and Trust company*-Trust companies only *Reciprocal agreement*-Not explicitly stated
Connecticut	1983	*De novo*-N.E.S. *Acquisition of existing banks*-Yes *Branching into state*-N.E.S. *Acquisition SB, S&L and Trust*-Yes, other than trust companies (variety of other restrictions) *Reciprocal agreement*-New England only and anti-leap-frogging provision (non-NE to Maine and then Connecticut, Massachusetts and/or Rhode Island)
Delaware	1981-1983	**1981** *De novo*-Yes 1. Minimum capital stock and paid-in-surplus at least $10 million, with 1 year to reach $25 million 2. Employ at least 100 persons 3. Not likely to attract customers from general public *Acquistion of existing banks*-N.E.S. *Branching into state*-N.E.S. *Acquisition SB, S&L and Trust*-N.E.S. *Reciprocal agreement*-N.E.S. *Misc. provision*-No interest rate ceiling on credit cards **1983** *De novo*-Yes, if above three conditions are met and bank holding company was present under 1981 law. May also charter *de novo* bank although capital requirements for consumer credit banks may be different (initial capital requirement different if affiliated with credit card bank) *Acquisition of existing banks*-N.E.S. *Branching into state*-N.E.S. *Acquisition SB, S&L and Trust*-N.E.S. *Reciprocal agreement*-N.E.S. *Misc. Provision*-Bank may only accept deposits other than demand deposits and make loans to natural persons for noncommercial uses
Georgia	1984	*De Novo*-No *Acquisition of existing banks*-Yes, in business for 5 years *Branching into state*-No *Acquisition SB, S&L and Trust*-No S&L *Reciprocal agreement*-Yes, other states permitted are Alabama, Florida, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Virginia
Florida	1972	*De novo*-N.E.S. *Acquisition of existing banks*-Yes, if on 12-20-72 owned a bank or trust company in the state *Branching into state*-N.E.S. *Acquisition SB, S&L and Trust*-N.E.S. *Reciprocal agreement*-N.E.S.
Illinois	1981	*De novo*-N.E.S. *Acquisition of existing banks*-Only grandfathered interstate bank holding companies under Bank Holding Company Act of 1956 *Branching into state*-N.E.S. *Acquisition SB, S&L and Trust*-N.E.S. *Reciprocal agreement*-N.E.S.
Iowa	1972	*De novo*-N.E.S. *Acquisition of existing banks*-Yes, if on 1-1-71 bank holding company were registered as a bank holding corporation and owned 2 banks in Iowa *Branching into state*-N.E.S. *Acquisition SB, S&L and Trust*-N.E.S. *Reciprocal agreement*-N.E.S.
Maine	1975	*De novo*-Yes *Acquisition of existing banks*-Yes *Branching into state*-N.E.S. *Acquisition SB, S&L and Trust*-Yes *Reciprocal agreement*-Yes

State	Year Passed	Provisions
Maryland	1983	*De novo* Yes. If 1 Minimum capital stock and paid in surplus of $10 million, rising to $25 million in 1 year 2 Employ at least 100 persons 3 Not likely to attract customers from general public *Acquisition of existing banks* N.E.S. *Branching into state* N.E.S. *Acquisition SB, S&L and Trust* N.E.S. *Reciprocal agreement* N.E.S. *Misc. provision* 24% interest rate ceiling on credit cards
Massachusetts	1982	*De novo* Yes *Acquisition of existing banks* Yes *Branching into state* Yes *Acquisition SB, SL and Trust* Yes *Reciprocal agreement* Yes. New England only and anti-leapfrogging provision
Nebraska	1983	*De novo* Yes. If 1 Limited to one office 2 Minimum capital stock and paid-in-surplus is at least $2.5 million 3 Employ at least 50 state residents within one year 4. Operate in a manner not likely to attract customers from the general public *Acquisition of existing banks* N.E.S. *Branching into state* N.E.S. *Acquisition SB, S&L and Trust* N.E.S. *Reciprocal agreement* N.E.S. *Misc. provision* No interest-rate ceiling on credit cards
	1983	*De novo* N.E.S. *Acquisiton of existing banks* Yes, if on 3-12-63 the bank owned at least 2 banks in state *Branching into state* N.E.S. *Acquisition SB, S&L and Trust* N.E.S. *Reciprocal agreement* N.E.S.
New York	1982	*De novo* Yes *Acquisition of existing banks* Yes *Branching into state* N.E.S. *Acquisition SB, S&L and Trust* No *Reciprocal Agreement* Yes
Oregon	1983	*De Novo* No *Acquisition of existing banks* Yes, but of mutual savings banks only *Branching into state* No *Acquistion SB, S&L and Trust* Mutual savings banks only *Reciprocal agreement* No
Rhode Island	1983	*De novo* N.E.S. *Acquisition of existing banks* Yes *Branching into state* N.E.S. *Acquisition SB, S&L and Trust* Yes, but not trust companies *Reciprocal agreement* Yes. New England states only. After 7-1-86, nationwide *Misc. provision* Law does not take effect until 7-1-84
South Dakota	1983	*De novo* Yes, if 1 Minimum capital of $5 million 2 Operated in manner not likely to attract the general public 3 Limited to one banking office *Acquistion of existing banks* Yes, but must not be for acquisition of additional offices *Branching into state* N.E.S. *Acquisition SB, S&L and Trust* N.E.S. *Reciprocal agreement* N.E.S. *Misc. provision* State chartered banks may engage in all facets of insurance business.
Virginia	1983	*De novo* Yes, if 1 Minimum capital and paid in surplus of $5 million 2 Employ at least 40 state residents 3 Operate in manner that is not likely to attract the general public *Acquisition of existing banks* N.E.S. *Branching into state* N.E.S. *Acquistion SB, S&L and Trust* N.E.S. *Misc. provision* No interest rate ceilings on credit cards
Washington	1983	*De novo* N.E.S. *Acquisition of existing bank* Yes, but bank must be in danger of closing & there must be no in state institution willing to acquire it *Branching into state* N.E.S. *Acquisition SB, S&L and Trust* Trust companies only *Reciprocal agreement* N.E.S.

cost advantages over most smaller banks in producing basic banking deposit and loan services. Bank holding company subsidiaries also seem to have no cost advantage over independent banks.[4] This evidence on bank costs has been consistent in studies done over a period of almost 20 years. Studies using more recent data and more sophisticated methods actually have found less evidence of economies of scale in banking than earlier studies.

These bank cost studies' conclusions about the implications of interstate banking are corroborated by other evidence. They are, in the main, applicable. However, they have three main limitations. First, the studies cover only banks with deposits of $1 billion or less, while the aggressive organizations most often identified as likely interstate banks are larger. Second, the evidence on bank costs pays little attention to economies of scope—that is, the behavior of a particular product's unit costs when output of related products is expanded. Finally, no cost studies of nationwide organizations in the United States or elsewhere are available.

These limitations do not shake the conclusion that large banks have no cost advantages in their basic product lines. While costs of very large banks have not been estimated, a large body of evidence on their performance in entering markets in competition with smaller banks indicates that they possess no great advantages. In addition, economies of scope seem to play at most a small role in the costs of basic banking services. Recent studies by pioneers in the study of both economies of scope and economies of scale in banking indicate this.[5] The conclusion is confirmed by indirect evidence again provided by the lackluster performance of large banks in competition with smaller ones.[6] It is discussed below. While nationwide systems have not been studied, their unit costs should be somewhat greater than the costs of less geographically extensive systems because of longer lines of communication.

Large Banks' Advantages

Large banks' paucity of advantage is seen in their relatively poor performance when they have entered markets in competition with smaller banks. The large banks' lack of advantage is exemplified by the record of large New York City banks in upstate New York between 1970 and 1980 and by new banks in California. Several of the nations' largest banks entered upstate New York markets between 1970 and 1977. All entries involved either new or small banks or branches. Of the 33 entries, two were closed and the remaining 31 recorded an average market share gain of only 1.3 percentage points through 1980. Their average market share in 1980 was 1.8 percent.[7] Other evidence indicates the entry by the large banks through acquisition of banks with high market share results in no better performance by these institutions than does foothold or de novo entry.[8]

On the flip side of the evidence, the record of new banks in California in the 1970s is instructive. During the decade, 153 new banks opened in the state. In 1980, fully 141 of these were still operating, and those started in the decades' first three years had reached average sizes between $55 million and $70 million.[9] These new banks were competing against some of the nation's largest banks, with extensive and mature branch systems.[10]

"For basic services, large potential entrants seem to have few cost advantages over existing banks."

Bank Costs and Public Benefits

Competition-efficiency arguments on interstate banking, thus, cut both ways. For basic banking services, large potential entrants seem to have few cost advantages over existing banks. They would be unable to offer basic services at lower prices or to pay higher interest on deposits in markets that were already competitive. Nor would they be able to drive smaller competitors out of business, at least not by taking advantage of lower production costs. Some have argued that large banks will gain more size advantages in the future because computers will perform more bank functions and increase economies of scale in production of bank services. Both premises probably are correct, but the conclusion need not be. As Paul Metzker has argued, small banks can capture advantages of economies of large

scale production by purchasing services from large service companies, franchisers, networks and bankers' banks.[11] Pronounced trends in these directions are taking place. They seem likely to allow smaller banks to continue holding their own in competition with larger entrants.[12]

New Entry

In banking markets that presently are not competitive, interstate banking seems likely to benefit the public. Interstate banking would increase the number of potential entrants into all banking markets. Markets considered likely to be profitable will attract real entrants. Product and service markets that are not now competitive are likely to generate higher profits and competing institutions. Even if new entrants do not come in, their presence "in the wings" may limit prices charged in previously uncompetitive markets. To the extent that noncompetitive markets remain then, interstate banking seems likely to provide the public with more competitive prices, higher quality and more innovation in financial services.

"... the best evidence now available indicates that conditions similar to those under interstate banking would improve market performance to the public's benefit."

Recent evidence indicates that the spread of large banks into markets throughout the nation may also reduce loan rates and increase deposit interest rates through another route. The competitive impact of large banks facing each other in many geographically dispersed markets has puzzled economists for several years. Evidence developed in 1978 by Whitehead, who studied the development of bank holding companies in Florida, indicated that local markets with more large holding companies that also compete in many other markets experienced lower loan prices and bank profits and higher deposit interest rates. This evidence was contradicted by a study of other states by Stephen Rhoades at that time.

Recently, Whitehead (with Jan Luytjes) improved his study, again concluding that markets in which more widely dispersed large companies compete have more competitive prices and lower bank profits.[13] A more recent study of other states by Rhoades proved consistent with Whitehead's findings.[14] The issue needs more study, but the best evidence now available indicates that conditions similar to those under interstate banking would improve market performance to the public's benefit.

Interstate banking's impact on the national concentration of financial resources is subject to much more speculation. Nationwide, fewer banks would probably hold more resources. However, large banks' paucity of advantages in basic banking services argues that local markets will not be monopolized. Whether more nationwide concentration of banks will have adverse effects will depend on the extent of the concentration and the entry of other financial firms into banking. For now the evidence on larger banks' competitive problems and bank costs (cited above) indicates that concentration increases may not be very severe. In addition, large nonbanking firms are indeed entering the banking industry.

Special Services and Large Loans

The previous discussion has concentrated on basic banking services; however, banks also offer more specialized services and large loans. The larger banks most likely to enter local markets if interstate banking is allowed enjoy advantages over smaller local banks in offering sophisticated services and large loans directly. (Smaller banks generally can make these services available through their larger correspondents, but this may be cumbersome.) An institution's ability to establish deposit-taking offices may create some economies of scope that will lower costs of the sophisticated services and encourage large banks to offer them in some areas. In addition, large banks' higher loan limits may allow them to grant large loans more quickly, without finding other banks to participate. Such capabilities would benefit the relatively small number of bank customers who require sophisticated services and large loans.

Banking Industry Health

Of course, we can also assume that the public benefits from the continued health of the commercial banking industry as distinct from nonbank

providers of banking services. Commercial banks are at a disadvantage relative to nonbank firms because they can offer some services in only one state. Firms such as Sears, Merrill Lynch, Prudential and Beneficial Corp. are able to offer most financial services on a nationwide basis. In a mobile society, where consumers who use banking services move fairly often, financial services providers with multi-state presence are able to maintain relationships with transient customers more easily than geographically limited firms. The impact of their advantage is difficult to ascertain; however, over a long period it may be sufficient to allow nonregulated providers to gain market share at the expense of commercial banks.

If nonregulated providers gain market share, the public will still be provided with basic financial services. However, commercial banks might well be weakened. Since they remain important to the payments system, their weakness may be considered a public cost. The occasion for this cost can be avoided by allowing banks interstate expansion.

On the whole, allowing interstate banking seems likely to bring competitive benefits rather than costs. More competitors, potential competitors and sophisticated services are likely to be available in local markets. The nationwide expansion of banks that confront each other in many markets may engender greater competition and a more viable industry. At the same time, large banks appear to enjoy no advantages that would allow them to drive smaller banks to the wall and thus increase local market concentration.

Savings and Credit Flows

Conflicting claims abound regarding the probable impact of interstate banking on flows of saving and credit among parts of the country. Proponents of interstate banking typically argue that the opening of large out-of-state banks' full-service offices will provide ample amounts of new credit in the states that are entered. Opponents argue that the same phenomenon will suck savings from those areas to the headquarters states of the entering banks. Evidence on this question is sketchy primarily because money is fungible: savings and credit dollars cannot be traced through a complex financial system in which transfers are made quickly through many channels.

Yet the very existence of such a system holds the keys to the answer to this puzzle. The system exists because savers and their agents seek top returns on their money, purchasers of capital seek to acquire money most economically, and financial intermediaries seek to profit by satisfying both. It is obvious that local savers and banks are in no way limited to local investments. Savers can choose between options offered by local banks and by money funds, stockbrokers with (and without) 800 telephone numbers, national insurance companies and basically nonfinancial companies like Sears Roebuck and Penneys. The local bank itself may acquire funds from nonlocal savers and use them for nonlocal investments. It may buy federal funds and brokered deposits. It may put locally or nonlocally generated funds into nonlocal loans, federal funds sales and securities. At the same time, local borrowers—with the possible exception of small businesses—have a fairly large menu of local and nonlocal sources of funds. Today in many markets this menu includes

"There is little reason to believe that interstate banking will change capital flows substantially."

nonbank subsidiaries of large money center banks.

There is, then, little reason to believe that interstate banking will change capital flows substantially. Savings already can move by many routes to and from local economies. These change every day as institutions seek new ways to intermediate profitably. Under these circumstances, interstate banking is unlikely to dislocate capital movements significantly. American capital markets are already efficient at moving capital to its most productive uses. Savings from local areas have many opportunities to get out to other uses and local areas have many opportunities to acquire savings for profitable projects. "Local control" of savings and lending does not exist in most markets

Bank Safety

The third major category for interstate banking issues is bank safety. Again, this is primarily a large bank versus small bank issue. Recent petro-loan and international loan problems combine with the memory of the REIT problems of the early 1970s to support an argument that larger banks tend to be less safe—more prone to be threatened by consequences of their risk-taking—than smaller banks. Small banks' size and limited geographic coverage, on the other hand suggest that they may be unable to diversify their asset portfolios sufficiently to avoid taking more overall risk than large banks. Another argument occasionally cited is that small banks' managements often are not sufficiently sophisticated to take advantage of various methods of controlling risk.

Evidence about the risk-size relationship in banks is inadequately developed. A thorough analysis of the literature on this subject done in 1982 by Whitehead and Robert Schweitzer revealed little evidence that banks of any size enjoyed risk advantages over banks of other sizes.[15] Further evidence presented by Mark Flannery indicates that both large and small banks have managed their interest rate risk effectively during the 1970s and early 1980s.[16] Finally, small banks seem to have suffered no more than large banks as deposit interest rates were deregulated over the past five years.[17] All of this evidence indicates that if large banks substitute for small banks in an interstate environment it is not likely to bring instability to any state's banking system.

"Sketchy evidence indicates that interstate banking would neither increase nor decrease risks to the banking system substantially."

Interstate banking might impact other risks in two ways that have not been carefully studied. If large banks are able to compete directly for deposits outside of money centers, they may be able to accept more deposits directly rather than through the market for large certificates of deposit. We might call this process disintermediating the large CD market. If the large CD market is reduced in this manner, large banks will have a broader deposit base—more depositors with smaller deposits. This base seems less likely to desert the large banks on a rumor than are the large depositors concentrated in the large CD market. Broader depositor bases that might emerge from interstate banking seem likely to reduce the risk of the financial system somewhat.

Interstate banking might have two opposing effects on risk to the banking system from bank failures. It could reduce risk by providing a larger group of potential merger partners for failing banks. The Garn-St Germain Act has moved the financial system toward solving regulators' problem of finding merger partners for weak banks from a limited in-state group of potential acquirers. Small, troubled banks are not covered by that act, however. Interstate banking would make it more likely that small failing banks could be merged. More spirited bidding for weak banks probably would also reduce losses to the Federal Deposit Insurance Corporation (FDIC) insurance fund.

On the other hand, as some banks get much larger in size and geographic spread, the resolution of their failure would become more difficult. Larger banks require larger merger partners. The failure of more geographically dispersed banks would impact communities throughout the nation. How these effects on system risks would balance out is speculative. Sketchy evidence indicates that interstate banking would neither increase nor decrease risks to the banking system substantially. It could create broader, more stable deposit bases for large banks. It would provide more potential merger partners for small failing banks, but it would increase the difficulties of handling large failing banks.

Public Costs and Benefits

Costs of interstate banking, for the public at least, seem unlikely to be at all large. A considerable body of research indicates that the danger of market concentration arising from interstate banking is negligible. Nor is it likely that credit flows would be dislocated significantly. A much less well-developed body of evidence also indicates that expansion of large banks would not increase the risk of instability in local

banking markets or in the financial system. Benefits of interstate banking clearly appear to outweigh the costs. The benefits are most closely related to the number of actual and potential entrants that interstate banking would allow into [illegible] to make local banks behave more competitively and to provide a larger group of potential merger partners for failing banks. The availability and quality of sophisticated bank services also should improve. To the extent that a healthy group of banks is in the public interest, interstate banking may improve banks' health by allowing them to compete with other unregulated providers of financial services on an interstate basis.

Other Issues

Two other issues raised by the interstate banking debate deserve mention because they seem to influence many of the policy recommendations concerning the question. How interstate banking is accomplished is likely to have a considerable influence on the wealth (and influence) of particular bankers and groups of bankers. This includes both bank owners and bank management.

Owners of banks will be affected by the manner of entry by outside banks. De novo entry into noncompetitive markets is likely to cut into the profits of bankers already offering services in those markets. Consequently, local bankers with some competitive advantage are likely to lose if de novo entry is allowed. They will be unable to exact so high a price if they choose to sell or to make as high a level of profits if they continue to operate.

A bank's management may also be threatened if the bank is acquired. Influence, income and position may all be lost by management of the acquiree in such a transaction.

For these reasons and others that contend local control of savings and credit flows and local involvement with financial institutions are in the public interest, entry limitations are often proposed in interstate banking laws. The two most common proposals are restrictions on de novo entry and regional interstate banking—which effectively restricts entry by large money-center banks. The former protects owners of existing banks from competition or allows them to sell to outside organizations that want to enter their markets. The latter protects managements of some larger institutions, allowing them to negotiate with similar or smaller organizations in selling their banks or in acquiring smaller banks. Regional restrictions may work against smaller banks interests, however, because they decrease the number of potential acquirers. Such restrictions, if temporary, may also allow time to assess the actual impact of interstate banking.

Since the primary benefits of interstate banking are closely related to the number of potential and real entrants it allows in local markets, limitations on de novo entry and on the location of potential entrants diminish the potential benefits. The extent of the diminution is closely related to the extent of the limitations.

Arguments in favor of limitations premised on local control of credit are not convincing. They assume that there is now some local control of savings and investment flows. In most markets, we have argued above, no such control exists. It

> "The public generally should benefit from the adoption of interstate banking."

exists only in the noncompetitive markets where the benefits brought by potential new entrants would be the greatest.

Arguments premised on the need for local involvement in and identity with financial institutions are difficult to analyze. There are, certainly, local banks whose managements are closely involved with and supportive of local communities. Acquisition by a regional rather than a national company may or may not be more likely to continue that involvement. Benefits of this increasing probability are difficult to quantify. Political bodies making the interstate banking laws are probably in the best position to weigh those benefits.

Implications

The above analysis has several implications:

1. The public generally should benefit from the adoption of interstate banking.

APPENDIX VI

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Office of the General Counsel
April 25, 1984

STATE LEGISLATION ON INTERSTATE ACQUISITIONS BY BANK HOLDING COMPANIES

Introduction

This memo summarizes all enacted state statutes governing interstate acquisitions by bank holding companies and all proposals on the same topic introduced to date in the 1984 sessions of the state legislatures. The restrictions which the statutes and proposed legislation place on out-of-state bank holding company acquisitions of financial institutions vary substantially. An attempt has been made, whenever possible, to group the statutes and bills according to their similarity. Therefore, the legislation has been divided into "Reciprocal" and "Non-Reciprocal" classifications.

The legislatures of Connecticut, Georgia, Kentucky, Maine, Massachusetts, New York, Rhode Island, and Utah have enacted reciprocal interstate banking statutes. However, even within the "reciprocal" category, these statutes differ. For example, New York authorizes out-of-state bank holding companies or subsidiaries to acquire in-state financial institutions if reciprocal rights are granted by the other state. Connecticut, Massachusetts, and Rhode Island allow a bank holding company or subsidiary located in one of the New England states to acquire a bank in their states if their bank holding companies or subsidiaries are permitted to make similar acquisitions in the other specified jurisdictions. The Rhode Island provision limiting reciprocity to other New England states expires on July 1, 1986. The reciprocity feature in the Maine statute, first passed in 1975, has been deleted by an act of the legislature early this year. The Georgia statute is the first enacted in the Southeast, and the Utah measure creates a Western region that excludes California. The Kentucky measure extends reciprocal rights to contiguous states for two years and then allows national reciprocity.

The statutes of Delaware, Maryland, Nebraska, Nevada, South Dakota and Virginia are categorized as "Non-Reciprocal--Laws with Limitations on Activities of Subsidiaries." With the exception of South Dakota, these statutes authorize an out-of-state bank holding company to acquire a newly established bank limited to a single office within the state. In 1983 South Dakota broadened its statute to permit an out-of-state bank holding company to acquire up to three in-state banks, subject to specified limitations. All of these laws restrict the activities of the acquiring bank holding

company and provide that the acquired bank must be operated in a manner that is not likely to compete with existing banks by attracting customers from the general public.

The "Non-Reciprocal Laws" classification contains additional subdivisions, including "Laws Without Restrictions," "Failing Financial Institution Laws," and "Miscellaneous Laws." These statutes range from the Alaska law under "Laws Without Restrictions" which permits virtually unlimited entry by out-of-state bank holding companies, to the West Virginia statute under "Miscellaneous Laws" which prohibits a subsidiary of a bank holding company with its operations located outside of the state from controlling more than 5% of a state bank or bank holding company.

This memo does not cover legislation which prohibits in-state acquisitions by out-of-state bank holding companies or to legislation applicable only to intrastate acquisitions by bank holding companies.

RECIPROCAL LAWS:

Connecticut, S.B 419 (1983), permits a Connecticut bank or bank holding company to acquire banks, savings banks, and savings and loan associations in another New England state if the other New England state permits similar acquisitions by Connecticut banks or bank holding companies.

Georgia, H.B. 1198 (1984), permits a southern region (Alabama, Florida, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia) bank holding company to acquire a Georgia bank that has been in operation at least five years or another southern region holding company with a Georgia bank subsidiary on a reciprocal basis. The act would take effect on 1/1/85 if two contiguous states enact reciprocal legislation with effective dates earlier than 7/1/85; otherwise, it will take effect on 7/1/85.

Kentucky, H.B. 67 (1984), permits acquisition of Kentucky banks or bank holding companies on a reciprocal basis. For the first two years after the bill becomes effective, only bank holding companies from contiguous states (Illinois, Indiana, Missouri, Ohio, Tennessee, Virginia, West Virginia) may make acquisitions in Kentucky; after that, holding companies from any state may acquire banks or bank holding companies in Kentucky. No more than three banks or bank holding companies may be acquired in any 12-month period, acquisitions are not be permitted if they would result in control of banks holding more than 15% of total bank deposits in the state, and banks chartered after the act became effective and chartered for less than five years may not be acquired. The bill was amended by committee to terminate the three bank per year acquisition limit five years after the act becomes effective.

Massachusetts, Chapter 167A, §2 (1982), provides that, effective July 1, 1983, an out-of-state bank holding company in

Connecticut, Maine, New Hampshire, Rhode Island, or Vermont, with prior written approval of the board of bank incorporation, may establish or acquire direct or indirect ownership or control of more than 5% of the voting stock of one or more banks or bank holding companies in Massachusetts if it is so permitted by its own state laws and if reciprocity is extended to Massachusetts financial institutions.

New York, §142-b of Banking Law (1982, amended 1983), permits an out-of-state bank holding company or its subsidiary to charter or acquire control of banks in New York, provided that New York bank holding companies are allowed to do the same in their state on a reciprocal basis. Control is presumed if an out-of-state bank holding company or its subsidiary owns or holds 5% or more of the voting stock of the bank. A proposed acquisition may not be approved unless the superintendent finds that the laws on which the out-of-state bank holding company or subsidiary conducts its principal banking business specifically authorized such acquisition. Application procedures necessary for acquisition are outlined. Subsidiaries established in New York are subject to the laws and regulations that are applicable to New York banks and bank holding companies, including home office protection. Chapter 665 (1983), amends §142-b to require prior approval of the superintendent before a bank holding company or its subsidiary may acquire an out-of-state bank holding company or bank.

Rhode Island, S.B. 661 (1983), permits an out-of-state bank holding company located in New England to acquire 5% or more of the voting stock of a Rhode Island bank, bank holding company, savings bank, or savings and loan, if the laws of the other state permit similar acquisitions by Rhode Island banks or bank holding companies. The New England limitation expires on July 1, 1986.

Utah, S.B. 9-XXX (1984), permits acquisition of failing institutions by institutions from Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Washington, and Wyoming; institutions from the same states may acquire healthy Utah institutions if the acquiring institutions' home states pass reciprocal legislation.

NON-RECIPROCAL LAWS:

Laws with Grandfather Clauses*:

Florida, §658.27 (1980), prohibits an out-of-state bank holding company from acquiring an interest in a bank located in Florida. However, this law does not apply to acquisitions prior to March 28, 1972.

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* A grandfather clause, when used in this context, allows bank holding companies already engaged in certain activities on a particular date to continue these activities.

<u>Illinois</u>, Chapter 17, ¶2510 (1981), prohibits an out-of-state holding company from controlling more than 5% of the voting shares in an Illinois bank unless prior to January 1, 1982, it was registered with the Federal Reserve and controlled at least two banks in Illinois.

<u>Iowa</u>, §524.1805 (1972), prohibits an out-of-state bank holding company from acquiring interests in a state bank, unless the holding company was registered with the Federal Reserve Board on January 1, 1971.

<u>Nebraska</u>, §8-903 (1963, amended 1981, 1983), permits bank holding companies, including out-of-state holding companies that owned at least two Nebraska banks on 3/12/63, to acquire state or national banks in Nebraska chartered at least five years as long as

total deposits in the Nebraska banks held by the holding company do not exceed nine percent of all bank and savings and loan deposits in the state and as long as the holding company owns or controls no more than nine Nebraska banks at a time. Neb. Rev. Stat. §8-903 (Supp. 1983). For a summary of Nebraska L.B. 454 (1983), <u>see</u> the section <u>Laws with Limitations on Activities of Subsidiaries</u>.

<u>Laws with Limitations on Activities of Subsidiaries:</u>

<u>Delaware</u>, Title 5, §803 (1981), permits an out-of-state bank holding company or its subsidiary to acquire and hold not more than 5% of the voting shares of any bank located in Delaware. However, an out-of-state bank holding company or subsidiary may acquire all or substantially all of the voting shares of a single bank located in the state, if the bank whose stock is to be acquired is a newly established bank with a single office in Delaware and has a minimum capital surplus of $10 million to start and $25 million after the first year. The acquired bank must employ not less than 100 persons and must operate in a manner not likely to attract customers to the detriment of existing banks located in the state, provided it operates in a manner likely to attract and retain customers with whom the bank, out-of-state bank holding company or the holding company's subsidiary has or has had business relations. The acquisition must receive prior approval of the commissioner.

<u>Maryland</u>, §§5-901 through 5-908 of Financial Institutions Code (1983), would prohibit an out-of-state bank holding company or its subsidiary from acquiring any voting share of or interest in the assets of any bank located in Maryland. However, an out-of-state bank holding company or its subsidiary may acquire and hold all or substantially all of the voting shares of a single bank located in Maryland if the newly established bank has no more than one banking office and has a minimum capital stock and paid-in surplus of $10 million to start and $25 million after the first year. The newly acquired bank must employ not less than 100 persons and be operated in a manner and at a location that is not likely to attract customers from Maryland to the substantial detriment of existing

state or national banks or federal savings banks located in Maryland, provided the bank may be operated in a manner likely to attract and retain customers with whom that bank, the out-of-state bank holding company, or the holding company's subsidiary has or has had business relations. The acquisition must receive prior approval of the commissioner.

Nebraska, L.B. 454 (1983), permits an out-of-state.bank holding company or its subsidiary to acquire and hold all or substantially all of the voting stock of a single newly established bank located in the state if the newly established bank is limited to a single banking office, and this bank may not acquire, establish, share or maintain an additional banking office or remote service unit in Nebraska by merger, consolidation, or otherwise. The services of this bank are limited to soliciting and processing loans instituted by a credit or other transaction card. The acquired bank must have a minimum capital stock and paid-in surplus of $2.5 million. The acquired bank must employ not less than 50 persons and operate in a manner and at a location that is not likely to attract customers from the general public to the detriment of existing banks in the state, provided the bank is operated in a manner likely to attract and retain customers with whom the bank, the out-of-state bank holding company, or the holding company's subsidiary has or has had business relations. For a summary of Neb. Rev. Stat. §8-903, see the section Laws with Grandfather Clauses.

Nevada, S.B. 2-X (1984), passed in special session, allows out-of-state bank holding companies to acquire a Nevada bank or charter a new bank in the state. Operations will be limited to activities related to credit card processing. The bill was signed by the governor on 3/30/84.

South Dakota, §51-16-40 (1980, amended in 1983), permits an out-of-state bank holding company to acquire up to three in-state banks, including a single new state bank which has a minimum total capital of $5 million, a single new national bank which has a minimum total capital of $5 million, and a single existing state bank. An acquired bank is limited to a single banking office, and this bank may not acquire, establish, share or maintain an additional office or remote service unit, whether by merger, consolidation, or otherwise. A single banking office may not operate in a manner which is likely to attract customers to the detriment of existing banks in the state.

Virginia, §6.1-392 (1983), prohibits an out-of-state bank holding company or its subsidiary from acquiring more than 5% of the voting shares or assets of a bank located in Virginia. However, an out-of-state bank holding company or its subsidiary may acquire all or substantially all of the voting shares of a single bank located in Virginia if the bank is created for the primary purpose of engaging in multi-state credit card operations, has a minimum capital stock and paid-in surplus of $5 million or an amount equal to 8% of its total assets, will employ not less than 40 persons, and operates in a manner that is not likely to attract customers to the

detriment of existing banks in the state, provided the bank is operated in a manner likely to attract and retain customers with whom the bank, the out-of-state bank holding company, or the holding company's subsidiary has or has had business relations. The acquisition must receive prior approval of the Commission.

Laws without Restrictions:

Alaska, §06.05.235 (1982), permits an out-of-state bank holding company to acquire and own the voting securities or other capital stock of state banks, bank holding companies, or national banks conducting business in Alaska unless the state or national bank was recently formed. A "recently formed bank" was defined as a bank conducting business in Alaska on or after July 1, 1982, that has not been in existence and continuously operating in the state for more than three years. Chapter 60 (1983), effective October 12, 1983, deleted the restriction that prohibited an out-of-state bank holding company from acquiring a "recently formed" state or national bank.

Maine, Title 9-B, §1013(1975, amended 1977, 1979, 1983), permitted an out-of-state bank holding company to acquire Maine financial institutions or their holding companies on a reciprocal basis under conditions no more restrictive than those imposed by Maine, as determined by the superintendent. However, Chapter 597 of 1984 (H.P. 1500), which was signed by the governor on 2/9/84, removed the reciprocity requirement from the provisions permitting acquisitions by out-of-state financial institution holding companies.

Failing Financial Institutions Laws:

Minnesota, §49.48 (1982), permits an out-of-state bank holding company or its subsidiary to acquire a savings bank when the commissioner determines that exigent circumstances require such an acquisition to prevent the probable failure of the savings bank.

Oregon, §716.920 (1983), authorizes an out-of-state bank holding company to acquire a failing mutual savings bank, subject to specified branching limitations and restrictions on additional acquisitions.

Washington, §30.04.230 (1981), prohibits an out-of-state bank holding company from acquiring more than 5% of the shares of the voting stock or assets of Washington state or national commercial banks or trust companies. S.B. 3182 (1983), adds a provision which allows an out-of-state bank holding company to acquire a commercial bank or trust company that the supervisor of banking determines is in danger of closure, failure, or insolvency.

Miscellaneous Laws:

Arkansas, Act 128 (1983), prohibits bank holding companies domiciled outside Arkansas from acquiring direct or indirect control of a bank in the state, and it permits Arkansas bank holding

companies to acquire control of banks outside the state if the laws of the other state permit the Arkansas bank holding company to do so.

New Jersey, §17:9A-345(b), (amended 1982), prohibits a bank holding company which owns more than 25% of the stock of either a bank located outside New Jersey or of a foreign (other nation) bank from acquiring more than 5% of the stock of a New Jersey bank; however, §17:9A-346(b) allows this limit to be exceeded if the acquiring entity is a foreign (other nation) bank or bank holding company, if the stock acquired was owned by the purchased bank or was issued by it to facilitate the acquisition, if the total stock acquired does not exceed 49% of stock outstanding (including stock issued to facilitate acquisition), and if notice and prior state commissioner approval requirements are met. Finally, §17:9A-346(c) permits a bank, its parent company, or its subsidiary to acquire the stock of a foreign (other nation) bank or bank holding company that does not control a bank in New Jersey.

West Virginia, §31A-8A-4(e) (1982), prohibits a subsidiary of a bank holding company with its operations located outside of the state from acquiring 5% or more of the interest in or assets of any West Virginia bank or bank holding company.

PENDING LEGISLATION:

The following section presents summaries of bills to be introduced or presently under consideration by the 1984 sessions of the state legislatures. The summaries include bills carried over from 1983 sessions as well as bills newly introduced this year, and they are divided into reciprocal, non-reciprocal, and failing financial institution categories.

Reciprocal Bills

Florida, S.B. 370 (1984), would permit a bank, trust company, or bank holding company that conducts its principal operations in Alabama, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, or D.C. to acquire direct or indirect control of any Florida bank, trust company, or bank holding company that has conducted business in Florida for at least five years if the acquiring entity's home jurisdiction's statutes specifically authorize Florida banks, trust companies and bank holding companies to make acquisitions in the other jurisdiction. A bank, trust company, or bank holding company from outside the region would be permitted to acquire Florida banks at least five years old that have assets under $400 million; the asset limitation would not apply to agreements made before 1/1/84. Acquiring entities from outside the region would only be permitted to acquire one bank, holding company, or trust company during each of the five calendar years after passage of the act; after that time, all regional limitations would cease. As of 4/23/84, the bill was in the Commerce Committee. S.B. 409 would permit a bank

holding company with its principal place of business in Alabama, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, or D.C. to acquire a Florida bank in operation at least two years or a bank holding company whose bank subsidiaries have operated at least two years if the statutes of the acquiring bank holding company's principal place of business permit acquisitions by Florida bank holding companies. If an acquiring bank holding company ceases to hold at least 80% of its total deposits in the states comprising the region, it would in some circumstances be forced to divest its Florida acquisitions. S.B. 409 would take effect on 7/1/85 unless any two states in the region enact reciprocal legislation with earlier effective dates; in that case, the bill would be effective 1/1/85. The act would be repealed automatically on 7/1/89 if no other state in the region puts a reciprocal bill into effect. The bill had its first reading in the Senate on 4/18/84. H.B. 795 very closely resembles S.B. 409, but it sets its effective date as the earlier of 7/1/85 or the date on which the state or states in the region, other than Florida, that have 20% of the region's total deposits put reciprocal bills into effect. The bill would be repealed if no other state in the region puts a reciprocal bill into effect within five years, and it would be repealed in any case on 10/1/91 under the state's sunset provisions. H.B. 795 passed the House by a vote of 113-2 on 4/17/84 and was sent to the Senate Commerce Committee. (Source: American Banker, 4/19/84.) H.B. 727 would permit Florida savings associations operating at least two years to reorganize, merge, or consolidate with out-of-state associations or federal associations on a reciprocal basis, and it would allow out-of-state associations, federal associations, and regional banks or bank holding companies (as defined in S.B. 409) to acquire a Florida association on a reciprocal basis. Out-of-state financial institutions with a Florida subsidiary or a Florida bank holding company subsidiary could acquire Florida associations under rules applicable to acquisitions by Florida financial institutions. H.B. 727 passed the House by a 113-0 vote on 4/17/84 and was referred to the Senate Commerce Committee. (Source: American Banker, 4/19/84.)

Illinois, H.B. 1063, which was held over from last year's session, would permit a bank holding company with subsidiaries in another jurisdiction to acquire an Illinois bank if Illinois banks were permitted to make similar acquisitions in the other state. (Status: Hearings before the House Finance Committee are scheduled for 4/24/84.)

Michigan, H.B. 4633 and S.B. 369, which were carried over from 1983, would permit acquisition of new or existing Michigan banks by out-of-state bank holding companies on a reciprocal basis. (Status: As of 4/24/84, both bills were still in committee.)

North Carolina's legislature will consider an interstate bill at its June session that would permit acquisition of a North

Carolina bank by an out-of-state holding company based in Alabama, Arkansas, D.C., Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, South Carolina, Tennessee, Virginia, and West Virginia if the laws of the holding company's home state permit acquisitions by North Carolina bank holding companies on a reciprocal basis. Bank holding company bank subsidiaries must have 80% of their deposits within the listed states to be eligible to acquire North Carolina banks. (Source: American Banker, 3/30/84.)

Ohio, H.B. 762 (1984), would permit out-of-state banks or bank holding companies to charter or acquire Ohio banks or bank holding companies on a reciprocal basis if approved by a vote representing at least two-thirds of the shares of the acquired bank unless the acquisition would give the acquiring entity control of more than 20% of total bank, savings bank, and savings and loan deposits in the state. The bill would permit acquisitions of troubled institutions free of the shareholder approval and aggregate deposit limits. (Status: referred to House Financial Institutions Committee, 3/29/84.)

Rhode Island, H.B. 7978 (1984), would permit Rhode Island capital stock banks to merge with out-of-state banks on a reciprocal basis on approval of the holders of at least two-thirds of shares entitled to vote. Mutual banks could merge with out-of-state mutual banks on a reciprocal basis if approved by vote of at least two-thirds of the board of trustees and of the corporators. The bill also would permit interstate purchases of assets and assumptions of liabilities for capital stock and savings banks and building-loan associations on a reciprocal basis. (Status: referred to House Finance Committee, 4/3/84.)

South Carolina, H.B. 3743 and S.B. 959 (1984), would allow bank holding companies from Alabama, Arkansas, D.C., Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, or West Virginia to acquire South Carolina holding companies and banks at least five years old if the other state's laws would permit similar acquisitions by South Carolina holding companies. If passed, the bill would take effect on 7/1/86. S.B. 959 would also permit reciprocal acquisitions of savings and loan associations from the same states and would permit credit unions from any state to operate in South Carolina on a reciprocal basis. (Status: H.B. 3743 was passed by the House on 4/18/84 and sent to Senate Banking and Insurance Committee. Source: American Banker, 4/20/84.)

Non-Reciprocal Bills

California, A.J.Res. 96 (1984), would urge the President and Congress to repeal prohibitions against nationwide branching (McFadden Act, 12 U.S.C. §36), repeal prohibitions on ownership or acquisition of banks in more than one state by bank holding companies unless expressly authorized by state law (Douglas Amendment, 12 U.S.C. §1842(d)), and preempt state laws that conflict

with repeal of the branching and ownership prohibitions. (Status: introduced 1/23/84.)

Failing Institutions Bill

Michigan, H.B. 4684, provides that, with the approval of the commissioner, an out-of-state bank holding company may acquire control of a bank in danger of closing. The commissioner will approve an application if he determines that the following conditions are met: the bank to be acquired is in danger of closing, pursuant to criteria established by the Federal Deposit Insurance Act; there is not a bank or bank holding company located in Michigan with sufficient resources that is willing to acquire the failing bank on at least as favorable terms as the out-of-state bank holding company; the out-of-state bank holding company has an acceptable record of meeting the credit needs of the banking community, consistent with safe and sound operations; the acquisition will not have an adverse impact on the structure of financial institutions in Michigan; the acquisition will not have an adverse impact on the convenience and needs of the public in Michigan; and the acquisition must not affect the powers or privileges of the acquired bank. (Status: as of 4/24/84, still in committee.)

DEFEATED LEGISLATION:

The following section presents summaries of bills already considered and defeated during the 1984 sessions of the state legislatures. The bills are divided into reciprocal and non-reciprocal categories.

Reciprocal Bills

Arizona, H.B. 2117 (1984), would have permitted a Colorado, New Mexico, or Utah bank or bank holding company to operate in Arizona or acquire one or more Arizona banks or bank holding companies if the same rights were extended by those states to Arizona banks and bank holding companies, if the stockholders or board of directors of the acquired Arizona bank or bank holding company approved the acquisition, and if the proposal was approved by the state banking superintendent. (Status: held in committee; further action unlikely.)

California, A.B. 2094 (1984), which was carried over from 1983, would have authorized an out-of-state bank holding company or its subsidiary to acquire a state bank if the superintendent of banks determines that California banks and bank holding companies have reciprocal rights in the other state. (Status: Assembly Finance and Insurance Committee declined to take action on 1/10/84 that was required in order to keep the bill under consideration. Source: California Banker, January 1984.)

Connecticut, S.B. 326 (1984), would have converted the state's New England reciprocity statute to one that permitted nationwide reciprocity. (Status: moved to botton of Senate calendar 3/28/84; further action unlikely.)

Georgia, H.B. 1231 (1984), would have allowed an out-of-state bank holding company to establish a bank in Georgia on a reciprocal basis, but only within the corporate limits of any city with a population of 400,000 or more. (Status: tabled in committee. Source: Georgia Bankers Association Bulletin, 2/3/84.)

Iowa, H.S.B. 567 (1984), would have permitted out-of-state ban holding companies within the Midwestern region to acquire Iowa bank holding companies that have at least 10 banks and $750 million in deposits on a reciprocal basis. States in the region included Illinois, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin. H.S.B. 567 failed to emerge from committee consideration. S.F. 2220 was amended on the Senate floor to exclude regional interstate provisions similar to those of H.S.B. 567. (Source: Iowa Bankers Association Legislative Bulletin, No. 10, 3/9/84.)

Maryland, H.B. 323 and S.B. 425 (1984), would have permitted out-of-state bank holding companies or their subsidiaries to acquire, directly or indirectly, control of one or more new or existing Maryland banks or savings banks on a reciprocal basis. (Status: H.B. 323 received an unfavorable committee report on 3/22/84. Source: Washington Post, 3/27/84.)

Minnesota, S.F. 1837 (1984), would have permitted bank holding companies from Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wisconsin and Wyoming to acquire an existing Minnesota bank if the acquiring holding company's home state permitted acquisitions by Minnesota banks and bank holding companie under conditions no more restrictive than those in this bill. The act also would have permitted holding companies from the same state to control a newly organized Minnesota bank. The bill was defeated in committee. (Source: American Banker, 4/2/84.)

Missouri, H.B. 1239 (1984), would have permitted bank holding companies from adjacent states to acquire Missouri banks or to merg with or acquire Missouri bank holding companies on a reciprocal basis. H.B. 1368 (1984), would have permitted out-of-state bank holding companies to acquire one or more new or operating Missouri banks on a reciprocal basis as long as the total deposits held by the acquiring bank or bank holding company do not exceed 13% of total bank deposits in the state. S.B. 598 (1984), would permit an out-of-state bank holding company to acquire one or more new or operating Missouri banks free of any reciprocity limitation as long as the acquisition would not result in banks owned by the acquiring holding company having total deposits that exceed 13% of total bank deposits in the state. (Status: S.B. 598 received a "do pass" recommendation from the Senate Banking Committee on 2/1/84, but was amended to require reciprocity, permit only acquisitions, and limit

entry to Kansas City and St. Louis only. Senate debate on S.B. 598 was set aside on 4/2/84, and further action is unlikely unless the measure is added as an amendment to another bill. American Banker, 4/4/84, 4/17/84. Missouri Bankers Association Legislative Watch of 3/15/84 suggests that further action on H.B. 1239 and H.B. 1368 is unlikely.)

Nebraska, L.B. 1069 (1984), would have permitted bank holding companies and banks from the north-central states (Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, North Dakota, South Dakota, Wisconsin, and Wyoming) to acquire control on a reciprocal basis of up to nine Nebraska banks or fewer banks if their aggregate deposits amount to nine percent of total bank and savings and loan deposits in the state. The bill was defeated in committee. (Source: Nebraska Bankers Association Legislative Update, 2/17/84.)

Vermont, H.B. 612 (1984), would have permitted out-of-state banks, bank or non-diversified savings and loan holding companies, or savings and loans to acquire existing Vermont banks, holding companies, or savings and loans on a reciprocal basis.

Washington, S.H.B. 1185 (1984) would have permitted acquisition of in-state banks in existence at least three years by out-of-state bank holding companies on a reciprocal basis. An attempt to bring S.H.B. 1185 to the floor of the House in time to meet a deadline for consideration of bills originating in that chamber failed on 2/7/84. (Sources: American Banker, 2/9/84; Legislative/Government Relations Bulletin of Washington Bankers Association, 2/10/84.)

Wisconsin, A.B. 800, S.B. 534 (1984), would have permitted out-of-state banks or bank holding companies to acquire one or more Wisconsin bank holding companies or banks chartered at least three years on a reciprocal basis. The chairman of the Assembly Banking Committee chose not to move recommended passage of A.B. 800 in a committee meeting on 2/9/84 following defeat of both substitutes deleting the bill's substantive language and proposing Legislative Council study of the topic and of a regional reciprocal interstate substitute; unless the bill is discharged from the committee, it will receive no further consideration this year. Hearings on S.B. 534, the Senate companion bill to A.B. 800, were completed on 2/8/84; defeated in committee, 4/2/84. (Source: American Banker, 4/2/84.)

Non-Reciprocal Bills

New Mexico, H.B. 216 (1984), would have permitted an out-of-state bank holding company to acquire, directly or indirectly, one new New Mexico bank with at least $25 million in capital or one existing bank in the state on a non-reciprocal basis. The bill was killed when the House adopted an unfavorable report on the bill from its Business and Industry Committee by voice vote on 2/7/84. (Source: American Banker, 2/9/84.)

Vermont, H.B. 661 (1984), would have regulated financial institution holding companies in Vermont and permitted acquisition

of a Vermont financial institution or holding company by a company (defined broadly enough to include out-of-state or foreign nation corporations) if the acquisition would have given the company control of Vermont financial institutions holding less than 25% of total financial institution deposits of Vermont origin in the state.

Failing Institutions Bills

Nebraska, L.B. 1027 (1984), would have permitted acquisition of a failing Nebraska financial institution by an out-of-state bank holding company or financial institution if there was no Nebraska holding company or institution with sufficient resources that is willing to acquire the failing institution on terms at least as favorable as those offered by the out-of-state holding company or institution. The bill failed to advance on second reading. (Source: Nebraska Bankers Association Legislative Update, 4/6/84.)

SUMMARY OF 1984 INTERSTATE BILLS

ate	Bill No.	Reciprocal	Regional	Wide Open	Status
	H.B. 2117	yes	yes-AZ, CO, NM, UT	no	held in committe
	A.J.Res. 96	no	no	1/	introduced 1/23/
	A.B. 2094	yes	no	no	defeated
	S.B. 326	yes	no	no	further action unlikely
	H.B. 727	yes	yes-AL, DC, GA, LA, MD, MS, NC, SC, TN, VA, WV	no	introduced
	H.B. 795	yes	yes-AL, DC, GA, LA, MD, MS, NC, SC, TN, VA, WV	no	passed House; sent to Senate
	S.B. 370	yes	yes-AL, DC, GA, LA, MD, MS, NC, SC, TN, VA, WV	no	in committee
	S.B. 409	yes	yes-AL, DC, GA, LA, MD, MS, NC, SC, TN, VA, WV	no	first reading 4/18/84
	H.B. 1198	yes	yes-AL, FL, KY, LA, MS, NC, SC, TN, VA	no	enacted
	H.B. 1231	yes	no	no	tabled
	H.B. 1063	yes	no	no	hearings schedul
	H.S.B. 567	yes	yes-IL, KS, MN, MO, NB, ND SD, WS	no	defeated
	H.B. 67	yes	yes-for 2 yrs- IL,IN,MO,OH, TN,VA,WV,-then nationwide	no	enacted
	H.P. 1500	no	no	yes	enacted
	H.B. 323/ S.B. 425	yes	no	no	defeated

MI	H.B.4683/ S.B. 369	yes	no	no	in committe 1983
MN	S.F. 1837	yes	yes-IA, KS, MO, MT, NB, ND, SD, WS, WY	no	defeated ir committee
MO	H.B. 1239	yes	yes-AR,IL,IA KS,KY,NB,OK, TN	no	further act unlikely
	H.B. 1368	yes	no	no	further act unlikely
	S.B. 598	yes 2/	no	no	further act unlikely
NB	L.B. 1027	no 3/	no	no	defeated
	L.B. 1069	yes	yes-CO,IA,KS MN,MO,MT,ND, SD,WS,WY	no	defeated
NV	S.B. 2-X	no	no	yes 4/	enacted
NM	H.B. 216	no	no	yes 4/	defeated 2/7
NC	5/	yes	yes-AL,AR,DC, FL,GA,KY,LA, MD,MS,SC,TN, VA,WV	no	legislature convenes 6/7
OH	H.B. 762	yes	no	no	in committee
RI	H.B. 7978	yes	no	no	in committee
SC	H.B. 3743	yes	yes-AL,AR,DC, FL,GA,KY,LA, MD,MS,NC,SC, TN,VA,WV	no	passed House Senate
	S.B. 959	yes	yes-AL,AR,DC, FL,GA,KY,LA, MD,MS,NC,SC, TN,VA,WV	no	introduced 4,
UT	S.B. 9-XX	yes	yes-AK,AZ,CO, HI,ID,MT,NV, NM,OR,WA,WY	no	enacted
VT	H.B. 612	yes	no	no	defeated
	H.B. 6611	no	no	yes	defeated
WA	S.H.B. 1185	yes	no	no	defeated 2/7/

WS	A.B. 800	yes	no	no	defeated 2/9/8
	S.B. 534	yes	no	no	defeated in committee

Notes

1. The resolution urges repeal of the federal McFadden Act and Douglas Amendment by Congress; repeal would authorize interstate branching and acquisitions.

2. S.B. 598 was not a reciprocal bill when introduced; amendments added the reciprocity requirement.

3. L.B. 1027 would permit acquisitions of failing institutions only.

4. Would permit credit card processing only.

5. No bill number is shown because the legislature has not yet convened.

APPENDIX VII

CITICORP

Position Paper

Presented by William E. Dick
Vice President
Citicorp Person to Person Financial, Inc.

on

Interstate Banking

HJR 30 Study Committee

Virginia General Assembly

October 1984

Citicorp Position on Interstate Banking

My name is Bill Dick, and I am Vice President and Regional Manager of Citicorp Person to Person Financial, Inc., a non-banking financial services subsidiary of Citicorp. I would like to discuss our Corporate position on the issue of interstate banking.

As a bank holding company subsidiary, we are presently engaged in a number of lending activities here in Virginia. Through our offices in Vienna, Richmond and Virginia Beach, we provide first and second mortgage financing for the local marketplace. Through the Choice Credit Card, we provide retail credit. Cash advances can also be obtained by using the Choice Card at Citicorp Financial Centers, located, or soon to be located, in the 3 mentioned offices. Other Citicorp subsidiary offices in Roanoke and Virginia Beach lend money for the purchase of imported recreational vehicles and automobiles through a dealer network.

At present, we employ over one hundred and ten Virginians with an annual payroll in excess of $2.5 million. Additionally, we spend approximately $1.7 million per year in Virginia for services and supplies.

To our 5200 mortgage customers in Virginia, we have loaned $185 million while our auto/RV financing activities have provided

another $238 million to 26,000 customers. Citicorp has issued 262,000 Choice Credit Cards throughout the state to cardholders who may deal with 10,000 merchants at 17,000 locations. To date, Citicorp has provided $88 million in consumer retail financing to its Choice cardholders in Virginia.

To summarize, we have loaned in excess of $740 million in Virginia and have customer relationships with 391,000 consumers in the state.

Both as a corporation and as individual Virginians, we have over the years given freely of our time and money in support of community activities. This support extends from health care to cultural, educational and environmental institutions and services. We are especially pleased to support The Richmond Symphony, The Virginia Center for the Performing Arts and the Chesapeake Bay Foundation. We do these things in the belief that a healthy community leads to a healthy business climate. Citicorp expects to remain and continue to grow as a good corporate citizen in the Commonwealth of Virginia.

Although one of the issues before you concerns interstate banking, I respectively submit that by virtue of businesses such as ours, interstate banking is no longer a fact to be pondered, but a reality. The questions remaining to be addressed are taking of deposits across state lines, and permitting full competition between all banks for the provision of financial services.

Under existing law, an out-of-state bank operating in Virginia may import funds without limitation into the state to lend to its customers; but without special legislation it may not accept one dollar in deposits within this state to help fund these loans. We don't think this situation is fair. All we ask is to be allowed to "play on a level field" with the same rules applicable to everyone.

You have heard from opponents of interstate banking. However, it is not really interstate banking that they oppose, beoause there is no objection to that side of interstate banking in which an out-of-state bank pumps money into a state; the concern only begins when someone suggests letting an out-of-state bank compete for deposits within the state. It is "the growing threat of external competition to Virginia-based financial institutions" that concerns the VBA and its members. Interstate Banking Paper, pg.2.

Today, banking and other sectors of the financial services industry are undergoing a major transformation. A great many new kinds of banking services and some old ones are being offered by businesses not involved in banking before. A prime example is Sears, the world leader in retailing. Sears also owns a savings and loan (Sears Savings Bank), a major brokerage firm (Dean Witter), a major real estate company (Coldwell Banker) and a large insurance company (Allstate). The institutional boundaries that once separated financial services have all but disappeared.

If non-banking financial services providers can compete freely, without regard to state lines, then why not banks?

Allowing out of state banks to compete freely in the marketplace would give Virginia consumers and businesses new sources of financial expertise, the ability to draw on larger pools of capital, and most of all, the opportunity to reap the benefits of greater competition for their deposit dollars.

The possibility of increased competition understandably makes some uncomfortable. However, no legislation can sever the business relationships built over the decades between local banks and their communities. Local banks possess a strong competitive advantage which they will retain as long as they continue to meet the needs of their customers. Out of state banks cannot achieve any measure of success unless they can offer and deliver something better for the customer.

Now is the time for Virginia to take a leadership role and enact legislation that would permit fair and open competition in the financial services marketplace. Virginia has a unique opportunity this year to pass legislation and capture a leading position as a financial center.

Unrestricted interstate banking legislation would be beneficial to all segments of our community. Only those banks who are afraid or unwilling to compete in an open market have anything to lose. All we are talking about is increasing competition. However, there have been many misconceptions

regarding the effects of full interstate banking. The claimed disadvantages are, in our opinion, completely without foundation and unrelated to the real issues. Let me anticipate these claims by raising and answering them now.

1. "The big money center banks will come in here and gobble up all the little banks in Virginia". This exaggeration overlooks the important fact that you have it in your power to restrict acquisition to "friendly" takeovers or even allow only the establishment of new banks, thereby eliminating the "gobble up" risk altogether. If you restrict acquisition to friendly takeovers, there will be more bidders in the market than there have been in past acquisitions of small banks. This is highly desirable for the "forgotten masses" in this debate -- the bank shareholders.

2. Interstate banking has also been misrepresented to mean unfair competitive advantage of larger banks over smaller banks. If true, all the small Virginia banks would have been eliminated as effective competitors by the large Richmond banks years ago. Please note that while United Virginia Bank is 52 times larger than the National Bank of Fredericksburg, Citicorp is only 25 times larger than UVB and is marketing financial services throughout the whole world, not just Virginia. There is no evidence in Virginia or anywhere else that this competition is destructive, or that it favors large banks. According to the Atlanta Federal Reserve Board, "There are no economies of scale

in banking -- it is (not) reasonable to suppose that these large organizations are going to swallow up small ones... small banks are equally capable of competing with large banks. There is no reason to suppose they would be driven out of business...." As an example, consider the case where in mid-1983, Citicorp acquired a troubled savings and loan in California. The same unfair competition arguments were used then. However, Citicorp has not driven any California institutions out of the market. Mr. Paul Prior, Chairman of the U.S. League of Savings Institutions, said: "In California, the Citicorp people are building up the business of Citicorp Savings... They are considered by many people to be a good citizen of the financial service community in California -- definitely looking for new business and being innovative, but not killing for deposits." As a last example, one only needs to look at New York State. In upstate New York, Citibank has never captured more than 3% of the market. If New York City banks can't dominate in their own back yard, they are certainly not going to be able to dominate Virginia banking.

3. Another fear frequently expressed is that money center, or out-of-state banks will siphon off deposits from Virginia to New York or elsewhere, to fund foreign loans. As of last count, Citicorp had $42 billion in U.S. loans and $25 billion in U.S. deposits. The remaining $17 billion is funded from foreign deposits, the professional money markets of the world and our stockholders. At present, we are a net <u>importer</u> of funds into

Virginia of roughly $740 million. The irony here is that Virginia banks are the ones who are taking deposits out of state. Research has indicated that the Virginia banks loan out roughly 70% of their deposits. The excess deposits taken in and not lent out in the marketplace by Virginia banks are invested, or loaned, in the nation's money markets. This is precisely where <u>we</u> go to borrow the money we lend to our Virginia customers. We are <u>not</u> the ones taking the money out, we are the ones bringing it back in to the Commonwealth to meet consumer demand.

With respect to foreign loans, let me assure you that Citicorp <u>does not</u> use domestic deposits to make foreign loans. For this reason, Virginia consumer deposits would not be used for overseas lending operations.

Although Citicorp has brought almost three-quarter billion dollars of loans into Virginia, we are not allowed by law to receive one dollar of deposits in the state to fund our loans. Where is the logic or fairness in this?

4. Much has also been said about the "loss of local control" and the lack of concern for Virginia's problems by out-of-state managment of money center banks. Successful large financial organizations such as Citicorp are highly decentralized. To compete locally and be successful, a business must be part of its community, sensitive and responsive to local needs. Anything less would render the business ineffective, uncompetitive and not

a very strong factor in the marketplace. It is critical to the success of any business that it support the community it serves and in which its employees live. Our concern for the local community can be well documented in every market we serve.

The regional protective zones, recently being considered or enacted, appear to have been meticulously mapped out so that they will result in the fewest possible benefits of expanded banking coverage. Regional banking does not represent true interstate banking. It is nothing more than an enlarged, but restricted, geographic zone where regional banks are protected from national competition. In our judgement, the needs of businesses and consumers in a national economy are not met by banks that are restricted to one state or even to an arbitrarily chosen group of states.

The implied purpose of the regional approach is to allow the smaller banks in the region time to build up their competitiveness before true interstate banking brings larger banks into their market. A recent publication from the Federal Reserve Bank in Atlanta states that this would be a good initial step toward lowering geographic restrictions. But it adds that a time limit, or "national trigger" date in a few years is, on balance, desirable and the best available option. Kentucky and Rhode Island have adopted regional reciprocal banking bills with national trigger provisions. Similar legislation is under consideration in Tennessee, Michigan and Ohio.

This national trigger would strike a compromise by allowing the Virginia regional banks to grow through the regional process for a specified period, 2 to 3 years, for example. While we don't want to espouse a general rule applicable to all states, we're ready to accept a consolidation period as a reasonable approach for the Virginia market to prepare for full interstate banking.

In conclusion, Citicorp favors a regional approach as the initial step toward unrestricted national banking, provided that the legislation contains a trigger provision to allow full interstate banking after three years. Citicorp only wants the opportunity to offer financial services to the consumer, subject to the same rules and regulations as other Virginia banks. We believe the full competition resulting from this compromise is the best way to allocate the nations limited resources of people, credit, services and products.

Thank you for your consideration of our position.

CITICORP IN VIRGINIA

Lending functions: First and second mortgage loans, open end retail credit and direct cash advance loans through Choice credit cards, indirect sales finance lending for purchase of imported recreational vehicles and imported automobiles, Master Card, Visa and Diners Club.

Total Lending:

Service/Product	# Customers	$mm
Mortgage Loans	5,200	$185,000,000
Indirect Loans	26,000	$238,000,000
Choice Card	262,000	$ 88,000,000
Master Card/Visa	86,400	$ 65,000,000
Diners Club/Carte Blanche	11,000	$ 15,000,000
Commercial & Industrial	10	$150,000,000
	390,610	$741,000,000

Office Locations: Richmond, Roanoke, Virginia Beach and Vienna, Virginia

Employment: 110 Virginians

Annual Payroll: In excess of $2,500,000 per year

Purchased Goods and Services: In excess of $1,700,000 per year

Education and Civic Involvement:

Matching gifts to 42 Virginia schools, colleges and universities totaling $86,000 for past 5 years.
Grant of $3,000 to Colgate Darden Graduate Business School of University of Virginia.
Grant of $50,000 to VMI in honor of John D. deButts to initiate a comprehensive academic computing program.
Richmond Symphony
Virginia Center for the Performing Arts
Chesapeake Bay Foundation

CITICORP SHAREHOLDERS IN VIRGINIA:

		No Shares
Individuals *	1000	246,000
U.V.B.		207,600
Sovran		47,000
C.F.B.		31,600
Lowe, Brockenbrough & Tierney		56,400
	Total	589,200

* Does not include shareholders purchasing through broker accounts

Sharing Prosperity: Regional Interstate Banking versus the Consumer.

Thomas C. Theobald
Vice Chairman
Citibank/Citicorp

Not too many years ago, the idea that banking could be conducted across state lines was an alien notion in this country. There were fifty separate banking markets, neatly demarcated by state boundaries, give or take a few exceptions that slipped through the cracks of law and regulation along the way.

This made banking the only line of business in a $3.5 trillion economy that had a fence around it. Even insurance companies, which are subject to a welter of regulations, only have to suffer the inconvenience of applying for new licenses in new states.

What's more, there was and is no public support for such restriction. When banks have made their infrequent forays into unfamiliar states, they have generally been met with a popular and editorial yawn. The financial community may be in an uproar, but the public takes the attitude, "what took you so long?" This is particularly true since, as Dr. Larry Frieder and his colleagues point out in their report to the Florida House of Representatives, non-depository institutions provide a very substantial portion of nearly every category of credit in this country, and they operate with impunity across state lines.

Maybe that's why things are changing now for banks. There is something of an air of inevitability about the process.

Within the changing climate of opinion, however, there are considerable areas of disagreement. Some of us favor a national free market, or short of that, reciprocal interstate banking, in which individual states would throw their doors wide open to banks from all states that return the privilege.

Another method is regional reciprocal interstate banking. This idea has become very popular in the last year, although I understand there is no truth to the rumor that it will be named the official interstate banking strategy of the 1984 Olympics.

But, as those of you in the regulatory community are well aware, momentary popularity does not always make

for good public policy. It is necessary to clearly define the aims of any change in policy and then to consider the likelihood that any course of action is going to achieve those ends.

My own feeling is that if the goal is better pricing and service for consumers and economic growth for the United States, then interstate banking with free access to markets by all institutions is a very sensible approach. Regional banking, on the other hand, has all the inherent deficiencies of unit banking on a state basis, or single-state banking.

To redraw the boundaries of fifty smaller markets into a half dozen larger but still-controlled markets is contradictory to the cause of better service through competition. This is especially true if those lines carefully exclude some of the driving competitive forces of the industry, in this case the money center banks—Chicago for the Midwest, California for the West and New York for the East.

How Interstate Banking Increases Competition

First, let's consider the benefits of interstate banking.

The Atlanta Fed said in its January, 1984 *Economic Review* that free entry of banks into markets does increase competition. Studying the experience in Florida, which shifted from a unit-banking system to a multibank holding company system, the authors concluded, "as the number of links between firms increases, the degree of competition between those firms increases." Extrapolating from this data, they say, "legislative changes that increase the number of markets in which major firms compete throughout the nation are likely to increase the level of competition."

The consequences of competition are well-known—lower prices to keep old customers, a rash of product innovation to attract new ones, higher budgets for research and development to be sure that you can provide all of them with what they want in the future.

This all sounds pretty good for consumers, and ordinarily you would expect their elected representatives to embrace it. To make matters better, financial services growth produces all kinds of benefits for communities at large, such as jobs, increased business for suppliers, builders, and other sub-contractors, and more tax revenues for municipalities and states.

The Delaware Chamber of Commerce found that every hundred new jobs in the financial services in Delaware would create 110 spin-off jobs, $7.4 million more in personal income, $1.9 million in local bank deposits, one more retail establishment, $800,000 more in state and local taxes per year, construction of sixteen new houses, and $3.4 million in retail sales per year.

There is abundant statistical and anecdotal information to support this point because there has been so much growth in the industry throughout the United States. Indeed, for many purposes, interstate banking is already here. Bank holding companies can already do most of what they want.

Here in Illinois, for example, Citicorp was the sixth largest bank as of December 1983, if measured by customer loan volume. We had eighteen offices in five cities and nearly five hundred employees, making us the eighth largest bank employer. The acquisition of the sixty-one branch First Federal Savings and Loan in Chicago, now called Citicorp Savings, in January of this year has added considerably to those figures.

In Massachusetts, we are the ninth largest bank measured by loan volume, we have eleven offices in five communities, and employ over 200 people.

Similar figures apply in states throughout the country. No one in any of them is spurning the dollars Citicorp lends or the donations we make to local charities, cultural institutions and other philanthropies, or the millions of dollars in taxes and wages we pay.

We are contributing very respectably to the economic and social well-being of these and some forty other states. Citicorp is for all practical purposes a number of local institutions, attuned to the needs of their communities,

not subsidiaries of a money center bank.

If all this results from competition, then you would think everyone would welcome it, particularly since any other type of business would be wooed avidly by every state in the country. To sweeten the pot, a package of tax exemptions, training grants, and other inducements would be thrown in.

Regional Compacts Redline the Banking Market

Unhappily, we are not that popular. Instead we face a rising tide of sentiment for regional interstate banking compacts, which, in effect, redline the banking market.

Instead of fifty protected markets, the map has been redrawn into a number of super-states. If we accept the purposes of a national banking system to be access to capital, the promotion of competition among banks, and service of customers and businesses wherever they choose to locate, then the shortcomings of these regional compacts are eminently clear.

Their ostensible purpose is to allow smaller banks time to combine with others of similar size to make them too big to be acquired by money center banks.

There is no more articulate spokesman for this point of view than Gerald T. Mulligan, the former Massachusetts banking commissioner who was instrumental in passing that state's regional reciprocal banking legislation. He recently told *Boston Magazine*, "If interstate banking were to go into effect today, Citibank could easily digest most of the banks in Boston. And Citibank is just one of several big banks. Eventually you would find that all of the major financial institutions of Boston were owned and managed in New York or some other city."

I would like to thank him for his faith in Citibank's ability to raise the tens of billions of dollars in capital that wholesale nationwide acquisition would require.

Those who jump to the acquisition assumption, however, haven't read our strategic plan, or don't believe our often-stated intentions. If you think about the pertinent business economics, you will realize that acquisition is just one possibility of several—such as starting a new bank from scratch as we have done in Maine, and new forms of marketing such as telemarketing with 800 numbers, which might offer better returns. Fully established branch banks are, of course, extremely expensive to operate and some banks are already starting to thin out such structures.

If the compact really just buys time for smaller banks to grow, then why doesn't the Massachusetts law contain a sunset provision or trigger, like the Rhode Island one does, with a deadline after which any bank anywhere in the country can acquire or organize a bank in the state?

The Florida bill in particular seems to be immune to self-destruction. This impression is only strengthened by the explicit rejection of trigger legislation, as endorsed by Larry Frieder and his co-authors, with the eventual goal of true national banking.

One trouble with laws like these is that they develop constituencies of their own and rationales that far outlive their original purpose. Just look at what happened with price controls on oil a decade ago. Controls became a subsidy for energy inefficiency and it was only after they were finally removed that supply matched demand, ending shortages and eventually bringing down the real price of oil.

Even with built-in expiration dates, the big losers from regional compacts will be customers. They will have to wait for real competition to reach their markets, with attendant improvement in prices and service. Stockholders, too, will be big losers, since if smaller banks combine to make themselves indigestible, then the stockholders chance for getting the best price for their shares will have fled.

The only true nationwide auctions for depository institutions that have been conducted in this country have shown that banking shares are not exempt from the laws of the marketplace—open competition produces the best price. I might add that these auctions led to the creation of Citicorp Savings.

Stockholders also lose when managements vote themselves large golden parachutes in the event of takeover, like the two years of full salary for six top people at one New England bank I read about.

Every Need We Meet Is Local

Mr. Mulligan articulates another public policy concern in *Boston Magazine*, and since no discussion of the subject would be complete without it, I'd like to address it. In referring to the regional interstate bill he said, "The local lender is more likely to meet local needs. If you don't subscribe to that theory, then Brennan II (the Massachusetts law) makes no sense." Citicorp's domestic corporate bank is the largest profit center in the entire corporation with hundreds, if not thousands, of customers in every state in the country. The consumer bank with 10 million customers is the largest provider of finance for housing in the country, the largest issuer of credit cards and the largest issuer of student loans, with some 430,000 in all fifty states. And the success of all our businesses has hinged on the decision to grow them where the money is being used.

Those customers own homes, pay local taxes and vote in local elections. If the money we lend them is not used locally then where is it used? Every need we meet is "local!" I can't imagine the circumstances that would cause us to alter our lending patterns if we were given the power to take deposits; the market demand for credit is simply that, and doesn't depend on the deposit side.

A politically popular extension of this line of thinking is that banks will spirit deposits out of the country for foreign loans. Yet, international bankers are fully aware that foreign loans are funded from the Eurocurrency markets. Tell the depositors of the Chittenden Corporation in Vermont not to worry just because a vigorous international institution like Bank of Boston is trying to buy into it.

I don't think any of the familiar arguments really make it on this issue. If acquisition is the problem, you can require that new interstate entrants build from the ground up. If size is the problem, you can limit the size of the acquisition. If size is a *big* problem, there is a very viable program of anti-trust prosecution in this country that only recently prevented a couple of steel mergers.

Turf Protection and Target Markets

However, I don't think any of these explanations are germane. If you want to really appreciate what's at work here, you might consider another instance of turf protection written up recently in the New York Times. It seems that a number of new pizzerias in Miami have been blown up in the last few months because they had the bad judgment to open in neighborhoods already served by entrenched pizza interests. This has lent a new meaning to the term "target market." The methods may be different, but the principle is the same.

Having come of age in a tightly controlled environment, the tendency for many bankers is to try to fine tune the legal structure, always in the name of public interest, but never to conflict with their own competitive positions.

In Minnesota, for example, two bank holding companies have twenty-five percent each of the market and are trying to promote a regional interstate compact. They will need it, because if independent bankers have their way, growth within the state by any institution with more than ten percent of the market will be prohibited. Obviously, some people think there are too many angels on the head of the pin and others think there aren't enough.

On neither side is there any recognition that the banking market is driven by people's need and tastes.

I think their real reasons lie somewhere other than concern for the public interest. A Texas banker put it this way. "This is a prosperous area. We really don't want outside competitors sharing our prosperity."

Anyone can sympathize with that. No one wants to "share prosperity" if it means tougher competition and

lower profits. But these sentiments lie at the heart of all protectionism. Are they really the best foundation for public policy?

Competition, on the other hand, means a break for the customer in the form of better prices, product innovation and freer access to capital. This is the choice that faces us and I hope we make the right one.

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INTERSTATE BANKING LAWS

STATE	YEAR ENACTED	CITATION	PROVISIONS
ALASKA	1982	S.B. 752/ Chapter 75.	One-way full national by acquisition of an existing bank. (If the bank to be acquired was not in existence on the effective date of this bill, the acquisition would have to wait until such has been in operation at least three years.)
CONNECTICUT	1983	S.B. 419/ ENACTED 6-8-83	Regional reciprocal interstate banking within the New England states; increased S&L powers; and 2 non-banking subsidiary offices per year for out-of-state banks.
	1984	S.B. 326/ ENACTED 5-8-84	As enacted freezes the definition of a bank and BHC so as protect certain pending regional interstate mergers; limits establishment of S&L holding company subsidiaries to two per year, and attempts to prevent establishment of non-bank banks by BHCs. (The full national interstate banking language originally in the bill was deleted.)
DELAWARE	1981	H.B. 28/ Chapter 8; H.B.29/ Chapter 7	Financial Center Development Act; one-way, full national *de novo*, $10 million minimum capital, which must be increased to $25 million within one year from commencement of business, and 100 resident employees within one year of operations; no retail competition in state; favorable taxation; deregulation of rates on open-end revolving credit and closed-end installment loans; number of incorporators reduced from 15 to 3.
	1984	H.B. 724/ ENACTED 8-13-84	Permits an out-of-state BHC to acquire a second bank in Delaware with only one office, which does not attract customers from the general public, and requires that this new bank and its in-state affiliates must employ at least 200 persons within the first year.

FLORIDA	1984	H.B. 795 ENACTED 5-22-84	Permits reciprocal interstate banking by acquisition of a Florida bank in operation for at least 2 years by a BHC with its principal place of business within the region which includes Alabama, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia and the District of Columbia. Requires that the regional BHC applying to acquire a Florida bank have at least 80% of the total deposits of its banking subsidiaries within the region. Provides for an effective date of 7-1-85, or the date on which states having at least 20% of the total deposits in the region, excluding Florida, have in effect similar legislation.
GEORGIA	1984	H.B. 1198/ ENACTED 4-5-84	Regional reciprocal interstate banking among the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Virginia. Takes effect 7-1-85, unless 2 contiguous states enact similar legislation prior to that date in which case it can be moved up to the effective date of the second state to enact, but no earlier than 1-1-85.
ILLINOIS	1984	S.B. 1236/ ENACTED 6-26-84	Permits acquisition of a troubled bank in the state with assets of at least $1 billion by an in-state or an out-of-state BHC, with preference given to in-state acquirers.
KENTUCKY	1984	H.B. 67/ ENACTED 3-24-84, without Governor's signature.	Inter alia, permits reciprocal contiguous state interstate banking for 2 years after enactment, after which permits full national reciprocal interstate banking.
MAINE	1975/ 1978 Effective	Title 9-B, Sec. 1011	Full national interstate banking either by acquisition or de novo, on a reciprocal basis, under conditions no more restrictive than those provided by Maine law which currently requires reciprocity and the approval of the Superintendent.

MAINE	1983	H.B. 768/ ENACTED 5-18-83	Sets net new funds standards for interstate acquisitions of Maine institutions.
	1984	H.B.1500/ ENACTED 2-7-84.	Repeals the reciprocity requirement in Maine's interstate banking law.
MARYLAND	1983	S.B. 591/ ENACTED 5-18-83	Delaware-style bill -- one-way full national de novo, $25 million capital requirement; 100 employees required within one year of operation; no retail competition; permits an annual membership fee in an open-end credit agreement and other pricing relief.
MASSACHUSETTS	1982	H.B. 6724/ Chapter 626	Regional reciprocal interstate banking via acquisition within 6 New England states; precludes "leap-frogging"; permits regional reciprocal full interstate EFTS but only limited, i.e., no deposit-taking; authorizes one-way interstate EFTS outside the region and only through sharing with Massachusetts bank operated terminals.
MINNESOTA	1982	S.B. 832/ Chapter 372	Permitted acquisition of failing mutual savings banks, allowing the acquisition of F&M Mutual Savings Bank, the only mutual in the state.
	1984	H.B. 1678/ ENACTED 4-26-84 Chapter 502	Inter alia, may expand the authority of the Commerce Commissioner to permit the acquisition of a failing bank by an out-of-state BHC, to be accomplished by conversion of a failing commercial bank to a thrift institution which then may be acquired without further enabling interstate banking legislation.
NEBRASKA	1983	L.B. 454/ ENACTED 4-18-83	One-way full national interstate banking on a de novo basis, limited to a credit card operation; deregulates credit card interest rates.
NEVADA	1984	S.B. 2/ ENACTED 3-30-84	Provides for full national limited purpose interstate banking as well as certain changes to the consumer credit statutes.

NEW YORK	1982	A1452/ Chapter 417	Full national reciprocal interstate banking by acquisition or de novo.
	1983	A6859-B/ ENACTED 7-25-83	Clarifies that NY's reciprocal interstate banking law applies only to reciprocal arrangements and not to invitational laws by other states.
	1984	A8873-A/ ENACTED 7-19-84	Modifies interstate banking laws to require the Banking Superintendent to determine if the laws of the home state of a BHC which is seeking approval to acquire a New York bank allows direct or indirect acquisition of banks by out-of-state BHCs, and specifies that a condition cannot be met if the other state's laws hold restrictions which are not in New York law.
NORTH CAROLINA	1984	S.B. 706/ Ratified 7-7-84	Provides for enactment of the North Carolina Regional Reciprocal Banking Act which permits acquisition of banks in North Carolina which have been in continuous operation for more than five years by a BHC located within the Southeast region comprised of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia and the District of Columbia, on a reciprocal basis, under the same conditions or limitations which would apply to the acquisition of a bank or BHC in that other state by a NC BHC; provides for the nonseverability of the provisions of this act; effective 1-1-85.
OREGON	1983	H.B. 2149/ ENACTED 4-4-83	Authorizes out-of-state acquisition of failing mutual savings bank by a financial institution in a contiguous state.
		H.B. 2150/ ENACTED 7-11-83	As enacted, restricts interstate acquisitions under H.B. 2149 to prohibit the BHC from acquiring additional banks/branches in the state.

RHODE ISLAND	1983	S.B. 661/ ENACTED 5-18-83	Provides for New England regional interstate banking to begin in July, 1984 and full national interstate to begin in July, 1986.
SOUTH CAROLINA	1984	H.B. 3743/ ENACTED 5-21-84	Permits regional reciprocal interstate banking, intra-industry, of commercial banks and S&Ls, among the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia and the District of Columbia, permitting acquisition of a South Carolina institution only if it has been continuously operating for five years; also permits full national branching of credit unions; effective 7-1-86.
SOUTH DAKOTA	1980	H.B. 1370/ Chapter 331	One-way full national interstate banking via acquisition of *de novo* state or national bank; single office; no in-state retail competition; $25 million minimum capital
	1983	S.B. 256/ ENACTED 3-4-83	Expansion of 1980 interstate law to permit acquisition of up to 3 banks - an existing bank, a new state bank and a new national bank - with reduced capital requirements of $5 million; also expansion of bank powers to engage in all facets of insurance business.
UTAH	1984	S.B. 9/ ENACTED 4-6-84	Two-part interstate bill (impetus for legislation comes from need by regulators to deal with distressed Utah banks) which provides for: (1) reciprocal interstate banking among BHCs domiciled in the Western U.S. states of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Washington and Wyoming, but excludes California, by acquisition and (2) increased authority for the Commissioner to permit acquisition of a distressed institution by a depository based within the region, however specifically prohibits an out-of-region BHC with a depository subsidiary based within the region from acquiring a distressed Utah institution.

VIRGINIA	1983	H.B. 623/ Chapter 193	One-way, full national interstate on a de novo basis; permits a single office, $5 million minimum capital requirement; minimum staff of 40 within a year of operation, with activities limited to credit card operations
WASHINGTON	1983	S.B. 3182/ Chapter 157	Permits out-of-state BHCs to acquire ailing/failing banks or BHCs if no in-state BHC is financially able to do so.

SPECIAL PURPOSE INTERSTATE STATUTES

State	Year	Statute	Description
FLORIDA	1976	Fla. Statute Chap. 658.29	Permits out-of-state BHCs which owned banks in the state as of 12-20-72 to acquire additional in-state banks and trust companies. (NCNB, Northern Trust and Royal Trustco were thus grandfathered).
	1983	S.B. 580/ Chapter 30	Permits out-of-state banks to share ATMs owned and operated by Florida banks, but prohibits interstate deposit-taking.
ILLINOIS	1982	Ill. Rev. Sta. Acts of 1972	Permits the one out-of-state BHC that owned a bank in the state as of 12-31-81 (General Bancshares) to acquire additional banks in the state.
	1983	S.B. 699/ P.A. 83-307	Permits out-of-state banks to share ATMs operated by Illinois banks, on a reciprocal basis; prohibits interstate deposit-taking.
IOWA	1972	Chapter 1114, Acts of 1972	Grandfathers interstate entry so that only BHCs already owning 2 banks in Iowa as of 1-1-71 are eligible; aimed at Norwest/Minneapolis.
NEBRASKA	1983	L.B. 58/ ENACTED 2-16-83	Grandfathers interstate entry so that only BHCs which owned 2 banks in the state on 3-12-63 shall be permitted to expand within the state to the same extent as in-state holding companies. Norwest/Minneapolis is lead BHC so grandfathered. (Attempt to amend in contiguous interstate provisions failed.)
WASHINGTON	1981	S.B. 3042/ Chapter 83	Permits out-of-state banks, trust companies, and thrifts to use satellite facilities in state on a reciprocal basis.

APPENDIX VIII

SENATE BILL NO. .... HOUSE BILL NO. ....

A BILL to amend and reenact §§ 6.1-5, 6.1-382, 6.1-383.1 and 6.1-392 of the Code of Virginia and to amend the Code of Virginia by adding in Title 6.1 a chapter numbered 15, consisting of sections numbered 6.1-398 through 6.1-407, to authorize interstate banking on a regional reciprocal basis in Virginia.

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-5, 6.1-382, 6.1-383.1 and 6.1-392 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 6.1 a chapter numbered 15, consisting of sections numbered 6.1-398 through 6.1-407 as follows:

§ 6.1-5. Who shall not do a banking or trust business. – No person, copartnership or corporation, except corporations duly chartered and already conducting the banking business or trust business in this ~~State~~ *Commonwealth* under authority of the laws of this ~~State~~ *Commonwealth* or the United States, or which shall hereafter be incorporated under the laws of this ~~State~~ *Commonwealth* or authorized to do business in this ~~State~~ *Commonwealth* under the banking laws of the United States, shall engage in the banking business or trust business in this ~~State~~ *Commonwealth* , and no foreign corporation , *except as permitted in Chapter 14 (§ 6.1-390 et seq.) and Chapter 15 (§ 6.1-398 et seq.) of this title,* shall do a banking or trust business in this ~~State~~ *Commonwealth* ~~; except that~~ . Nothing in this chapter , *however,* shall:

(1) Prevent a natural person from qualifying and acting as trustee, personal representative, guardian, committee or in any other fiduciary capacity,

(2) Prevent any person or copartnership or corporation from lending money on real estate and personal security or collateral, or from guaranteeing the payment of bonds, notes, bills and other obligations, or from purchasing or selling stocks and bonds, or

(3) Prevent any bank or trust company organized under the laws of this ~~State~~ *Commonwealth* from qualifying and acting in another state or in the District of Columbia, as trustee, personal representative, guardian or committee or in any other fiduciary capacity, when permitted so to do by the laws of such other state or District.

Nothing in this section shall be construed to prevent banks or trust companies organized in this ~~State~~ *Commonwealth* and chartered under the laws of the United States from transacting business in Virginia.

§ 6.1-382. Registration. – Every company that controls one or more Virginia financial institutions shall register with the Commission in accordance with procedures established by the Commission and, unless such company *(except as provided in Chapter 15 (§ 6.1-398.1 et seq.) of this title)* is a corporation chartered under the laws of Virginia, it shall be admitted to transact business in Virginia in accordance with § 13.1-102 of the Code of Virginia. Unless the Commission allows additional time, registration shall be completed within ~~one hundred eighty~~ *180* days after July 1, 1978, or after the company acquires control of a Virginia financial institution, whichever date is later.

§ 6.1-383.1. Acquisition of interests in financial institutions and financial institution holding companies; prerequisites; notice; information to be made available to public. – A. Except as provided in Chapter 14 (§ 6.1-390 et seq.) *and Chapter 15 (§ 6.1-398 et seq.)* of this title, no company shall acquire or make any public offer to acquire, directly or indirectly, control of a Virginia financial institution ~~,~~ or a Virginia financial institution holding company, and no Virginia financial institution holding company shall acquire more than five percent of the voting shares of any Virginia financial institution ~~,~~ or of any other Virginia financial institution holding company, unless it first shall:

1. File with the Commission an application in such form as the Commission may prescribe from time to time;

2. Deliver to the Commission such other information as the Commission may require with such certification of financial information and such verification by oath or affirmation of other data as the Commission may deem appropriate;

3. Pay such application fee as the Commission may prescribe from time to time; and

4. Except in the case of a company which is a domestic corporation or a foreign corporation qualified to do business in Virginia, deliver to the Commission a written consent to service of

process in any action or suit arising out of or in connection with said proposed acquisition through service of process on the Secretary of the Commonwealth.

B. Upon receipt of an application, the Commission shall notify the affected Virginia financial institution ~~,~~ or Virginia financial institution holding company, and shall solicit the views of the affected Virginia financial institution ~~,~~ or Virginia financial institution holding company. The application and all other information required by the Commission under this section, except such additional information as the Commission determines should be kept confidential, shall be held as part of the public records and made available to the public.

§ 6.1-392. Acquisition of interests in bank located in Commonwealth by out-of-state banking holding company or subsidiary; conditions. – ~~Except as provided in 12 USC § 1842 and Chapter 13 (§ 6.1-381 et seq.) of this title, or as provided herein, no out-of-state bank holding company or any subsidiary thereof may acquire or hold, directly or indirectly, more than five percent of any voting shares of, interest in, or all or substantially all of the assets of any bank located in this Commonwealth. Notwithstanding the foregoing, an~~ *An* out-of-state bank holding company or any subsidiary thereof may acquire and hold all or substantially all of the voting shares of a single bank located in this Commonwealth when and for so long as the following conditions are satisfied:

1. The bank whose stock is to be acquired is a newly established bank that has or will have, when chartered and thereafter, no more than a single office located in this Commonwealth open to the public for the conduct of banking business; and such bank shall be created for the primary purpose of engaging in a significant multi-state credit card operation;

2. The bank whose stock is to be acquired has or will have on the date of commencement of business in this Commonwealth a minimum capital stock and paid-in-surplus of five million dollars and thereafter will maintain capital stock and surplus of five million dollars or an amount equal to eight percent of its total assets, whichever is greater, so long as it continues to do business in this Commonwealth;

3. The bank whose stock is to be acquired employs on the date of commencement of its banking business in this Commonwealth or will employ within one year of such date not less than forty persons in this Commonwealth in its business;

4. The bank whose stock is to be acquired is operated in a manner and at a location that is not likely to attract customers from the general public in this Commonwealth to the substantial detriment of existing banking institutions located in this Commonwealth; ~~provided that~~ *however,* such bank may be operated in a manner likely to attract and retain customers with whom that bank, the out-of-state holding company, or such holding company's bank or nonbanking subsidiaries have or have had business relations; and

5. Such acquisition has received the prior approval of the Commission.

CHAPTER 15.

ACQUISITIONS BY OUT-OF-STATE BANK HOLDING COMPANY.

§ 6.1-398. Definitions.–As used in this chapter, unless a different meaning is required by the context, the following words or phrases shall have the following meanings:

"Acquire" means:

1. The merger or consolidation of one bank holding company with another bank holding company;

2. The acquisition by a bank holding company of direct or indirect ownership or control of voting shares of another bank holding company or a bank, if, after such acquisition, the bank holding company making the acquisition will directly or indirectly own or control more than five percent of any class of voting shares of the other bank holding company or the bank;

3. The direct or indirect acquisition by a bank holding company of all or substantially all of the assets of another bank holding company or of a bank; or

4. Any other action that would result in direct or indirect control by a bank holding company of another bank holding company or a bank.

5. The term "acquire" does not permit the branching or merging of banks across state lines.

"Bank" shall have the same meaning as set forth in 12 U.S.C. § 1841 (c) or an institution which has or is eligible for insurance of deposits by the Federal Deposit Insurance Corporation.

"Bank holding company" shall have the same meaning set forth in 12 U.S.C. § 1841 (a) (1).

"Control" shall have the same meaning set forth in 12 U.S.C. § 1841 (a) (2).

"Principal place of business of a bank holding company" shall be the state in which the largest amount of its deposits is located as of the end of the last calendar year.

"Region" means the States of Alabama, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia, and the District of Columbia, which for the purposes of this chapter shall be considered a state.

"Regional" bank means a bank that:

1. Is organized under the laws of the United States or of one of the states in the region other than Virginia; and

2. Has its main office and all branches, if any, located only in states within the region.

"Regional bank holding company" means a bank holding company:

1. That has its principal place of business in a state within the region other than Virginia;

2. Whose regional bank and Virginia bank subsidiaries hold more than eighty percent of the total deposits held by all of its bank subsidiaries (excluding off-shore branches), other than bank subsidiaries controlled by it in accordance with § 6.1-401;

3. That is not controlled by a bank holding company other than a regional bank holding company; and

4. That neither is controlled by nor is a foreign bank as defined in the International Banking Act of 1978 (12 U.S.C. § 3101 (7)).

"Subsidiary" with respect to a bank means:

1. Any company twenty-five percent or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such bank holding company, or is held by it with power to vote;

2. Any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or

3. Any company with respect to the management or policies of which such bank holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the Commission, after notice and opportunity for hearing.

"Virginia bank" means a bank that:

1. Is organized under the laws of this Commonwealth or of the United States; and

2. Has its main office and branches, if any (other than off-shore branches), located only in this Commonwealth.

"Virginia bank holding company" means a bank holding company:

1. That has its principal place of business in this Commonwealth;

2. Whose Virginia bank and regional bank subsidiaries hold more than eighty percent of the total deposits held by all of its bank subsidiaries, other than bank subsidiaries controlled by it in accordance with § 6.1-401; and

3. That is not controlled by a bank holding company other than a Virginia bank holding company.

§ 6.1-399. Acquisitions by a regional bank holding company.—A. Any regional bank holding company that does not have a Virginia bank subsidiary other than a Virginia bank subsidiary that was acquired either pursuant to § 116 or § 123 of the Garn-St. Germain Depository Institutions Act of 1982 (12 U.S.C. 1730 a (M), 1823 (f) or, except as acquired in the regular course of securing or collecting a debt previously contracted in good faith, as provided in section 3(a) of the Bank Holding Company Act of 1956 as amended (12 U.S.C. § 1842 (a)), may acquire a Virginia bank holding company or a Virginia bank with the approval of the Commission. The regional bank holding company shall submit to the Commission an application for approval of such acquisition, which application shall be approved in the event:

1. The Commission determines that the laws of the state in which the regional bank holding company making the acquisition has its principal place of business permit Virginia bank holding companies meeting the criteria in this chapter to acquire banks and bank holding companies in that state;

2. The Commission determines that the laws of the state in which the regional bank holding company making the acquisition has its principal place of business permit such regional bank holding company to be acquired by the Virginia bank holding company or Virginia bank sought to be acquired. For the purposes of this subsection, a Virginia bank shall be treated as if it were a Virginia bank holding company;

3. The Commission determines either that the Virginia bank sought to be acquired has been in existence and continuously operating for more than five years or that all of the bank subsidiaries of the Virginia bank holding company sought to be acquired have been in existence and continuously operating for more than five years. The Commission may approve the acquisition by a regional bank holding company of all or substantially all of the shares of a bank organized solely for the purpose of facilitating the acquisition of a bank that has been in existence and continuously operating as a bank for more than five years; and

4. The Commission makes the acquisition subject to any conditions, restrictions, requirements or other limitations that would apply to the acquisition by a Virginia bank holding company of a bank or bank holding company in the state where the regional bank holding company making the acquisition has its principal place of business but that would not apply to the acquisition of a bank or bank holding company in such state by a bank holding company all the bank subsidiaries of which are located in that state.

B. A regional bank holding company that has a Virginia bank subsidiary other than a Virginia bank subsidiary that was acquired either pursuant to § 116 or § 123 of the Garn-St. Germain Depository Institutions Act of 1982 (12 U.S.C. 1730 a (m), 1823 (f) or, except as acquired in the regular course of securing or collecting a debt previously contracted in good faith, as provided in section 3(a) of the Bank Holding Company Act of 1956 as amended (12 U.S.C. § 1842 (a)), may acquire any Virginia bank or Virginia bank holding company with the approval of the Commission. The regional bank holding company shall submit to the Commission an application for approval of such acquisition, which application shall be approved in the event:

1. The Commission determines either that the Virginia bank sought to be acquired has been in existence and continuously operating for more than five years or that all of the bank subsidiaries of the Virginia bank holding company sought to be acquired have been in existence and continuously operating for more than five years. The Commission may approve the acquisition by a regional bank holding company of all or substantially all of the shares of a bank organized solely for the purpose of facilitating the acquisition of a bank that has been in existence and continuously operating as a bank for more than five years; and

2. The Commission makes the acquisition subject to any conditions, restrictions, requirements or other limitations that would apply to the acquisition by a Virginia bank holding company of a bank or a bank holding company in the state where the regional bank holding company making the acquisition has its principal place of business but that would not apply to the acquisition of a bank or a bank holding company in such state by a bank holding company all the bank subsidiaries of which are located in the state

§ 6.1-400. Same; investigation of application; prescribed investigation period; shortening, lengthening or waiving of period; hearing; appeal. — A. For ninety days following receipt of a complete application under § 6.1-399, the Commission shall be empowered to conduct an investigation for the purpose of determining whether:

1. The proposed acquisition would be detrimental to the safety and soundness of the applicant or of the Virginia bank or Virginia bank holding company which the applicant seeks

to control or whose stock is to be acquired;

2. The applicant, its directors and officers, if applicable, and any proposed new directors and officers of the Virginia bank or Virginia bank holding company which the applicant seeks to control or whose stock is to be acquired, are qualified by character, experience and financial responsibility to control and operate a Virginia bank or Virginia bank holding company;

3. The proposed acquisition would be prejudicial to the interests of the depositors, creditors, beneficiaries of fiduciary accounts or shareholders of the applicant or of the Virginia bank company or any Virginia bank which the applicant seeks to control or whose stock is to be acquired; and

4. The acquisition is in the public interest.

B. 1. The ninety-day investigation period may be shortened or waived by the Commission, as it deems appropriate, if the Commission finds that it must act immediately in order to prevent the probable failure of a Virginia bank involved.

2. The ninety-day investigation period may be extended only if the Commission determines that the applicant has not furnished all the information required in order to make a determination under § 6.1-399 or that the information submitted is substantially inaccurate or misleading.

C. Within the prescribed investigation period, and upon request of the applicant or the Virginia bank or Virginia bank holding company which the applicant seeks to control or whose stock is to be acquired or upon its own motion, the Commission may order a hearing concerning the proposed acquisition.

D. Within the prescribed investigation period, the Commission, by giving written notice of its decision and the reasons therefor to the applicant and to the Virginia bank or Virginia bank holding company which the applicant seeks to control or whose stock is to be acquired, may: (i) disapprove the application, or (ii) impose such conditions on the acquisition as the Commission may deem advisable to effect the purposes of this chapter. If the Commission takes no action within the ninety-day period or any extension thereof, or within such shorter period as the Commission may prescribe under paragraph 1 of subsection B of this section, or if the Commission issues notice within the prescribed period of its intent not to disapprove the application, the acquisition may be completed by the applicant.

E. Any party in interest aggrieved by any decision of the Commission, as a matter of right, may appeal to the Supreme Court of Virginia in the manner provided by law.

§ 6.1-401. Exceptions.–A Virginia bank holding company, a Virginia bank, a regional bank holding company, or a regional bank may acquire or control, and shall not cease to be a Virginia bank holding company, a Virginia bank, a regional bank holding company, or a regional bank, as the case may be, by virtue of its acquisition or control of:

1. A bank having offices in a state not within the region, if such financial institution has been acquired pursuant to the provisions of § 116 or § 123 of the Garn-St. Germain Depository Institutions Act of 1982 (12 U.S.C. 1730 a (m), 1823 (f));

2. A bank having offices in a state not within the region, if such bank has been acquired in the regular course of securing or collecting a debt previously contracted in good faith, as provided in section 3(a) of the Bank Holding Company Act of 1956 as amended (12 U.S.C. § 1842 (a)), and if the bank or bank holding company divests the securities or assets acquired within two years of the date of acquisition. A Virginia bank, a Virginia bank holding company, a regional bank holding company, or a regional bank may retain these interests for up to three additional periods of one year each if the Commission determines that the required divestiture would create undue financial difficulties for that bank or bank holding company; or

3. A bank or corporation organized under the laws of the United States or of any state and operating under § 25 or § 25(a) of the Federal Reserve Act as amended (12 U.S.C. § 601 or § 611-31) or a bank or bank holding company organized under the laws of a foreign country that is principally engaged in business outside the United States and that either has no office in the United States or has offices in the United States that are engaged only in business activities permissible for a corporation operating under § 25 or § 25(a) of the Federal Reserve Act as amended.

§ 6.1-402. Prohibitions.–A. Except as expressly permitted by federal law, no bank holding

company that is neither a Virginia bank holding company nor a regional bank holding company shall acquire a Virginia bank holding company or a Virginia bank.

B. Except as required by federal law, a Virginia bank holding company or a regional bank holding company that ceases to be a Virginia bank holding company or a regional bank holding company shall, as soon as practicable and, in all events, within one year after such event, divest itself of control of all Virginia bank holding companies and all Virginia banks. Such divestiture shall not be required if the Virginia bank holding company or the regional bank holding company ceases to be a Virginia bank holding company or a regional bank holding company, as the case may be, because of an increase in the deposits held by bank subsidiaries not located within the region and if such increase is not the result of the acquisition of a bank or bank holding company.

§ 6.1-403. Applicable laws, rules and regulations.– A. Any Virginia bank that is controlled by a bank holding company that is not a Virginia bank holding company shall be subject to all laws of this Commonwealth and all rules and regulations under such laws that are applicable to Virginia banks controlled by Virginia bank holding companies.

B. The Commission shall promulgate such rules and regulations, including the imposition of a reasonable application and administration fee, as it finds necessary to implement and effect the provisions of this chapter.

§ 6.1-404. Periodic reports; interstate agreements – The Commission shall have the authority to examine such regional bank holding company owning a Virginia bank and each of its Virginia or non-Virginia banks or non-bank affiliates and shall require reports under oath in such scope and detail of each regional bank holding company subject to this chapter for the purpose of assuring continuing compliance with the provisions of this chapter.

The Commission may enter into cooperative agreements with other regulatory authorities for the periodic examination of any regional bank holding company or any affiliate that has a Virginia bank subsidiary and may accept reports of examination and other records from such authorities in lieu of conducting its own examinations. The Commission may enter into joint actions with other regulatory authorities having concurrent jurisdiction over any regional bank holding company that has a Virginia bank subsidiary or may take such actions independently to carry out its responsibilities under this chapter, assure the safety and soundness of any Virginia banks, and assure compliance with the provisions of this chapter and the applicable banking laws of this Commonwealth.

§ 6.1-405. Enforcement.–The Commission shall have the same powers to enforce the provisions of this chapter as those granted under Title 12.1 of this Code.

§ 6.1-406. Notice of intent to acquire out-of-state bank.–A Virginia bank holding company or a regional bank holding company shall file with the Commission notice of its intention to acquire a bank outside Virginia, together with such information as the Commission shall request. It shall within thirty days or an extended period not exceeding fifteen days, disapprove such acquisition if it determines that the acquisition could affect detrimentally the safety or soundness of a Virginia bank to be acquired by the same bank holding company. It shall approve such acquisition within forty-five days if it determines that the acquisition will not affect detrimentally the safety or soundness of such Virginia bank.

§ 6.1-407. Nonseverability.–It is the purpose of this chapter to facilitate orderly development of banking organizations that own banks with main offices and branches in more than one state within the region. It is not the purpose of this chapter to authorize acquisitions of Virginia bank holding companies or Virginia banks by bank holding companies that do not have their principal place of business in this Commonwealth on any basis other than as expressly provided in this chapter. Therefore, if any portion of this chapter, except those provisions found in the definition of the word "bank" in § 6.1-398 and in paragraph 4 of the definition of the phrase "regional bank holding company" in § 6.1-398, limiting the acquisition of Virginia bank holding companies and Virginia banks by bank holding companies that do not have their principal place of business within the region is determined to be invalid for any reason by a final non-appealable order of any Virginia or federal court of competent jurisdiction, then this chapter shall be void and of no further effect from the effective date of such order. However, any transaction that has been lawfully consummated pursuant to this chapter prior to a determination of invalidity shall be unaffected by such determination.

APPENDIX IX

SENATE BILL NO. .... HOUSE BILL NO. ....

A BILL to amend and reenact §§ 6.1-381 and 6.1-383.1 of the Code of Virginia, relating to financial institution holding companies.

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-381 and 6.1-383.1 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-381. Definitions.–As used in this chapter, unless a different meaning is required by the context, the words "financial institution holding company" shall mean any company which has control over any financial institution or which has control over any company which controls any financial institution. "Virginia financial institution holding company" shall mean any company which has control over any financial institution authorized to do business in this Commonwealth, or has control over a company which controls any such financial institution.

"Company" means any corporation, partnership, business trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated association, or any other form of entity not specifically listed herein. "Virginia financial institution" means a financial institution authorized to do business in the Commonwealth of Virginia. "Commission" means the State Corporation Commission. As used in this chapter, the term "financial institution" shall not be deemed to include consumer finance companies and savings and loan associations.

"Bank" shall include a bank as defined in 12 U.S.C. § 1841(c) or an institution which has or is eligible for insurance of deposits by the Federal Deposit Insurance Corporation.

A company shall be deemed to "control" another company, referred to in this chapter as a "subsidiary," if it owns twenty-five percent or more of the voting shares of the subsidiary, or if under the Bank Holding Company Act of 1956, as amended, or under Section 408 of the National Housing Act, as amended, such company is presumed to control the subsidiary, or a determination has been made by the Commission that such company exercises a controlling influence over the management and policies of the subsidiary.

A financial institution holding company shall be deemed to own shares owned by a subsidiary. Such holding company shall be deemed to engage in activities engaged in by a subsidiary or by any other company of which it owns five percent or more of the voting shares.

§ 6.1-383.1. Acquisition of interests in financial institutions and financial institution holding companies; prerequisites; notice; information to be made available to public.–A. Except as provided in Chapter 14 (§ 6.1-390 et seq.) of this title, no company shall acquire or make any public offer to acquire, directly or indirectly, control of a Virginia financial institution, or a Virginia financial institution holding company, and no Virginia financial institution holding company shall acquire more than five percent of the voting shares of any Virginia financial institution, or of any other Virginia financial institution holding company, unless it first shall:

1. File with the Commission an application in such form as the Commission may prescribe from time to time;

2. Deliver to the Commission such other information as the Commission may require with such certification of financial information and such verification by oath or affirmation of other data as the Commission may deem appropriate;

3. Pay such application fee as the Commission may prescribe from time to time; and

4. Except in the case of a company which is a domestic corporation or a foreign corporation qualified to do business in Virginia, deliver to the Commission a written consent to service of process in any action or suit arising out of or in connection with said proposed acquisition through service of process on the Secretary of the Commonwealth.

B. Upon receipt of an application, the Commission shall notify the affected Virginia financial institution, or Virginia financial institution holding company, and shall solicit the views of the affected Virginia financial institution, or Virginia financial institution holding company. The application and all other information required by the Commission under this section, except such additional information as the Commission determines should be kept confidential, shall be held as part of the public records and made available to the public.

C. Notwithstanding any other provision of law, except as permitted in Chapter 14 (§ 6.1-390 et seq.) of this title, no holding company, other than a bank holding company with bank

subsidiaries whose operations are principally conducted in the Commonwealth of Virginia, or whose bank subsidiaries are presently conducting business in Virginia, may acquire or own a bank organized under the laws of Virginia with its main office or branch in Virginia or a national banking association whose main office is located in Virginia.

APPENDIX X

SENATE BILL NO. 148

AMENDMENT IN THE NATURE OF A SUBSTITUTE

A BILL to amend the Code of Virginia by adding a section numbered 6.1-208.6, relating to out-of-state credit unions.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 6.1-208.6 as follows:

§ 6.1-208.6. Out-of-state credit unions.—A. A credit union organized and doing business in another state may conduct business as a credit union in Virginia with the approval of the Commission. The Commission shall find that the out-of-state credit union:

1. Is a credit union duly organized under the laws of another state which would allow credit unions organized in this Commonwealth to conduct business in that state;

2. Has share insurance for its members;

3. Reasonably needs to establish a place of business in this Commonwealth to adequately serve its members in this Commonwealth;

4. Is examined and supervised by the supervisory authority of the state in which the out-of state credit union is organized; and

5. Has filed an application with the Commission to conduct such business.

B. The out-of-state credit union shall:

1. Grant loans at rates of interest not in excess of the rates permitted for credit unions organized under the laws of this Commonwealth;

2. Comply with the same consumer protection provisions that credit unions organized under the laws of this Commonwealth are required to obey;

3. Designate and maintain a registered agent in this Commonwealth;

4. Submit all examination reports from its supervisory agency to the Commission;

5. Have any insurer of shares designate an agent for service of process and agree that in the absence of such designation service may be upon the clerk of the Commission; and

6. Inform the members of the credit union who use any facility authorized pursuant to this section of the state where the organization, supervision, and share insurance of the credit union are, and of the fact that it is not regulated, supervised or insured by any agency of this Commonwealth.

C. Credit unions organized in this Commonwealth may establish offices outside the Commonwealth upon approval of the Commission.

APPENDIX XI

HOUSE JOINT RESOLUTION NO.....

Continuing the joint subcommittee study, established under House Joint Resolution No. 30 of 1984, to review the savings and loan laws, the interest rate laws of the Commonwealth and interstate banking.

WHEREAS, pursuant to House Joint Resolution No. 30 of the 1984 Session of the General Assembly, a joint subcommittee was established to study the issue of interstate banking, the revision of the savings and loan laws and the revision of the interest rate laws of the Commonwealth; and

WHEREAS, the full joint subcommittee that was established was able for the most part to complete its work on the interstate banking issue and the revision of the savings and loan laws in order to introduce legislation but needs to continue to monitor federal activity in these areas; and

WHEREAS, the interest rate subcommittee of the full joint subcommittee was diligent in its efforts to complete its work but was unable, due to time constraints, to draft a final bill that it felt was satisfactory and, therefore, needs to continue its study; and

WHEREAS, there remains a need to revise the interest rate laws and to state them in a clear manner for the benefit of the citizens of the Commonwealth; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the joint subcommittee established pursuant to House Joint Resolution No. 30 of the 1984 General Assembly, is requested to continue its study of the interest rate laws of the Commonwealth, in order to clarify and consolidate them and to continue to monitor the federal government's activity in the areas of savings and loan laws and interstate banking.

The membership of the joint subcommittee shall remain the same. In the event a vacancy should occur in the membership, the vacancy shall be filled by the same person or committee as provided in the House Joint Resolution No. 30 of 1984.

All agencies of the Commonwealth shall assist the joint subcommittee in its study.

The joint subcommittee shall complete its work in time to submit recommendations to the 1986 Session of the General Assembly.

All direct and indirect costs of conducting this study are estimated to be $19,000.