INTERNATIONAL BANKING ACT OF 1977

HEARINGS

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION, REGULATION AND INSURANCE

OF THE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 7325

A BILL TO PROVIDE FOR FEDERAL REGULATION OF PARTICIPATION BY FOREIGN BANKS IN DOMESTIC FINANCIAL MARKETS

JULY 12, 13, AND 19, 1977

Printed for the use of the
Committee on Banking, Finance and Urban Affairs

INTERNATIONAL BANKING ACT OF 1977

HEARINGS

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION, REGULATION AND INSURANCE

OF THE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 7325

A BILL TO PROVIDE FOR FEDERAL REGULATION OF PARTICIPATION BY FOREIGN BANKS IN DOMESTIC FINANCIAL MARKETS

JULY 12, 13, AND 19, 1977

Printed for the use of the
Committee on Banking, Finance and Urban Affairs

U.S. GOVERNMENT PRINTING OFFICE
93-031 O WASHINGTON : 1977

HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

HENRY S. REUSS, Wisconsin, *Chairman*

THOMAS L. ASHLEY, Ohio
WILLIAM S. MOORHEAD, Pennsylvania
FERNAND J. ST GERMAIN, Rhode Island
HENRY B. GONZALEZ, Texas
JOSEPH G. MINISH, New Jersey
FRANK ANNUNZIO, Illinois
JAMES M. HANLEY, New York
PARREN J. MITCHELL, Maryland
WALTER E. FAUNTROY, District of Columbia
STEPHEN L. NEAL, North Carolina
JERRY M. PATTERSON, California
JAMES J. BLANCHARD, Michigan
CARROLL HUBBARD, JR., Kentucky
JOHN J. LAFALCE, New York
GLADYS NOON SPELLMAN, Maryland
LES AUCOIN, Oregon
PAUL E. TSONGAS, Massachusetts
BUTLER DERRICK, South Carolina
MARK W. HANNAFORD, California
DAVID W. EVANS, Indiana
CLIFFORD ALLEN, Tennessee
NORMAN E. D'AMOURS, New Hampshire
STANLEY N. LUNDINE, New York
HERMAN BADILLO, New York
EDWARD W. PATTISON, New York
JOHN J. CAVANAUGH, Nebraska
MARY ROSE OAKAR, Ohio
JIM MATTOX, Texas
BRUCE F. VENTO, Minnesota
DOUG BARNARD, Georgia
WES WATKINS, Oklahoma

J. WILLIAM STANTON, Ohio
GARRY BROWN, Michigan
CHALMERS P. WYLIE, Ohio
JOHN H. ROUSSELOT, California
STEWART B. McKINNEY, Connecticut
GEORGE HANSEN, Idaho
HENRY J. HYDE, Illinois
RICHARD KELLY, Florida
CHARLES E. GRASSLEY, Iowa
MILLICENT FENWICK, New Jersey
JIM LEACH, Iowa
NEWTON I. STEERS, JR., Maryland
THOMAS B. EVANS, JR., Delaware
BRUCE F. CAPUTO, New York
HAROLD C. HOLLENBECK, New Jersey

PAUL NELSON, *Clerk and Staff Director*
WILLIAM P. DIXON, *General Counsel*
MICHAEL P. FLAHERTY, *Counsel*
GRASTY CREWS II, *Counsel*
MERCER L. JACKSON, *Minority Staff Director*
GRAHAM T. NORTHUP, *Deputy Minority Staff Director*

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION, REGULATION AND INSURANCE

FERNAND J. ST GERMAIN, Rhode Island, *Chairman*

FRANK ANNUNZIO, Illinois
JAMES M. HANLEY, New York
CARROLL HUBBARD, JR., Kentucky
JERRY M. PATTERSON, California
BUTLER DERRICK, South Carolina
THOMAS L. ASHLEY, Ohio
NORMAN E. D'AMOURS, New Hampshire
JOHN J. LAFALCE, New York
CLIFFORD ALLEN, Tennessee
JOHN J. CAVANAUGH, Nebraska
MARY ROSE OAKAR, Ohio
JIM MATTOX, Texas

JOHN H. ROUSSELOT, California
CHALMERS P. WYLIE, Ohio
GARRY BROWN, Michigan
HENRY J. HYDE, Illinois
GEORGE HANSEN, Idaho
JIM LEACH, Iowa

RICHARD L. STILL, *Subcommittee Staff Director*

CONTENTS

APPENDIXES

Appendix A

QUESTIONS SUBMITTED BY LETTER FROM CHAIRMAN ST GERMAIN REGARDING H.R. 7325, "THE INTERNATIONAL BANKING ACT OF 1977," WITH ATTACHED REPLIES FROM THE FOLLOWING WITNESSES

Appendix B

THE FOLLOWING LETTERS WERE SUBMITTED FOR INCLUSION IN THE RECORD:

INTERNATIONAL BANKING ACT OF 1977

TUESDAY, JULY 12, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2120, Rayburn House Office Building, Hon. Fernand J. St Germain (chairman of the subcommittee), presiding.

Present: Representatives St Germain, Annunzio, Hanley, Derrick, LaFalce, Allen, Cavanaugh, Oakar, Rousselot, Hyde, Hansen, and Leach.

Mr. ST GERMAIN. The subcommittee will come to order.

Today the Subcommittee on Financial Institutions Supervision, Regulation and Insurance opens 3 days of hearings on the provisions of H.R. 7325, the International Banking Act of 1977.

Chairman Reuss and I, on May 23, were joined by 19 of our colleagues serving on the Committee on Banking, Finance and Urban Affairs as sponsors of this bill, virtually identical to H.R. 13876, which passed the House by voice vote on July 29 of last year.

The Senate Subcommittee on Financial Institutions held hearings on the proposal, but due to the shortage of time remaining in the 94th Congress, the subcommittee was unable to make its recommendations to the full committee and hence it is necessary for us once again to resume the consideration of this most important regulatory measure requested by the Board of Governors of the Federal Reserve repeatedly since 1974.

The sponsors of the present bill also served as sponsors in the 94th Congress when, after the conclusion of the FINE Study conducted by this subcommittee, it became apparent to those of us who participated in those hearings that the time had indeed arrived to establish at long last a national policy with regard to the operations of foreign banks in the United States.

That policy has as its admittedly oversimplified goal the placing of foreign bank operations under the same type of Federal banking and monetary regulation that affects comparable domestic banks. It should be emphasized that after extended hearings in the 94th Congress beginning with the FINE Study Discussion Principles, the full committee, by a vote of 29 to 3, concurred in the judgment reached by the measure's original cosponsors.

During the intervening year, understandably, considerable apprehension has been voiced by an increasing number of individuals and the foreign institutions they represent as to the impact of this bill's provisions on their existing or, and I must emphasize, their contemplated future operations in the United States.

[A copy of H.R. 7325 follows:]

95TH CONGRESS
1ST SESSION

H. R. 7325

IN THE HOUSE OF REPRESENTATIVES

MAY 23, 1977

Mr. ST GERMAIN (for himself, Mr. REUSS, Mr. ASHLEY, Mr. MOORHEAD of Pennsylvania, Mr. GONZALEZ, Mr. MINISH, Mr. ANNUNZIO, Mr. HANLEY, Mr. MITCHELL of Maryland, Mr. NEAL, Mr. PATTERSON of California, Mr. BLANCHARD, Mrs. SPELLMAN, Mr. DERRICK, Mr. HANNAFORD, Mr. ALLEN, Mr. D'AMOURS, Mr. BADILLO, Mr. STANTON, Mr. WYLIE, and Mr. HYDE) introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

A BILL

To provide for Federal regulation of participation by foreign banks in domestic financial markets.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND DEFINITIONS

SECTION 1. (a) This Act may be cited as the "International Banking Act of 1977".

(b) For the purposes of this Act—

(1) "agency" means any office or any place of business of a foreign bank located in any State of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, but

at which deposits may not be accepted from citizens or residents of the United States;

(2) "Board" means the Board of Governors of the Federal Reserve System;

(3) "branch" means any office or any place of business of a foreign bank located in any State of the United States at which deposits are received and checks are paid or money is lent;

(4) "Comptroller" means the Comptroller of the Currency;

(5) "Federal agency" means an agency of a foreign bank established and operating under section 4 of this Act;

(6) "Federal branch" means a branch of a foreign bank established and operating under section 4 of this Act;

(7) "foreign bank" means any institution that (1) is organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, and (2) either (A) principally conducts its banking business outside the United States or (B) is a subsidiary, as that term is defined in the Bank Holding Company Act of 1956, of any institution which, on a consolidated basis, principally conducts its banking business outside the

United States. For the purposes of this Act, the term "foreign bank" includes, without limitation, foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating;

(8) "foreign country" means any country other than the United States, and includes any colony, dependency, or possession of any such country;

(9) "commercial lending company" means any institution, other than a bank or an organization operating under section 25 of the Federal Reserve Act, organized under the laws of any State of the United States, or the District of Columbia which maintains credit balances incidental to or arising out of the exercise of banking powers and engages in the business of making commercial loans;

(10) "State" means any State of the United States or the District of Columbia; and

(11) the terms "bank", "bank holding company", "company", "control", and "subsidiary" as used in this Act shall have the same meanings assigned to those terms in the Bank Holding Company Act of 1956, and the terms "controlled" and "controlling" as used in

this Act shall be construed consistently with the term "control" as defined in section 2 of the Bank Holding Company Act of 1956.

ESTABLISHMENT OF NATIONAL BANKS

SEC. 2. Section 5146 of the Revised Statutes (12 U.S.C. 72) is amended by striking out the period at the end of the first sentence and adding the following new provision: ", except that in the case of an association which is a subsidiary or affiliate of a foreign bank, the Comptroller of the Currency may in his discretion waive the requirement of citizenship in the case of not more than a minority of the total number of directors.".

EDGE CORPORATIONS

SEC. 3. (a) The second sentence of the fourth paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 614) is amended by striking out ", all of whom shall be citizens of the United States" after "to elect or appoint directors".

(b) The first sentence of the sixth paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 615(a)) is amended by inserting "except with the approval of the Board of Governors of the Federal Reserve System," after "but in no event".

(c) The second proviso of the first sentence of the twelfth paragraph of section 25(a) of the Federal Reserve

Act (12 U.S.C. 618) is amended by inserting ", except with the approval of the Board of Governors of the Federal Reserve System" after "That".

(d) The thirteenth paragraph of section 25(a) of the Federal Reserve Act (12 U.S.C. 619) is deleted and the following paragraph is inserted in lieu thereof:

"Except as otherwise provided in this section, a majority of the shares of the capital stock of any such corporation shall at all times be held and owned by citizens of the United States, by corporations the controlling interest in which is owned by citizens of the United States, chartered under the laws of the United States or of a State of the United States, or by firms or companies, the controlling interest in which is owned by citizens of the United States. Notwithstanding any other provisions of this section, any foreign bank or any bank organized under the laws of the United States, any State of the United States, or the District of Columbia, the controlling interest in which is owned by a foreign bank, group of foreign banks, or institution organized under the laws of a foreign country which owns or controls a foreign bank may, with the prior approval of the Board of Governors of the Federal Reserve System and upon such terms and conditions and subject to such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe, own and hold 50 per centum or more of the shares of the capital stock of any corporation organized under this section, and any such corporation shall be subject to the same provisions of law as any other corporation organized under this section. For the purposes of the preceding sentence of this paragraph the terms 'controls' and 'controlling interest' shall be construed consistently with the definition of 'control' in section 2 of the Bank Holding Company Act of 1956, and the term 'foreign bank' shall have the meaning assigned to it in the International Banking Act of 1977.".

FEDERAL BRANCHES AND AGENCIES

SEC. 4. (a) Except as provided in section 5, a foreign bank may, with the approval of the Comptroller, establish a Federal branch or agency in any State in which (1) it is not operating a branch or agency pursuant to State law and (2) the establishment of a branch or agency, as the case may be, by a foreign bank is not prohibited by State law.

(b) In establishing and operating a Federal branch or agency, a foreign bank shall be subject to such rules, regulations, and orders as the Comptroller considers appropriate to carry out this section, which shall include provisions for service of process and maintenance of branch and agency accounts separate from those of the parent bank. Except as otherwise specifically provided in this Act or in rules, regulation, or orders adopted by the Comptroller under this section, operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a national bank at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a national bank doing business at the same location, except that (1) the requirements of section 5240 of the Revised Statutes (12 U.S.C. 481) shall be met with respect to a Federal branch or agency if it is examined at least once in each calendar year; (2) any limitation or restriction based on the capital stock and surplus of a national bank shall be deemed to refer, as applied to a Federal branch or agency, to the dollar equivalent of the capital stock and surplus of the parent bank, and if the parent bank has more than one Federal branch or agency the accounts of all such branches and agencies shall be aggregated in determining compliance with the limitation; (3) a Federal branch or agency shall not be required to become a member bank, as that term is defined in section 1 of the Federal Reserve Act; and (4) a Federal branch or agency shall not be required to become an insured bank as that term is defined in section 3(h) of the Federal Deposit Insurance Act.

(c) In acting on any application to establish a Federal branch or agency, the Comptroller shall take into account the effects of the proposal on competition in the domestic and foreign commerce of the United States, the financial and managerial resources and future prospects of the applicant foreign bank and the branch or agency, and the convenience and needs of the community to be served.

(d) Notwithstanding any other provision of this section, a foreign bank shall not engage in the business of receiving deposits or exercising fiduciary powers at any Federal agency. A foreign bank may, however, maintain at a Federal agency for the account of others credit balances incidental to, or arising out of, the exercise of its lawful powers.

(e) No foreign bank may maintain both a Federal branch and a Federal agency in the same State.

(f) Any branch or agency operated by a foreign bank in a State pursuant to State law and any commercial lending company controlled by a foreign bank may be converted into a Federal branch or agency with the approval of the Comptroller. In the event of any conversion pursuant to this subsection, all of the liabilities of such foreign bank previously payable at the State branch or agency, or all of the liabilities of the commercial lending company, shall thereafter be payable by such foreign bank at the branch or agency established under this subsection.

(g) (1) Upon the opening of a Federal branch or agency in any State and thereafter, a foreign bank, in addition to any deposit requirements imposed under section 6(a) of the International Banking Act of 1977, shall keep on deposit, in accordance with such rules and regulations as the Comptroller may prescribe, with a member bank designated by such foreign bank, dollar deposits or investment securities of the type that may be held by national banks for their own accounts pursuant to paragraph "Seventh" of section 5136 of the Revised Statutes, as amended, in an amount as hereinafter set forth. Such depository bank shall be located in the State where such branch or agency is located and shall be approved by the Comptroller if it is a national bank and by the Board of Governors of the Federal Reserve System if it is a State bank.

(2) The aggregate amount of deposited investment securities (calculated on the basis of principal amount or market value, whichever is lower) and dollar deposits for each branch or agency established and operating under this section shall be not less than the greater of (1) that amount of capital (but not surplus) which would be required of a national bank being organized at this location, or (2) 5 per centum of the total liabilities of such branch or agency, including acceptances, but excluding (A) accrued expenses, and (B) amounts due and other liabilities to offices, branches, agencies, and subsidiaries of such foreign bank. The Comp-

93-031 O - 77 - 2

troller may require that the assets deposited pursuant to this subsection shall be maintained in such amounts as he may from time to time deem necessary or desirable, for the maintenance of a sound financial condition, the protection of depositors, and the public interest, but such additional amount shall in no event be greater than would be required to conform to generally accepted banking practices as manifested by banks in the area in which the branch or agency is located.

(3) The deposit shall be maintained with any such member bank pursuant to a deposit agreement in such form and containing such limitations and conditions as the Comptroller may prescribe. So long as it continues business in the ordinary course such foreign bank shall, however, be permitted to collect income on the securities and funds so deposited and from time to time examine and exchange such securities.

(h) A foreign bank with a Federal branch or agency operating in any State may (1) with the prior approval of the Comptroller establish and operate additional branches or agencies in the State in which such branch or agency is located on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of branches by a national bank if the principal office of such national bank were located at the same place as the initial branch or agency in such State of such foreign bank and (2) change the designation of its initial branch or agency to any other branch or agency subject to the same limitations and restrictions as are applicable to a change in the designation of the principal office of a national bank if such principal office were located at the same place as such initial branch or agency.

(i) Authority to operate a Federal branch or agency shall terminate when the parent foreign bank voluntarily relinquishes it or when such parent foreign bank is dissolved or its authority or existence is otherwise terminated or canceled in the country of its organization. If (1) at any time the Comptroller is of the opinion or has reasonable cause to believe that such foreign bank has violated or failed to comply with any of the provisions of this section or any of the rules, regulations, or orders of the Comptroller made pursuant to this section, or (2) a conservator is appointed for such foreign bank or a similar proceeding is initiated in the foreign bank's country of organization, the Comptroller shall have the power, after opportunity for hearing, to revoke the foreign bank's authority to operate a Federal branch or agency. The Comptroller may, in his discretion, waive such opportunity for hearing if he determines such waiver to be in the public interest. The Comptroller may restore any such authority upon due proof of compliance with the provisions of this section and the rules, regulations, or orders of the Comptroller made pursuant to this section.

(j) Whenever the Comptroller revokes a foreign bank's authority to operate a Federal branch or agency or whenever any creditor of any such foreign bank shall have obtained a judgment against it arising out of a transaction with a Federal branch or agency in any court of record of the United States or any State of the United States and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the Comptroller shall become satisfied that such foreign bank is insolvent, he may, after due consideration of its affairs, in any such case, appoint a receiver who shall take possession of all the property and assets of such foreign bank in the United States and exercise the same rights, privileges, powers, and authority with respect thereto as are now exercised by receivers of national banks appointed by the Comptroller.

INTERSTATE BANKING OPERATIONS

SEC. 5. (a) Except as provided by subsection (b), no foreign bank may operate a branch, agency, commercial lending company subsidiary, or bank subsidiary outside its home State unless (1) in the case of a Federal or State branch, the State is one in which it could operate a branch if it were a national bank located in its home State, (2) in the case of a State branch, agency, or commercial lending company, it is approved by the regulatory authority of the State in which such State branch, agency, or commercial lending company is to be operated, and (3) in the case of a Federal branch or agency, its operation is not prohibited by the State in which it is to be operated, and (4) in the case of a bank, its acquisition would be permissible under section 3 of the Bank Holding Company Act of 1956 if the foreign bank were a bank holding company the operations of whose banking subsidiaries were principally conducted in the foreign bank's home State.

(b) Unless its authority to do so is lawfully revoked otherwise than pursuant to this section, a foreign bank may continue to operate, outside its home State, any branch, agency, or commercial lending company subsidiary, or bank subsidiary whose operation was lawfully commenced, or whose establishment had been approved by the appropriate State authority, prior to May 1, 1976.

(c) For the purposes of this section, the home State of a foreign bank—

(1) which has no branch or subsidiary bank in the United States, but which has an agency or commercial lending company in one or more States, is whichever

of such States is determined by election of the bank, or, in default of such election, by the Board of Governors of the Federal Reserve System.

(2) which has a branch or subsidiary bank in one State only, is that State.

(3) which has a branch or subsidiary bank in more than one State, is whichever of such State is determined by election of the bank, or, in default of such election, by the Board of Governors of the Federal Reserve System.

An initial election under this subsection shall be made by means of a written declaration filed with the Board of Governors of the Federal Reserve System not more than one year after the date of enactment of this Act by the foreign bank concerned. After the home State of a foreign bank has been determined pursuant to this subsection, it may be changed only by the Board of Governors of the Federal Reserve System, either upon the application of the bank, or upon its own motion, for cause shown. Any foreign bank that does not maintain a branch, agency, or commercial lending company subsidiary, or that is not a bank holding company or a subsidiary thereof on the date of enactment of this Act, shall have its home State deemed to be the State in which it establishes its initial branch, agency, commercial lending company subsidiary, or bank subsidiary (including any commercial lending company subsidiary or bank subsidiary acquired by a company of which it is a subsidiary) in the United States.

ACCEPTANCE OF DEPOSITS

SEC. 6. (a) No branch may accept deposits of United States citizens, residents, or businesses whose principal place of business is in the United States unless the branch maintains with the Federal Deposit Insurance Corporation a surety bond or pledge of assets. The amounts and types of such bonds and assets shall be determined under such rules as the Federal Deposit Insurance Corporation may prescribe for the purpose of protecting such deposits to the same extent and in the same amount that the deposits would be protected under the Federal Deposit Insurance Act if the branch were an insured bank under that Act. Liabilities to offices, branches, agencies, subsidiaries, and affiliates of a foreign bank shall not be treated as deposits in a branch of such foreign bank for the purposes of this section.

(b) This section does not apply to any bank organized under the laws of Puerto Rico, nor does it prohibit any branch or agency from maintaining credit balances for the account of customers incidental to, or arising out of, the exercise of its lawful powers.

(c) With respect to branches in existence on the date of enactment of this title, this section shall take effect January 1, 1978.

AUTHORITY OF FEDERAL RESERVE SYSTEM

SEC. 7. (a) (1) Except as provided in paragraphs (2) and (3) of this subsection, subsections (a), (b), (c), (d), (f), (g), (i), (j), (k), and the second sentence of subsection (e) of section 19 of the Federal Reserve Act shall apply to every branch and agency of a foreign bank and every commercial lending company controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank in the same manner and to the same extent as if the branch, agency, or commercial lending company were a member bank as that term is defined in section 1 of the Federal Reserve Act; but the Board either by general or specific regulation or ruling may waive the minimum and maximum reserve ratios prescribed under section 19 of the Federal Reserve Act and may prescribe any other ratio, not more than 22 per centum, for any obligation of any such branch, agency, or commercial lending company that the Board may deem reasonable and appropriate to effectuate monetary policy objectives, taking into consideration the character of business conducted by such institutions and the need to maintain vigorous and fair competition between and among such institutions and member banks. The

Board may impose reserve requirements on branches, agencies, and commercial lending companies in such graduated manner as it deems reasonable and appropriate.

(2) A branch or agency shall be subject to this subsection only if (A) its parent foreign bank has total worldwide consolidated bank assets in excess of $1,000,000,000; (B) its parent foreign bank is controlled by a foreign company which owns or controls foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1,000,000,000; or (C) its parent foreign bank is controlled by a group of foreign companies that own or control foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1,000,000,000.

(3) A commercial lending company shall be subject to this subsection only if it is controlled (A) by a foreign bank that has total worldwide consolidated bank assets in excess of $1,000,000,000; (B) by a group of foreign banks that, in the aggregate, have total worldwide consolidated bank assets in excess of $1,000,000,000; (C) by a foreign company that owns or controls a foreign bank or banks that in the aggregate have total worldwide consolidated bank assets in excess of $1,000,000,000; or (D) by a group of foreign companies that own or control a foreign bank or banks that in the aggregate have total worldwide consolidated bank assets in excess of $1,000,000,000.

(b) Section 13 of the Federal Reserve Act is amended by adding at the end thereof the following new paragraph:

"Subject to such restrictions, limitations, and regulations as may be imposed by the Board of Governors of the Federal Reserve System, each Federal Reserve bank may receive deposits from, discount paper endorsed by, and make advances to any branch or agency of a foreign bank, and any commercial lending company in the same manner and to the same extent that it may exercise such powers with respect to a member bank if such branch, agency, or commercial lending company is maintaining reserves with such Reserve bank pursuant to section 7 of the International Banking Act of 1977. In exercising any such powers with respect to any such branch agency, or commercial lending company each Federal Reserve bank shall give due regard to account balances being maintained by such branch, agency, or commercial lending company with such Reserve bank and the proportion of any such branch, agency, or commercial lending company's assets being held as reserves under section 7 of the International Banking Act of 1977. For the purposes of this paragraph, the terms 'branch,' 'agency,' 'foreign bank,' and 'commercial lending company' shall have the same meanings assigned to them in section 1 of the International Banking Act of 1977.".

(c) Each branch or agency of a foreign bank, other than a Federal branch or agency, and each commercial lending company controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank, shall be subject to (1) paragraphs 7, 8, and 20 and the reporting requirements of paragraph 6 of section 9 of the Federal Reserve Act (12 U.S.C. 325, 326, 335, and 324), (2) subparagraph (a) of section 11 of the Federal Reserve Act (12 U.S.C. 248(a)), and (3) paragraph (5) of section 21 of the Federal Reserve Act (12 U.S.C. 483), to the same extent and in the same manner as if the branch, agency, or commercial lending company were a State member bank. In addition to any requirements imposed under section 4 of this Act, each Federal branch and agency shall be subject to subparagraph (a) of section 11 of the Federal Reserve Act (12 U.S.C. 248(a)) and to paragraph 5 of section 21 of the Federal Reserve Act (12 U.S.C. 483) to the same extent and in the same manner as if it were a member bank.

(d) Each branch or agency of a foreign bank established or operating pursuant to State law and each commercial lending company controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank shall also be subject to such other duties, restrictions, conditions, limitations, or civil penalties or liabilities applicable under the Federal Reserve Act to a State member bank, which the Board, by regulation or order, determines appropriate to insure the safety and soundness of banking operations, or to maintain competitive equality with State member banks, or to otherwise carry out the purposes of this Act except that (1) the Board may make such exemptions or exceptions from such duties, restrictions, conditions, limitations, or civil penalties or liabilities that it deems to be reasonable and appropriate in light of the different organizational structure or character of business conducted by such branches, agencies or commercial lending companies, and (2) any limitation or restriction based on the capital stock and surplus of a member bank shall be deemed to refer, as applied to a branch or agency, to the dollar equivalent of the capital stock and surplus of its parent foreign bank, and if the parent foreign bank has more than one branch or agency the accounts of all such branches and agencies, including Federal branches and agencies, shall be aggregated in determining compliance with the limitation or restriction.

(e) No foreign bank may, after the date of enactment of this Act, establish any branch or agency pursuant to State law and no foreign bank, group of foreign banks, or one or more foreign companies that control a foreign bank may acquire control of a commercial lending company without first obtaining approval of the Board of Governors of the Federal Reserve System. Whenever the Board receives an application from any such foreign bank, group of foreign banks, or foreign companies to establish a branch or agency, or to control a commercial lending company, the Board shall send a copy to the Secretary of State, the Secretary of the Treasury and the bank supervisory authority of the State where the branch or agency or commercial lending company is to be located and shall allow thirty days within which their views and recommendations may be submitted. In acting on any such application, the Board shall take into account the effects of the proposal on competition in the domestic and foreign commerce of the United States, the financial and managerial resources and future prospects of the applicant foreign bank, group of foreign banks, or one or more foreign companies and the branch, agency, or commercial lending company concerned, and the convenience and needs of the community to be served.

NONBANKING ACTIVITIES

SEC. 8. (a) Except as otherwise provided in this section (1) any foreign bank that maintains a branch or agency in a State, (2) any foreign bank or foreign company controlling a foreign bank that controls a commercial lending company organized under State law, and (3) any company of which any foreign bank or company referred to in (1) and (2) is a subsidiary shall be subject to the provisions of the Bank Holding Company Act of 1956, and to sections

105 and 106 of the Bank Holding Company Act Amendments of 1970 in the same manner and to the same extent that bank holding companies are subject thereto, except that any such foreign bank or company shall not by reason of this subsection be deemed a bank holding company for purposes of section 3 of the Bank Holding Company Act of 1956.

(b) After December 31, 1985, no foreign bank or other company to which subsection (a) applies on the date of enactment of this Act may retain direct or indirect ownership or control of any voting shares of any nonbanking company in the United States that it owned, controlled, or held with power to vote on the date of enactment of this Act or engage in any nonbanking activities in the United States in which it was engaged on such date unless authorized by subsection (c) of this section or by the Board of Governors of the Federal Reserve System under section 4 of the Bank Holding Company Act of 1956.

(c) After December 31, 1985, notwithstanding the prohibitions of subsection (b) of this section, a foreign bank or other company to which subsection (a) applies on the date of enactment of this Act may continue to engage in nonbanking activities in the United States in which directly or through an affiliate it was lawfully engaged on December 3, 1974 (or on a date subsequent to December 3, 1974, in the case of activities carried on as the result of the direct or indirect acquisition, pursuant to a binding written contract entered into on or before December 3, 1974, of another company engaged in such activities at the time of acquisition) and may retain direct or indirect ownership or control of any voting shares of any nonbanking company that it (1) owned, controlled, or held with power to vote on December 3, 1974 (or on a date subsequent to December 3, 1974, if acquired by a written contract entered into on or before such date) and (2) that does not engage in any activities other than those in which such foreign bank, company, or affiliate may engage by virtue of this subsection or section 4 of the Bank Holding Company Act of 1956; except that the Board by order, after opportunity for hearing, may terminate the authority conferred by this subsection (c) on any such foreign bank or company to engage directly or through an affiliate in any activity otherwise permitted by this subsection (c) if it determines, having due regard to the purposes of this Act and the Bank Holding Company Act of 1956, that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States. Notwithstanding any exercise of the authority conferred upon the Board by this subsection (c), in the case of any such foreign bank or company that engages directly or indirectly through an affiliate in the business of underwriting, distributing, or otherwise buying or selling stocks, bonds, and other securities in the United States, such foreign bank or company may continue to engage in such business in the United States to the extent not prohibited for national banks by paragraph Seventh of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) and, in addition, may continue to engage in the United States in the business of underwriting and distributing securities to the extent necessary to participate in customary and usual syndicate activities in the United States by the managing underwriters or other underwriters on behalf of all syndicate members in connection with underwritings of such securities so long as the individual selling and distribution activities of any such foreign bank or company (whether direct or indirect through an affiliate) in connection with any such underwriting are confined to jurisdictions other than the United States. Nothing in this subsection (c) shall be construed to authorize any foreign bank or company referred to in this subsection (c), or any affiliate thereof, to engage in activities authorized by this subsection (c) through the acquisition, pursuant to a contract entered into after December 3, 1974, of any interest in or the assets of a going concern engaged in such activities. Any foreign bank or company that is authorized to engage in any activity pursuant to this subsection (c) but, as a result of action of the Board, is required to terminate such activity may retain the ownership of control of shares in any company carrying on such activity for a period of two years from the date on which its authority was so terminated by the Board. As used in this subsection, the term "affiliate" shall mean any company more than 5 per centum of whose voting shares is directly or indirectly owned or controlled or held with power to vote by the specified foreign bank or company.

(d) Nothing in this section shall be construed to define a branch or agency of a foreign bank or a commercial lending company controlled by a foreign bank or foreign company that controls a foreign bank as a "bank" for the purposes of any provisions of the Bank Holding Company Act of 1956, or section 105 of the Bank Holding Company Act Amendments of 1970, except that any such branch, agency or commercial lending company subsidiary shall be deemed a "bank" or "banking subsidiary", as the case may be, for the purposes of applying the prohibitions of section 106 of the Bank Holding Company Act Amendments of 1970 and the exemptions provided in sections 4(c)(1), 4(c)(2), 4(c)(3), and 4(c)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c) (1), (2), (3), and (4)) to any foreign bank or other company to which subsection (a) applies.

GUIDELINES FOR FOREIGN BANK OPERATIONS

SEC. 9. (a) The Secretary of the Treasury in issuing guidelines under this section, and the Federal regulatory agencies in the administration of this Act, shall seek to achieve a parity of treatment for foreign banks, branches, agencies, and commercial lending companies relative to their domestic counterparts. It is the purpose of this Act to establish a basic statutory framework which, giving due consideration to the structure of our domestic monetary mechanisms and our national interests, will, to the extent practical, allow foreign banking institutions to have the same rights, duties and privileges and be subject to the same limitations, restrictions, or conditions as our domestic banking institutions. It is the intent of the Congress that this Act shall establish a pattern for equitable treatment which State regulators may adopt in their regulation of foreign banking institutions.

(b) The Secretary of the Treasury shall issue guidelines with respect to the banking operations of foreign banks, companies, and individuals in the United States, in order to assist Federal and State banking agencies in acting on applications by such foreign banks, companies, and individuals to establish branches or agencies of foreign banks in any State or to acquire interests in banks, corporations organized under sections 25 or 25 (a) of the Federal Reserve Act, or commercial lending companies organized under State law.

(c) In issuing guidelines under this section, the Secretary of the Treasury shall endeavor to foster participation by foreign interests in international financial markets in the United States to the maximum extent consistent with maintenance of fair and vigorous competition in such markets, and with international economic policies of the United States, including policies relating to the balance of trade, the balance of payments, the international payments mechanism, and the negotiation and implementation of reciprocal arrangements with other countries to strengthen international trade.

(d) Whenever the Comptroller of the Currency receives an application to establish a national bank that will be controlled by a foreign company or group of foreign companies, or a Federal branch or agency of a foreign bank, he shall send a copy to the Secretary of State, the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, and the bank supervisory authority of the State where the bank, branch, or agency is to be located. He shall wait thirty days for such officials to submit their views before acting on the application.

(e) Whenever a State bank supervisory authority receives an application to establish a branch or agency of a foreign bank or to organize a bank or a commercial lending company that will be controlled by a foreign company or group of foreign companies, he shall transmit a copy of such application to the Secretary of the Treasury, the Secretary of State, and the Board of Governors of the Federal Reserve System, and shall allow a thirty-day period within which their views and recommendations may be submitted.

(f) Whenever the Board of Governors of the Federal Reserve System receives an application from a foreign company or group of foreign companies for approval under section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) or receives an application from a foreign bank under sections 25 or 25(a) of the Federal Reserve Act and whenever the responsible Federal banking agency under the Bank Merger Act (12 U.S.C. 1828(c)) receives an application under that Act involving a bank that is controlled by a foreign company or group of foreign companies, it shall transmit a copy of such application to the Secretary of the Treasury and the Secretary of State and allow a thirty-day period within which their views and recommendations may be submitted.

(g) (1) Every branch or agency of a foreign bank and every commercial lending company controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank shall conduct its operations in the United States in full compliance with provisions of any law of the United States or any State thereof which—

(A) prohibit discrimination against any individual or other person on the basis of the race, color, religion, sex, marital status, age, or national origin of (i) such individual or other person or (ii) any officer, director, employee, or creditor of, or any owner of any interest in, such individual or other person; and

(B) apply to national banks or State-chartered banks doing business in the State in which such branch or agency or commercial lending company, as the case may be, is doing business.

(2) Notwithstanding any other provision of law, no application for a branch or agency under this Act shall be approved by the Comptroller and no application referred to in subsection (d), (e), or (f) of this section shall be approved by the Comptroller, the Board of Governors of the Federal Reserve System, or a State bank supervisory authority, as the case may be, unless the entity making the application has agreed to conduct all of its operations in the United States in full compliance with provisions of any law of the United States or any State thereof which—

(A) prohibit discrimination against individuals or other persons on the basis of the race, color, religion, sex, marital status, age, or national origin of (i) such individual or other person or (ii) any officer, director, employee, or creditor of, or any owner of any interest in, such individual or other person; and

(B) apply to national banks or State-chartered banks doing business in the State in which the entity to be established is to do business.

REPRESENTATIVE OFFICES

SEC. 10. (a) Any foreign bank that maintains an office other than a branch or agency in any State shall register with the Secretary of the Treasury in accordance with rules prescribed by him, within one hundred and eighty days after the date of enactment of this Act or the date on which the office is established, whichever is later.

(b) This Act does not authorize the establishment of any such office in any State in contravention of State law.

CEASE-AND-DESIST ORDERS

SEC. 11. Subsection (b) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by adding at the end thereof the following new paragraphs:

"(4) This subsection and subsections (c), (d), (h), (i), (k), (l), (m), and (n) of this section shall apply to any branch, agency, and any commercial lending company controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank, as those terms are defined in the International Banking Act of 1977, in the same manner as they apply to an insured bank, and for that purpose the appropriate Federal banking agency shall be the Comptroller of the Currency with respect to a Federal branch or agency of a foreign bank and the Board of Governors of the Federal Reserve System with respect to a branch, agency, or commercial lending company subsidiary operating pursuant to State law.

"(5) This subsection and subsections (c), (d), (h), (i), (k), (l), (m), and (n) of this section shall apply to any foreign bank or company to which subsection (a) of section 8 of the International Banking Act of 1977 applies and to any subsidiary (other than a bank) of any such foreign bank or company in the same manner as they apply to a bank holding company and any subsidiary thereof (other than a bank) under subparagraph (3) of this subsection. For the purposes of this subparagraph, the term 'subsidiary' shall have the meaning assigned to it in section 2 of the Bank Holding Company Act of 1956.".

REGULATION AND ENFORCEMENT

SEC. 12. (a) The Comptroller, the Board, and the Secretary of the Treasury are authorized and empowered to issue such rules, regulations, and orders as each of them may deem necessary in order to perform their respective duties and functions under this Act and to administer and carry out the provisions and purposes of this Act and prevent evasions thereof.

(b) Compliance with the requirements imposed under this Act shall be enforced under section 8 of the Federal Deposit Insurance Act by the appropriate Federal banking agency as defined in that Act.

Mr. St Germain. In an effort to accommodate those who wish to be heard, notwithstanding the considerable period of time devoted to this one facet of international banking operations last year, the subcommittee has elected to hold 3 full days of hearings to make certain that a number of conflicting points of view will be presented fully to the subcommittee by witnesses representing particular viewpoints.

The subcommittee has, as well, encouraged the submission of written statements and it is the intention of the Chair to defer for at least 1 week after the final date of testimony, on July 19, before scheduling a subcommittee markup, so that all members of the subcommittee will have a full opportunity to consider a number of proposed amendments to the bill, including suggestions for modifications submitted by the Federal financial regulatory agencies as well as spokesmen for the administration. By adopting this procedure, it remains our hope that we will be able to complete final action on this long-standing request of the Federal Reserve Board prior to the end of the first session of the 95th Congress and, if not, early in the second session.

Since each of the members of the subcommittee has been previously furnished copies of Vice Chairman Gardner's speech of May 2, 1977, renewing the request of the Board of Governors for this legislation, and were furnished a section-by-section analysis of the provisions of the bill contained in my floor remarks upon its introduction on May 23, I will merely highlight what I believe to be the compelling case for our consideration of the International Banking Act at this time.

The continued rapid growth of foreign bank operations in the United States with aggregate assets now totaling $76 billion—a 30 percent increase in the last 4 years—makes it imperative that the Congress respond favorably to the request of the Federal Reserve Board for appropriate legislation embodied in the provisions of H.R. 7325.

We can no longer accept the fact that there is a total absence of a national policy and regulatory framework in the increasingly important area of foreign bank operations in the United States. The growth of foreign assets from approximately $7 billion in 1965 to more than $76 billion in a little over a 10-year period, involving approximately 94 foreign banks operating over 210 banking facilities in this country, is clear evidence of the need for action and the reason for the Federal Reserve Board's continued placing of this legislation at the top of its priority list if it is to continue to discharge its responsibility of ensuring a smooth functioning of our own banking system, which requires the continued coordination of policies with national monetary and regulatory authorities abroad.

Mr. Rousselot has been delayed at another hearing, and without objection we shall at this point place his opening statement in the record.

[The above referred to statement follows:]

Opening Statement of Hon. John H. Rousselot

Mr. Chairman:

As we open these hearings on H.R. 7325, the International Banking Act, I would like to welcome Vice Chairman Gardner, Mr. Palmer, and Mr. O'Brien, and to commend you, Mr. Chairman, for putting together what promises to be a very informative set of hearings.

Since the bill before us is nearly identical to a bill which the House passed almost a year ago, a few general observations would be in order at this time.

1. We can probably all agree that the basic objective of this legislation is to apply to foreign banks doing business in this country the same restrictions and conditions of doing business as apply to domestic banks. I would suggest to my colleagues that the way to correct "inequities" should not always be to increase the degree of regulation imposed upon foreign banks operating in this country. There may be instances where we should pursue equity by reducing the degree of regulation of our domestic banking system.

2. Last year my distinguished colleague from Georgia, Mr. Stephens, who regrettably has since retired offered an amendment to section 5 of H.R. 13876 which would have eliminated the requirement that Federal statutes be changed to permit national banks—or State member banks—to branch across State lines before foreign branches, agencies, or commercial lending companies would be permitted to do so.

The purpose of this amendment was to increase the opportunity for States such as Georgia and Texas, which are interested in becoming international banking centers to do so. States such as New York and California which have been traditional international banking centers do not seek the unfair competitive advantage which the present language appears to give them. The amendment was defeated last year by a close vote of 185-205. I believe that the chances of passing this legislation would be greatly enhanced by incorporating this amendment before the bill is reported.

3. Another amendment which Mr. Stephens offered last year was designed to preserve the dual banking system by removing provisions which would extend the authority of the Federal Reserve to set reserves for, to examine, and to approve the establishment of, State-chartered foreign bank branches and agencies. I believe that the extension of such Federal Reserve authority to State-chartered entities is unwarranted in the absence of a clear showing that the States cannot properly and adequately supervise foreign bank activities and urge that this amendment as well be given serious consideration prior to Floor action.

Thank you, Mr. Chairman, for permitting me to make these comments.

Mr. St Germain. Governor Gardner, we have received your testimony and we appreciate having it a little bit ahead of time. I hope the Fed can continue this practice in the future. You may proceed, Governor Gardner.

STATEMENT OF HON. STEPHEN S. GARDNER, VICE CHAIRMAN, FEDERAL RESERVE BOARD

Governor Gardner. Mr. Chairman, members of the subcommittee, it is a pleasure to testify in support of the International Banking Act of 1977. This landmark legislation is very important to American consumers and businesses, to Federal and State bank regulatory authorities and legislators, to the management of monetary policy, and to U.S. relations with our trading partners. Without attempting to weigh the importance of each relative interest, because all must be considered fairly, I would emphasize that the bill is a domestic bank regulatory measure and should be so characterized. The only unique thing about foreign bank offices in this country is that they are owned and managed from abroad mostly by large multinational banks with worldwide assets exceeding $1 billion. As these hearings will indicate, they are also a very large and rapidly growing part of our domestic banking system. Their banking services are sold to American consumers and businesses and they compete directly with domestic banks that are regulated and supervised under a comprehensive system of Federal and State laws and regulations.

I am optimistic that these hearings will lead to the enactment of a law that is fair and appropriate for all parties, embodying the principle of national treatment for foreign banks and conforming their regulation evenly and equitably to that imposed on similar domestic banking organizations. My optimism is based on these facts. Last year this committee did an outstanding job in proposing an International Banking Act to the full House which passed as H.R. 13867. The appropriate subcommittee of the Senate held a full set of hearings on this proposal and was prevented from continuing this work only because of the adjournment of the Congress. Further, proposals of this kind have been before the Congress and the public since 1974, and there has been ample opportunity for the Congress to hear all points of view germane to this bill.

Two things have happened in this process. First, the original legislative proposals have been changed significantly to meet some basic objections, and the Federal Reserve has recommended further changes which, in our judgment, should meet the remaining points of controversy. Second, those who foresaw a continued and rapid growth of foreign bank operations in the United States have seen their predictions fulfilled. Since the introduction of the Board's first proposal in 1974, foreign bank operations in this country have continued to grow in number, size, and importance. They have been assuming an increasingly important share of the market for commercial and industrial loans, have been increasing their penetration into regional markets and retail banking services, and have been active participants in domestic money markets. Our most recent data show that 210 banking facilities are operated by 94 foreign banks in the United States. More than half of these foreign banks operate across State lines: 22 foreign banks have banking offices in three or more States and another 28 foreign banks have banking offices in two States, an advantage denied to domestic banks. Foreign bank interest in the United States is growing at a remarkably rapid pace and even the most partisan of those who oppose any form of Federal regulation must grant that further delay will surely complicate the work of the Congress in enacting appropriate legislation.

Mr. Chairman, I am submitting with my testimony a statistical appendix providing data on the growth of foreign bank operations and a compendium of supporting documents intended for the subcommittee's use. In today's statement, I would like to address those provisions of the act that may be questioned by later witnesses.

As recently as 3 years ago, many held the belief that foreign banks in our economy were highly specialized institutions operating only in port and gateway cities where international trade was important, and those opposed to legislation argued that their chartering and regulation could be left to the States. Such arguments today, in view of the extraordinary expansion of these banks in the context of the development of multinational banking, have been thoroughly disproved.

The rapid expansion of multinational banking has been occurring abroad as well as in the United States. The growth of this international financial community is testing the regulatory frameworks and monetary system in many other countries. In Belgium, the

Netherlands, the United Kingdom and Canada, banking laws are currently being revised. Other countries are reviewing their existing regulations and supervisory practices. The business this subcommittee is about is thus very common in other nations and it is an entirely responsible and appropriate activity. For the United States is alone among the leading trading nations of the western world, in having virtually no national policy, monetary controls, or national presence where foreign banks are concerned.

Over the past several years, as we have testified before, we have generally found the banking authorities in other countries to be sympathetic and understanding of the need to rationalize the treatment of foreign banks in our country with our domestic banking system. Many foreign central bankers consider it surprising that the United States does not have a national policy on foreign banks, and, in particular, they recognize the logic of extending monetary and credit controls to foreign banks operating within our borders, and conducting transactions in our currency. This, of course, is a fundamental reason for enacting this bill.

The subcommittee should not be misled by criticism from commercial bankers abroad. The objections to the legislation addressed to those sections of the bill that would require divestitures or the closing of existing facilities can be dealt with during the legislative process. Objections to the United States having appropriate powers to guide monetary and credit policies within this country should not be given undue weight.

In the Board's letter to you endorsing the present legislation, there are included proposals for amendments addressed to the most valid concerns of those opposing certain of its sections. I would like to touch on these amendatory proposals and underline their inportance to the success of the legislation before you.

I have referred to monetary policy controls, and your bill largely accomplishes the objective of establishing for foreign banks a fair equivalent to the monetary regulations that affect comparable domestic banking institutions. The bill does not require formal membership in the Federal Reserve System. It simply requires that those foreign banks operating in the United States that have $1 billion or more in worldwide bank assets maintain reserves in the same way as the largest U.S. banks, virtually all of which are members of the Federal Reserve System.

There is, however, an omission in the present bill. The State-chartered subsidiaries of large foreign banks are exempted from monetary controls. The Board believes that the appropriate test for the imposition of monetary controls is the size and the ability of a foreign bank to compete and participate through its U.S. affiliates in our large money and credit markets. Thus, the Board recommends that section 7 of the bill be amended to require that Federal Reserve monetary controls be applied to all the U.S. operations of a foreign bank that has $1 billion or more in worldwide bank assets, irrespective of whether they are conducted through agencies, branches, subsidiary banks, or subsidiary New York investment companies. If we omit one corporate form of organization from such restrictions, the bill's purpose will be subverted and its effectiveness severely reduced.

Consistent with national treatment, section 5 of the bill generally subjects foreign banks to the same multi-State restrictions that apply to domestic banks. The Board believes, however, that direct imposition of the branching restrictions of the McFadden Act should be limited to Federal branches and agencies. State branches should be put on the same competitive footing as State banks in their home State. In this way, foreign banks may benefit from future reciprocal interstate branching legislation that may be agreed upon among the States.

In our previous comments on the bill, we suggested that multi-State restrictions apply to both branches and agencies of foreign banks. I expect you will hear strong testimony from State authorities urging that agencies remain exempted from multi-State branching restrictions as the bill now provides. The Board has carefully considered these arguments which arise quite naturally from those States interested in attracting offices of foreign banks to assist in expanding their local industries' participation in foreign trade.

I would like now to propose what appears to be a reasonable alternative. That alternative would be to limit agencies of foreign banks that are licensed by the States in the future to powers that are no greater than federally chartered Edge Act corporations. These future State-licensed agencies would thus be able to conduct a full service international banking business and thus promote the further development of international trade and investment throughout the country. At the same time, the multi-State restrictions on banking offices conducting a full service domestic banking business would not be compromised. To exempt agencies entirely would, in our judgment, exacerbate the present multi-State advantages enjoyed by foreign banks, as, traditionally, agencies have been the most important form of foreign bank activity. This alternative would equitably meet the interests of the States that wish to have international banking agencies, the interests of foreign banks that wish to establish international banking facilities in more than one trade center and the public interest of competitive equality with our domestic banks.

The issue of deposit insurance on foreign bank operations in order to protect U.S. consumers and businesses has been debated since 1974. Following the action of this committee and the House vote on H.R. 13876 last year, the Federal Deposit Insurance Corporation suggested in comments to the Senate a method of applying deposit insurance to the domestic deposits of U.S. branches of foreign banks. In the judgment of the Board, that alternative is far more desirable than the present section 6 of the bill. The Board favors compulsory FDIC insurance on deposits in branches of foreign banks. The arguments for extending FDIC insurance to these deposits are very direct and simple. The United States has enjoyed an extraordinarily successful system of deposit insurance protecting in its end effect jobs, businesses and our economies locally, regionally and nationally since the 1930's. It is a model act covering virtually all full-service commercial banks in this country. It is being studied and copied by foreign governments. It would be a curious turn of events to abandon our world leadership in this area by substituting an imperfect form of protection. Surety bonds or pledges of assets cannot be considered comparable to the certainty of FDIC insurance and the Federal Deposit Insurance Corporation's ability to protect our citizens from bank failures.

Because of the continuing rapid growth of foreign bank operations in this country, it will become progressively more difficult to adopt grandfathering proposals for their existing activities that are equitable and consistent with prior legislative precedent. Your bill grandfathers multi-State banking operations as of May 1, 1976. Nonbanking activities, other than securities affiliates, are permanently grandfathered as of December 3, 1974. The Board concurs strongly in the permanent grandfathering of these activities and believes it appropriate for the Congress to review the existing grandfathering dates. A majority of the Board believes these dates should be brought forward to afford equitable treatment to all existing facilities.

As for securities affiliates, it will be recalled that the Senate hearings on the International Banking Act of 1976 produced extensive controversy concerning the securities affiliate provisions in the present bill. The Board urges that the securities affiliations that are in place today be permanently grandfathered to quiet the controversy, and that, as a safeguard, the Board be given the discretion to review these activities under the nonbanking standards of the Bank Holding Company Act for any abuses that might arise over time. This would meet the concerns expressed by the regional stock exhanges. It would also provide some certainty to foreign banks that their securities affiliates, which are still a very small part of the securities industry, could continue to operate in essentially the same form and relative size as at present.

As we have indicated to the subcommittee, the Board does not see the necessity for the detailed guideline provisions of foreign bank entry in section 9 of the bill. The State and Federal regulatory agencies already have appropriate statutory requirements that must be fulfilled by those who apply for permission to conduct a banking business in this country. The provisions of the bill, which provide for consultation between bank regulatory authorities and the Secretaries of State and Treasury on new foreign bank applications, would seem entirely adequate to insure that any important foreign policy issues are considered when appropriate. I would expect that in almost all cases this consultative procedure would be entirely routine.

Legitimate issues that have been raised by foreign banks concerning fair national treatment include a key issue related to the nonbanking prohibitions of the Bank Holding Company Act. Last year there apparently was a misconception on the part of some foreign bankers, who thought that the nonbanking prohibitions that we apply to banks in our domestic market would seriously interfere with their nonbanking interests abroad. For that reason we have proposed a clarifying amendment to this bill whereby foreign banks that are principally engaged in banking abroad would not be prohibited from retaining or acquiring interests in foreign-chartered, nonbanking companies that have U.S. activities, but which are principally engaged in business outside the United States. While the Board believes it has sufficient regulatory authority under present law to deal with such problems, we also believe it would be desirable for the Congress to embody this principle in the statute. In this proposal, we have included a requirement that any banking transactions with U.S. offices of such foreign affiliates be conducted at competitive rates and terms. In this way the firm or bank involved would not have an unfair advantage over their respective U.S. competitors.

The Board's carefully considered and strong support of the International Banking Act of 1977 is based on the conviction that the proposed bill with the amendments that we have recommended would fairly implement the principle of national treatment of foreign banking organizations operating in the United States. In the opinion of the Board, as we have repeatedly emphasized, that principle is the only workable and equitable method of dealing with these organizations.

As I have suggested in this testimony, most responsible objections to the legislation have been or can be met. The question then is simply: Should we not put foreign and domestic banks on a relatively equal footing now, for surely they should be in time? This legislation is an essential ingredient in the larger process of rationalizing and modernizing our own banking laws. That work will be fairer and easier if it is evenly applicable to all banks as it would be under this legislation.

The conscientious and excellent work of Congress and the committee should continue until this bill is passed. The Federal Reserve is ready to assist in any way necessary.

Thank you.

[The statistical appendix to Governor Gardner's statement, along with a compendium of supporting materials, both referred to in his statement, follow:]

Statistical Appendix to Statement by

Stephen S. Gardner

Vice Chairman, Board of Governors of the Federal Reserve System

before the

Subcommittee on Financial Institutions Supervision, Regulation and Insurance

of the

Committee on Banking, Finance and Urban Affairs

United States House of Representatives

on H.R. 7325

93-031 O - 77 - 4

Table 1a

U.S. BANKING INSTITUTIONS OWNED BY FOREIGN BANKS
FOR MONTHLY REPORT DATE IN -NOVEMBER 1972
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL ASSETS	24,317	13,635	5,302	4,064	1,316
ASSETS OF "STANDARD" BANKING BUSINESS	18,073	9,959	3,283	3,747	1,084
LOANS AND CREDITS	11,286	6,979	1,485	2,106	717
COMMERCIAL AND INDUSTRIAL **	10,507	6,942	1,374	1,495	696
(U.S.)	(8,275)	(5,533)	(898)	(1,336)	(508)
(FOREIGN)	(2,232)	(1,410)	(476)	(156)	(188)
MISC. U.S. LOANS INCLUDING RETAIL	779	36	111	611	21
MONEY-MARKET ASSETS	5,753	2,714	1,558	1,253	229
INTERBANK LOANS AND DEPOSITS	2,949	1,480	1,219	170	81
(U.S.)	(2,383)	(1,254)	(945)	(138)	(46)
(FOREIGN)	(567)	(227)	(273)	(32)	(34)
LOANS TO SECURITY DEALERS	1,183	789	194	105	95
U.S. GOVT. AND AGENCY SECURITIES	1,620	445	146	978	53
MISCELLANEOUS ASSETS	1,034	267	241	388	138
ASSETS ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	6,244	3,676	2,019	318	232
CLEARING BALANCES DUE FROM OTHERS	1,968	702	809	283	175
DUE FROM U.S. BANKING AFFILIATES	1,762	1,362	388	7	5
DUE FROM FOREIGN PARENT & AFFILIATES	2,515	1,612	823	28	53

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

** INCLUDES CUSTOMERS' LIABILITIES ON ACCEPTANCES OUTSTANDING AND ON DEFERRED PAYMENT LETTERS OF CREDIT.

Table 1b

U.S. BANKING INSTITUTIONS OWNED BY FOREIGN BANKS
FOR MONTHLY REPORT DATE IN NOVEMBER 1972
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL LIABILITIES AND EQUITY	24,317	13,635	5,302	4,064	1,316
LIABILITIES OF "STANDARD" BANKING BUSINESS	10,606	3,875	2,729	3,173	828
LIABILITIES TO CORPORATIONS AND OTHER NON-BANKS	6,156	794	2,024	2,884	454
DEMAND DEPOSITS AND CREDIT BALANCES	1,835	320	460	946	108
TIME AND SAVINGS DEPOSITS AND OTHER BORROWINGS	4,321	473	1,564	1,939	345
(DEPOSITS OF U.S. RESIDENTS)	(4,196)	(420)	(1,186)	(2,499)	(92)
(DEPOSITS OF FOREIGNERS)	(1,960)	(374)	(838)	(386)	(362)
MONEY-MARKET LIABILITIES					
INTER-BANK BORROWINGS AND DEPOSIT LIABILITIES	2,635	1,924	339	123	248
U.S. BANKS	2,241	1,803	313	92	33
FOREIGN BANKS	394	121	26	32	215
MISCELLANEOUS LIABILITIES	1,816	1,158	366	166	126
LIABILITIES ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	13,053	9,669	2,528	475	380
CLEARING BALANCES DUE TO OTHERS	1,544	786	422	176	160
DUE TO U.S. BANKING AFFILIATES	1,971	1,616	138	212	5
DUE TO FOREIGN PARENT AND AFFILIATES	9,537	7,268	1,968	87	214
CAPITAL ACCOUNTS AND RESERVES	658	90	45	416	108
NUMBER OF REPORTING INSTITUTIONS	104	50	26	25	3

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

Table 2a
U.S. BANKING INSTITUTIONS OWNED BY FOREIGN BANKS
FOR MONTHLY REPORT DATE IN -DECEMBER 1974
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL ASSETS	55,866	28,790	12,801	11,955	2,320
ASSETS OF "STANDARD" BANKING BUSINESS	38,135	18,149	8,578	9,531	1,878
LOANS AND CREDITS	24,264	13,030	4,561	5,534	1,138
COMMERCIAL AND INDUSTRIAL**	21,789	12,968	4,384	3,330	1,107
(U.S.)	(16,581)	(10,070)	(2,648)	(3,050)	(813)
(FOREIGN)	(5,208)	(2,899)	(1,736)	(279)	(294)
MISC. U.S. LOANS INCLUDING RETAIL	2,475	62	177	2,204	31
MONEY-MARKET ASSETS	10,878	4,273	3,445	2,667	493
INTERBANK LOANS AND DEPOSITS	7,022	3,274	2,985	505	258
(U.S.)	(4,607)	(2,097)	(1,946)	(445)	(119)
(FOREIGN)	(2,415)	(1,177)	(1,039)	(60)	(139)
LOANS TO SECURITY DEALERS	597	456	53	79	10
U.S. GOVT. AND AGENCY SECURITIES	3,258	543	407	2,083	225
MISCELLANEOUS ASSETS	2,994	846	572	1,330	246
ASSETS ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	17,731	10,641	4,224	2,424	442
CLEARING BALANCES DUE FROM OTHERS	6,506	1,833	2,008	2,349	317
DUE FROM U.S. BANKING AFFILIATES	4,827	4,484	291	40	11
DUE FROM FOREIGN PARENT & AFFILIATES	6,398	4,324	1,925	35	114

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

** INCLUDES CUSTOMERS' LIABILITIES ON ACCEPTANCES OUTSTANDING AND ON DEFERRED PAYMENT LETTERS OF CREDIT.

Table 2b
U.S. BANKING INSTITUTIONS OWNED BY FOREIGN BANKS
FOR MONTHLY REPORT DATE IN -DECEMBER 1974
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL LIABILITIES AND EQUITY	55,866	28,790	12,801	11,955	2,320
LIABILITIES OF "STANDARD" BANKING BUSINESS	30,157	13,741	6,253	8,591	1,573
LIABILITIES TO CORPORATIONS AND OTHER NON-BANKS	13,998	2,004	3,811	7,515	667
DEMAND DEPOSITS AND CREDIT BALANCES	4,763	683	913	2,992	175
TIME AND SAVINGS DEPOSITS AND OTHER BORROWINGS	9,234	1,321	2,898	4,523	493
(DEPOSITS OF U.S. RESIDENTS)	(9,384)	(1,135)	(1,209)	(6,899)	(142)
(DEPOSITS OF FOREIGNERS)	(4,614)	(870)	(2,603)	(617)	(525)
MONEY-MARKET LIABILITIES					
INTER-BANK BORROWINGS AND DEPOSIT LIABILITIES	12,398	9,439	1,905	481	573
U.S. BANKS	11,187	9,392	1,460	237	99
FOREIGN BANKS	1,212	47	446	244	474
MISCELLANEOUS LIABILITIES	3,761	2,298	537	594	333
LIABILITIES ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	24,144	14,795	6,421	2,323	605
CLEARING BALANCES DUE TO OTHERS	4,976	1,880	1,184	1,638	273
DUE TO U.S. BANKING AFFILIATES	4,950	3,310	1,260	364	16
DUE TO FOREIGN PARENT AND AFFILIATES	14,218	9,605	3,977	321	315
CAPITAL ACCOUNTS AND RESERVES	1,565	254	128	1,041	143
NUMBER OF REPORTING INSTITUTIONS	165	75	57	30	3

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

Table 3a

U.S. BANKING INSTITUTIONS OWNED BY FOREIGN BANKS
FOR MONTHLY REPORT DATE IN ----APRIL 1977
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES***	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL ASSETS	66,196	25,198	23,896	15,167	1,936
ASSETS OF "STANDARD" BANKING BUSINESS	49,142	17,052	17,679	12,945	1,465
LOANS AND CREDITS	26,890	11,716	7,256	7,290	628
COMMERCIAL AND INDUSTRIAL **	23,702	11,659	7,013	4,409	620
(U.S.)	(17,531)	(9,068)	(4,337)	(3,629)	(497)
(FOREIGN)	(6,170)	(2,591)	(2,676)	(780)	(124)
MISC. U.S. LOANS INCLUDING RETAIL	3,188	56	243	2,881	8
MONEY-MARKET ASSETS	18,087	4,477	9,455	3,565	590
INTERBANK LOANS AND DEPOSITS	13,851	3,735	8,704	1,017	396
(U.S.)	(8,858)	(2,981)	(4,772)	(860)	(244)
(FOREIGN)	(4,993)	(753)	(3,931)	(158)	(151)
LOANS TO SECURITY DEALERS	705	214	309	169	13
U.S. GOVT. AND AGENCY SECURITIES	3,531	528	442	2,379	181
MISCELLANEOUS ASSETS	4,165	859	969	2,089	248
ASSETS ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	17,054	8,145	6,216	2,222	470
CLEARING BALANCES DUE FROM OTHERS	5,883	1,406	2,504	1,697	277
DUE FROM U.S. BANKING AFFILIATES	4,163	3,138	826	147	53
DUE FROM FOREIGN PARENT & AFFILIATES	7,007	3,602	2,887	378	141

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

** INCLUDES CUSTOMERS' LIABILITIES ON ACCEPTANCES OUTSTANDING AND ON DEFERRED PAYMENT LETTERS OF CREDIT.

*** INCLUDES FOREIGN BANK-OWNED AGREEMENT CORPORATIONS.

Table 3b

U.S. BANKING INSTITUTIONS OWNED BY FOREIGN BANKS
FOR MONTHLY REPORT DATE IN ----APRIL 1977
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES ***	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL LIABILITIES AND EQUITY	66,196	25,198	23,896	15,167	1,936
LIABILITIES OF "STANDARD" BANKING BUSINESS	40,080	13,257	13,456	12,338	1,028
LIABILITIES TO CORPORATIONS AND OTHER NON-BANKS	23,360	2,602	9,286	10,920	552
DEMAND DEPOSITS AND CREDIT BALANCES	5,242	386	1,302	3,339	216
TIME AND SAVINGS DEPOSITS AND OTHER BORROWINGS	18,118	2,216	7,985	7,581	337
(DEPOSITS OF U.S. RESIDENTS)	(15,135)	(1,204)	(4,152)	(9,715)	(63)
(DEPOSITS OF FOREIGNERS)	(8,225)	(1,397)	(5,134)	(1,205)	(489)
MONEY-MARKET LIABILITIES					
INTER-BANK BORROWINGS AND DEPOSIT LIABILITIES	12,294	7,969	3,525	533	267
U.S. BANKS	11,534	7,877	2,994	402	260
FOREIGN BANKS	759	92	531	130	6
MISCELLANEOUS LIABILITIES	4,426	2,686	645	886	209
LIABILITIES ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	23,962	11,639	10,241	1,350	732
CLEARING BALANCES DUE TO OTHERS	4,598	1,680	1,545	824	549
DUE TO U.S. BANKING AFFILIATES	4,765	2,861	1,580	299	25
DUE TO FOREIGN PARENT AND AFFILIATES	14,599	7,098	7,116	227	158
CAPITAL ACCOUNTS AND RESERVES	2,154	302	198	1,478	175
NUMBER OF REPORTING INSTITUTIONS	210	95	76	34	5

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

*** INCLUDES FOREIGN BANK-OWNED AGREEMENT CORPORATIONS.

Table 4a

U.S. BANKING INSTITUTIONS OWNED BY FOREIGN BANKS
LOCATED IN ——————————NEW YORK
FOR MONTHLY REPORT DATE IN —NOVEMBER 1972
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL ASSETS	17,882	10,019	4,412	2,136	1,316
ASSETS OF "STANDARD" BANKING BUSINESS	14,067	8,060	2,990	1,933	1,084
LOANS AND CREDITS	8,200	5,328	1,234	922	717
COMMERCIAL AND INDUSTRIAL**	8,002	5,296	1,195	814	696
(U.S.)	(6,052)	(4,063)	(719)	(762)	(508)
(FOREIGN)	(1,949)	(1,233)	(476)	(52)	(188)
MISC. U.S. LOANS INCLUDING RETAIL	199	32	39	107	21
MONEY-MARKET ASSETS	4,976	2,502	1,531	715	229
INTERBANK LOANS AND DEPOSITS	2,658	1,282	1,195	100	81
(U.S.)	(2,242)	(1,181)	(945)	(70)	(46)
(FOREIGN)	(416)	(101)	(250)	(31)	(34)
LOANS TO SECURITY DEALERS	1,175	789	192	98	95
U.S. GOVT. AND AGENCY SECURITIES	1,142	431	143	517	53
MISCELLANEOUS ASSETS	891	230	226	296	138
ASSETS ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	3,815	1,959	1,422	202	232
CLEARING BALANCES DUE FROM OTHERS	1,822	678	785	184	175
DUE FROM U.S. BANKING AFFILIATES	114	85	23	2	5
DUE FROM FOREIGN PARENT & AFFILIATES	1,879	1,195	615	17	53

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

** INCLUDES CUSTOMERS' LIABILITIES ON ACCEPTANCES OUTSTANDING AND ON DEFERRED PAYMENT LETTERS OF CREDIT.

Table 4b
U.S. BANKING INSTITUTIONS OWNED BY FOREIGN BANKS
LOCATED IN ------------NEW YORK
FOR MONTHLY REPORT DATE IN -NOVEMBER 1972
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL LIABILITIES AND EQUITY	17,882	10,019	4,412	2,136	1,316
LIABILITIES OF "STANDARD" BANKING BUSINESS	6,390	1,908	2,053	1,601	628
LIABILITIES TO CORPORATIONS AND OTHER NON-BANKS	3,793	522	1,404	1,414	454
DEMAND DEPOSITS AND CREDIT BALANCES	1,316	301	379	527	108
TIME AND SAVINGS DEPOSITS AND OTHER BORROWINGS	2,477	221	1,024	887	345
(DEPOSITS OF U.S. RESIDENTS)	(2,102)	(352)	(600)	(1,058)	(92)
(DEPOSITS OF FOREIGNERS)	(1,692)	(170)	(803)	(356)	(362)
MONEY-MARKET LIABILITIES					
INTER-BANK BORROWINGS AND DEPOSIT LIABILITIES	1,226	572	313	94	248
U.S. BANKS	968	571	287	77	33
FOREIGN BANKS	258	0	26	17	215
MISCELLANEOUS LIABILITIES	1,370	814	337	93	126
LIABILITIES ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	11,044	8,047	2,323	294	380
CLEARING BALANCES DUE TO OTHERS	1,479	776	405	137	160
DUE TO U.S. BANKING AFFILIATES	810	690	13	101	5
DUE TO FOREIGN PARENT AND AFFILIATES	8,755	6,581	1,905	56	214
CAPITAL ACCOUNTS AND RESERVES	448	63	37	240	108
NUMBER OF REPORTING INSTITUTIONS	63	26	20	14	3

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

Table 5a
U.S. BANKING INSTITUTIONS OWNED BY FOREIGN BANKS
LOCATED IN ------------NEW YORK
FOR MONTHLY REPORT DATE IN -DECEMBER 1974
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL ASSETS	38,507	18,389	10,454	7,343	2,320
ASSETS OF "STANDARD" BANKING BUSINESS	27,453	13,229	6,951	5,395	1,878
LOANS AND CREDITS	16,190	9,135	3,146	2,770	1,138
COMMERCIAL AND INDUSTRIAL**	15,282	9,078	3,105	1,992	1,107
(U.S.)	(11,121)	(6,704)	(1,821)	(1,782)	(813)
(FOREIGN)	(4,162)	(2,374)	(1,284)	(209)	(294)
MISC. U.S. LOANS INCLUDING RETAIL	908	57	41	778	31
MONEY-MARKET ASSETS	8,983	3,548	3,290	1,651	493
INTERBANK LOANS AND DEPOSITS	5,980	2,570	2,848	304	258
(U.S.)	(3,644)	(1,612)	(1,856)	(257)	(119)
(FOREIGN)	(2,136)	(959)	(992)	(46)	(139)
LOANS TO SECURITY DEALERS	588	456	50	72	10
U.S. GOVT. AND AGENCY SECURITIES	2,414	522	392	1,275	225
MISCELLANEOUS ASSETS	2,280	545	515	974	246
ASSETS ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	11,054	5,160	3,503	1,948	442
CLEARING BALANCES DUE FROM OTHERS	5,868	1,677	1,952	1,921	317
DUE FROM U.S. BANKING AFFILIATES	396	284	84	16	11
DUE FROM FOREIGN PARENT & AFFILIATES	4,791	3,199	1,468	10	114

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

** INCLUDES CUSTOMERS' LIABILITIES ON ACCEPTANCES OUTSTANDING AND ON DEFERRED PAYMENT LETTERS OF CREDIT.

Table 5b

U.S. BANKING INSTITUTIONS OWNED BY FOREIGN BANKS
LOCATED IN ————————NEW YORK
FOR MONTHLY REPORT DATE IN —DECEMBER 1974
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL LIABILITIES AND EQUITY	38,507	18,389	10,454	7,343	2,320
LIABILITIES OF "STANDARD" BANKING BUSINESS	17,439	5,844	5,200	4,822	1,573
LIABILITIES TO CORPORATIONS AND OTHER NON-BANKS	9,213	1,248	3,239	4,058	667
DEMAND DEPOSITS AND CREDIT BALANCES	3,313	613	766	1,759	175
TIME AND SAVINGS DEPOSITS AND OTHER BORROWINGS	5,899	635	2,473	2,299	493
(DEPOSITS OF U.S. RESIDENTS)	(5,177)	(796)	(744)	(3,495)	(142)
(DEPOSITS OF FOREIGNERS)	(4,036)	(452)	(2,496)	(563)	(525)
MONEY-MARKET LIABILITIES					
INTER-BANK BORROWINGS AND DEPOSIT LIABILITIES	5,431	2,882	1,605	371	573
U.S. BANKS	4,337	2,881	1,224	133	99
FOREIGN BANKS	1,093	0	381	238	474
MISCELLANEOUS LIABILITIES	2,795	1,714	355	393	333
LIABILITIES ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	20,021	12,365	5,158	1,893	605
CLEARING BALANCES DUE TO OTHERS	4,736	1,786	1,162	1,514	273
DUE TO U.S. BANKING AFFILIATES	2,973	2,532	267	157	16
DUE TO FOREIGN PARENT AND AFFILIATES	12,312	8,047	3,728	223	315
CAPITAL ACCOUNTS AND RESERVES	1,047	180	97	628	143
NUMBER OF REPORTING INSTITUTIONS	81	35	29	14	3

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

Table 6a
U.S. BANKING INSTITUTIONS OWNED BY FOREIGN BANKS
LOCATED IN -------------NEW YORK
FOR MONTHLY REPORT DATE IN ----APRIL 1977
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL ASSETS	45,294	14,865	20,326	8,166	1,936
ASSETS OF "STANDARD" BANKING BUSINESS	34,454	11,360	14,991	6,637	1,465
LOANS AND CREDITS	16,619	7,646	5,254	3,091	628
COMMERCIAL AND INDUSTRIAL**	15,772	7,614	5,139	2,399	620
(U.S.)	(11,013)	(5,597)	(2,995)	(1,924)	(497)
(FOREIGN)	(4,759)	(2,017)	(2,144)	(475)	(124)
MISC. U.S. LOANS INCLUDING RETAIL	847	32	115	692	8
MONEY-MARKET ASSETS	14,789	3,202	8,952	2,045	590
INTERBANK LOANS AND DEPOSITS	11,805	2,517	8,258	634	396
(U.S.)	(7,397)	(2,168)	(4,443)	(541)	(244)
(FOREIGN)	(4,408)	(349)	(3,815)	(92)	(151)
LOANS TO SECURITY DEALERS	676	206	307	149	13
U.S. GOVT. AND AGENCY SECURITIES	2,308	479	386	1,262	181
MISCELLANEOUS ASSETS	3,047	513	785	1,501	248
ASSETS ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	10,840	3,505	5,335	1,530	470
CLEARING BALANCES DUE FROM OTHERS	4,779	1,108	2,200	1,193	277
DUE FROM U.S. BANKING AFFILIATES	813	35	610	116	53
DUE FROM FOREIGN PARENT & AFFILIATES	5,248	2,362	2,525	221	141

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

** INCLUDES CUSTOMERS' LIABILITIES ON ACCEPTANCES OUTSTANDING AND ON DEFERRED PAYMENT LETTERS OF CREDIT.

Table 6b
U.S. BANKING INSTITUTIONS OWNED BY FOREIGN BANKS
LOCATED IN -------------NEW YORK
FOR MONTHLY REPORT DATE IN ----APRIL 1977
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL LIABILITIES AND EQUITY	45,294	14,865	20,326	8,166	1,936
LIABILITIES OF "STANDARD" BANKING BUSINESS	23,590	4,916	11,258	6,388	1,028
LIABILITIES TO CORPORATIONS AND OTHER NON-BANKS	15,368	1,334	7,920	5,562	552
DEMAND DEPOSITS AND CREDIT BALANCES	3,262	346	1,118	1,582	216
TIME AND SAVINGS DEPOSITS AND OTHER BORROWINGS	12,106	989	6,802	3,979	337
(DEPOSITS OF U.S. RESIDENTS)	(8,181)	(644)	(2,949)	(4,524)	(63)
(DEPOSITS OF FOREIGNERS)	(7,187)	(690)	(4,971)	(1,038)	(489)
MONEY-MARKET LIABILITIES					
INTER-BANK BORROWINGS AND DEPOSIT LIABILITIES	5,230	1,829	2,802	333	267
U.S. BANKS	4,705	1,819	2,402	224	260
FOREIGN BANKS	525	10	400	109	6
MISCELLANEOUS LIABILITIES	2,991	1,753	536	493	209
LIABILITIES ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	20,309	9,772	8,911	894	732
CLEARING BALANCES DUE TO OTHERS	4,291	1,581	1,514	648	549
DUE TO U.S. BANKING AFFILIATES	3,000	2,000	832	144	25
DUE TO FOREIGN PARENT AND AFFILIATES	13,018	6,191	6,566	102	158
CAPITAL ACCOUNTS AND RESERVES	1,395	178	157	884	175
NUMBER OF REPORTING INSTITUTIONS	105	43	41	16	5

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

Table 7a
U.S. BANKING INSTITUTIONS OWNED BY FOREIGN BANKS
LOCATED IN -----------CALIFORNIA
FOR MONTHLY REPORT DATE IN -NOVEMBER 1972
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL ASSETS	5,511	3,616	0	1,895	0
ASSETS OF "STANDARD" BANKING BUSINESS	3,679	1,899	0	1,780	0
LOANS AND CREDITS	2,810	1,651	0	1,159	0
COMMERCIAL AND INDUSTRIAL **	2,303	1,646	0	656	0
(U.S.)	(2,020)	(1,469)	(0)	(551)	(0)
(FOREIGN)	(282)	(177)	(0)	(106)	(0)
MISC. U.S. LOANS INCLUDING RETAIL	507	5	0	503	0
MONEY-MARKET ASSETS	742	212	0	529	0
INTERBANK LOANS AND DEPOSITS	262	198	0	64	0
(U.S.)	(134)	(72)	(0)	(62)	(0)
(FOREIGN)	(128)	(126)	(0)	(2)	(0)
LOANS TO SECURITY DEALERS	7	0	0	7	0
U.S. GOVT. AND AGENCY SECURITIES	473	14	0	459	0
MISCELLANEOUS ASSETS	128	36	0	91	0
ASSETS ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES.	1,832	1,717	0	115	0
CLEARING BALANCES DUE FROM OTHERS	121	23	0	98	0
DUE FROM U.S. BANKING AFFILIATES	1,282	1,277	0	6	0
DUE FROM FOREIGN PARENT & AFFILIATES	428	417	0	11	0

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

** INCLUDES CUSTOMERS' LIABILITIES ON ACCEPTANCES OUTSTANDING AND ON DEFERRED PAYMENT LETTERS OF CREDIT.

Table 7b
U.S. BANKING INSTITUTIONS OWNED BY FOREIGN BANKS
LOCATED IN -----------CALIFORNIA
FOR MONTHLY REPORT DATE IN -NOVEMBER 1972
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL LIABILITIES AND EQUITY	5,511	3,616	0	1,895	0
LIABILITIES OF "STANDARD" BANKING BUSINESS	3,525	1,968	0	1,558	0
LIABILITIES TO CORPORATIONS AND OTHER NON-BANKS	1,736	271	0	1,465	0
DEMAND DEPOSITS AND CREDIT BALANCES	434	19	0	416	0
TIME AND SAVINGS DEPOSITS AND OTHER BORROWINGS	1,302	252	0	1,050	0
(DEPOSITS OF U.S. RESIDENTS)	(1,503)	(68)	(0)	(1,435)	(0)
(DEPOSITS OF FOREIGNERS)	(233)	(204)	(0)	(30)	(0)
MONEY-MARKET LIABILITIES					
INTER-BANK BORROWINGS AND DEPOSIT LIABILITIES	1,381	1,352	0	29	0
U.S. BANKS	1,246	1,232	0	14	0
FOREIGN BANKS	136	121	0	15	0
MISCELLANEOUS LIABILITIES	408	344	0	63	0
LIABILITIES ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	1,788	1,622	0	166	0
CLEARING BALANCES DUE TO OTHERS	47	9	0	38	0
DUE TO U.S. BANKING AFFILIATES	1,034	925	0	108	0
DUE TO FOREIGN PARENT AND AFFILIATES	707	687	0	19	0
CAPITAL ACCOUNTS AND RESERVES	198	27	0	171	0
NUMBER OF REPORTING INSTITUTIONS	34	24	0	10	0

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

Table 8a
U.S. BANKING INSTITUTIONS OWNED BY FOREIGN BANKS
LOCATED IN ----------CALIFORNIA
FOR MONTHLY REPORT DATE IN -DECEMBER 1974
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL ASSETS	14,860	10,397	0	4,463	0
ASSETS OF "STANDARD" BANKING BUSINESS	8,933	4,919	0	4,013	0
LOANS AND CREDITS	6,600	3,895	0	2,705	0
COMMERCIAL AND INDUSTRIAL **	5,174	3,890	0	1,284	0
(U.S.)	(4,582)	(3,366)	(0)	(1,217)	(0)
(FOREIGN)	(592)	(525)	(0)	(67)	(0)
MISC. U.S. LOANS INCLUDING RETAIL	1,426	5	0	1,421	0
MONEY-MARKET ASSETS	1,683	724	0	959	0
INTERBANK LOANS AND DEPOSITS	859	703	0	156	0
(U.S.)	(633)	(484)	(0)	(148)	(0)
(FOREIGN)	(226)	(219)	(0)	(8)	(0)
LOANS TO SECURITY DEALERS	7	0	0	7	0
U.S. GOVT. AND AGENCY SECURITIES	817	21	0	796	0
MISCELLANEOUS ASSETS	650	301	0	349	0
ASSETS ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	5,927	5,478	0	450	0
CLEARING BALANCES DUE FROM OTHERS	561	155	0	406	0
DUE FROM U.S. BANKING AFFILIATES	4,224	4,200	0	24	0
DUE FROM FOREIGN PARENT & AFFILIATES	1,143	1,122	0	20	0

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

** INCLUDES CUSTOMERS' LIABILITIES ON ACCEPTANCES OUTSTANDING AND ON DEFERRED PAYMENT LETTERS OF CREDIT.

Table 8b
U.S. BANKING INSTITUTIONS OWNED BY FOREIGN BANKS
LOCATED IN ----------CALIFORNIA
FOR MONTHLY REPORT DATE IN -DECEMBER 1974
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL LIABILITIES AND EQUITY	14,860	10,397	0	4,463	0
LIABILITIES OF "STANDARD" BANKING BUSINESS	11,558	7,894	0	3,664	0
LIABILITIES TO CORPORATIONS AND OTHER NON-BANKS	4,147	756	0	3,391	0
DEMAND DEPOSITS AND CREDIT BALANCES	1,278	70	0	1,208	0
TIME AND SAVINGS DEPOSITS AND OTHER BORROWINGS	2,869	686	0	2,183	0
(DEPOSITS OF U.S. RESIDENTS)	(3,678)	(339)	(0)	(3,339)	(0)
(DEPOSITS OF FOREIGNERS)	(469)	(417)	(0)	(52)	(0)
MONEY-MARKET LIABILITIES					
INTER-BANK BORROWINGS AND DEPOSIT LIABILITIES	6,633	6,555	0	78	0
U.S. BANKS	6,582	6,507	0	75	0
FOREIGN BANKS	51	47	0	3	0
MISCELLANEOUS LIABILITIES	778	583	0	195	0
LIABILITIES ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	2,831	2,429	0	402	0
CLEARING BALANCES DUE TO OTHERS	208	94	0	114	0
DUE TO U.S. BANKING AFFILIATES	983	778	0	205	0
DUE TO FOREIGN PARENT AND AFFILIATES	1,639	1,557	0	82	0
CAPITAL ACCOUNTS AND RESERVES	471	74	0	397	0
NUMBER OF REPORTING INSTITUTIONS	53	39	0	14	0

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

93-031 O - 77 - 5

Table 9a

U.S. BANKING INSTITUTIONS OWNED BY FOREIGN BANKS
LOCATED IN -------------CALIFORNIA
FOR MONTHLY REPORT DATE IN ----APRIL 1977
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL ASSETS	16,966	10,314	0	6,652	0
ASSETS OF "STANDARD" BANKING BUSINESS	11,698	5,674	0	6,023	0
LOANS AND CREDITS	8,093	4,057	0	4,036	0
COMMERCIAL AND INDUSTRIAL **	5,895	4,032	0	1,863	0
(U.S.)	(5,059)	(3,459)	(0)	(1,600)	(0)
(FOREIGN)	(837)	(573)	(0)	(263)	(0)
MISC. U.S. LOANS INCLUDING RETAIL	2,197	24	0	2,173	0
MONEY-MARKET ASSETS	2,688	1,271	0	1,417	0
INTERBANK LOANS AND DEPOSITS	1,539	1,213	0	326	0
(U.S.)	(1,098)	(809)	(0)	(289)	(0)
(FOREIGN)	(441)	(404)	(0)	(37)	(0)
LOANS TO SECURITY DEALERS	28	8	0	20	0
U.S. GOVT. AND AGENCY SECURITIES	1,121	50	0	1,071	0
MISCELLANEOUS ASSETS	917	347	0	570	0
ASSETS ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	5,268	4,640	0	628	0
CLEARING BALANCES DUE FROM OTHERS	736	296	0	439	0
DUE FROM U.S. BANKING AFFILIATES	3,134	3,103	0	31	0
DUE FROM FOREIGN PARENT & AFFILIATES	1,398	1,240	0	158	0

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

** INCLUDES CUSTOMERS' LIABILITIES ON ACCEPTANCES OUTSTANDING AND ON DEFERRED PAYMENT LETTERS OF CREDIT.

Table 9b
U.S. BANKING INSTITUTIONS OWNED BY FOREIGN BANKS
LOCATED IN -----------CALIFORNIA
FOR MONTHLY REPORT DATE IN ----APRIL 1977
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL LIABILITIES AND EQUITY	16,966	10,314	0	6,652	0
LIABILITIES OF "STANDARD" BANKING BUSINESS	13,984	8,332	0	5,652	0
LIABILITIES TO CORPORATIONS AND OTHER NON-BANKS	6,406	1,266	0	5,140	0
DEMAND DEPOSITS AND CREDIT BALANCES	1,769	39	0	1,731	0
TIME AND SAVINGS DEPOSITS AND OTHER BORROWINGS	4,636	1,227	0	3,409	0
(DEPOSITS OF U.S. RESIDENTS)	(5,596)	(558)	(0)	(5,038)	(0)
(DEPOSITS OF FOREIGNERS)	(810)	(707)	(0)	(103)	(0)
MONEY-MARKET LIABILITIES					
INTER-BANK BORROWINGS AND DEPOSIT LIABILITIES	6,277	6,140	0	137	0
U.S. BANKS	6,185	6,058	0	127	0
FOREIGN BANKS	92	82	0	10	0
MISCELLANEOUS LIABILITIES	1,301	926	0	375	0
LIABILITIES ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	2,300	1,860	0	440	0
CLEARING BALANCES DUE TO OTHERS	273	100	0	173	0
DUE TO U.S. BANKING AFFILIATES	1,015	860	0	155	0
DUE TO FOREIGN PARENT AND AFFILIATES	1,012	900	0	113	0
CAPITAL ACCOUNTS AND RESERVES	682	122	0	560	0
NUMBER OF REPORTING INSTITUTIONS	63	48	0	15	0

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

Table 10a
U.S. BANKING INSTITUTIONS OWNED BY BANKS IN --------------JAPAN
FOR MONTHLY REPORT DATE IN -NOVEMBER 1972
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL ASSETS	10,968	8,766	190	2,012	0
ASSETS OF "STANDARD" BANKING BUSINESS	8,814	6,857	43	1,914	0
LOANS AND CREDITS	7,080	5,834	19	1,227	0
COMMERCIAL AND INDUSTRIAL **	6,741	5,834	19	888	0
(U.S.)	(5,397)	(4,612)	(19)	(767)	(0)
(FOREIGN)	(1,343)	(1,222)	(0)	(121)	(0)
MISC. U.S. LOANS INCLUDING RETAIL	339	0	0	339	0
MONEY-MARKET ASSETS	1,506	873	24	609	0
INTERBANK LOANS AND DEPOSITS	744	661	23	60	0
(U.S.)	(668)	(609)	(0)	(60)	(0)
(FOREIGN)	(76)	(52)	(23)	(1)	(0)
LOANS TO SECURITY DEALERS	20	20	0	0	0
U.S. GOVT. AND AGENCY SECURITIES	741	192	1	548	0
MISCELLANEOUS ASSETS	228	150	0	78	0
ASSETS ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	2,154	1,909	147	98	0
CLEARING BALANCES DUE FROM OTHERS	440	343	2	94	0
DUE FROM U.S. BANKING AFFILIATES	1,451	1,325	124	1	0
DUE FROM FOREIGN PARENT & AFFILIATES	264	241	21	3	0

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

** INCLUDES CUSTOMERS' LIABILITIES ON ACCEPTANCES OUTSTANDING AND ON DEFERRED PAYMENT LETTERS OF CREDIT.

Table 10b

U.S. BANKING INSTITUTIONS OWNED BY BANKS IN ---------------JAPAN
FOR MONTHLY REPORT DATE IN -NOVEMBER 1972
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL LIABILITIES AND EQUITY	10,968	8,766	190	2,012	0
LIABILITIES OF "STANDARD" BANKING BUSINESS	4,691	3,044	58	1,589	0
LIABILITIES TO CORPORATIONS AND OTHER NON-BANKS	1,904	387	40	1,477	0
DEMAND DEPOSITS AND CREDIT BALANCES	556	130	7	419	0
TIME AND SAVINGS DEPOSITS AND OTHER BORROWINGS	1,348	257	33	1,058	0
(DEPOSITS OF U.S. RESIDENTS)	(1,762)	(365)	(39)	(1,358)	(0)
(DEPOSITS OF FOREIGNERS)	(142)	(21)	(1)	(119)	(0)
MONEY-MARKET LIABILITIES					
INTER-BANK BORROWINGS AND DEPOSIT LIABILITIES	1,700	1,659	8	33	0
U.S. BANKS	1,685	1,659	8	18	0
FOREIGN BANKS	15	0	0	15	0
MISCELLANEOUS LIABILITIES	1,088	998	10	80	0
LIABILITIES ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	6,042	5,665	127	250	0
CLEARING BALANCES DUE TO OTHERS	389	362	0	27	0
DUE TO U.S. BANKING AFFILIATES	1,647	1,318	125	205	0
DUE TO FOREIGN PARENT AND AFFILIATES	4,006	3,986	2	19	0
CAPITAL ACCOUNTS AND RESERVES	235	57	5	173	0
NUMBER OF REPORTING INSTITUTIONS	28	21	1	6	0

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

Table 11a
U.S. BANKING INSTITUTIONS OWNED BY BANKS IN ---------------JAPAN
FOR MONTHLY REPORT DATE IN -DECEMBER 1974
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL ASSETS	23,707	18,872	1,440	3,394	0
ASSETS OF "STANDARD" BANKING BUSINESS	16,599	12,657	927	3,015	0
LOANS AND CREDITS	13,250	10,509	847	1,894	0
COMMERCIAL AND INDUSTRIAL**	12,697	10,481	847	1,370	0
(U.S.)	(9,793)	(8,081)	(412)	(1,300)	(0)
(FOREIGN)	(2,904)	(2,400)	(435)	(70)	(0)
MISC. U.S. LOANS INCLUDING RETAIL	553	29	0	524	0
MONEY-MARKET ASSETS	2,656	1,665	67	924	0
INTERBANK LOANS AND DEPOSITS	1,566	1,314	63	189	0
(U.S.)	(1,235)	(985)	(62)	(188)	(0)
(FOREIGN)	(331)	(329)	(1)	(1)	(0)
LOANS TO SECURITY DEALERS	80	60	0	20	0
U.S. GOVT. AND AGENCY SECURITIES	1,010	290	4	715	0
MISCELLANEOUS ASSETS	693	483	13	197	0
ASSETS ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	7,108	6,216	513	379	0
CLEARING BALANCES DUE FROM OTHERS	1,366	983	19	364	0
DUE FROM U.S. BANKING AFFILIATES	4,163	4,059	92	12	0
DUE FROM FOREIGN PARENT & AFFILIATES	1,579	1,174	402	3	0

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

** INCLUDES CUSTOMERS' LIABILITIES ON ACCEPTANCES OUTSTANDING AND ON DEFERRED PAYMENT LETTERS OF CREDIT.

Table 11b

U.S. BANKING INSTITUTIONS OWNED BY BANKS IN ---------------JAPAN

FOR MONTHLY REPORT DATE IN -DECEMBER 1974

(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL LIABILITIES AND EQUITY	23,707	18,872	1,440	3,394	0
LIABILITIES OF "STANDARD" BANKING BUSINESS	13,519	10,421	427	2,671	0
LIABILITIES TO CORPORATIONS AND OTHER NON-BANKS	3,816	1,194	124	2,498	0
DEMAND DEPOSITS AND CREDIT BALANCES	1,331	321	49	962	0
TIME AND SAVINGS DEPOSITS AND OTHER BORROWINGS	2,485	874	75	1,536	0
(DEPOSITS OF U.S. RESIDENTS)	(3,262)	(816)	(106)	(2,340)	(0)
(DEPOSITS OF FOREIGNERS)	(554)	(378)	(18)	(158)	(0)
MONEY-MARKET LIABILITIES					
INTER-BANK BORROWINGS AND DEPOSIT LIABILITIES	7,510	7,307	158	45	0
U.S. BANKS	7,485	7,307	133	44	0
FOREIGN BANKS	26	0	25	1	0
MISCELLANEOUS LIABILITIES	2,193	1,920	144	128	0
LIABILITIES ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	9,665	8,265	994	406	0
CLEARING BALANCES DUE TO OTHERS	981	926	2	54	0
DUE TO U.S. BANKING AFFILIATES	4,203	3,041	858	304	0
DUE TO FOREIGN PARENT AND AFFILIATES	4,481	4,298	134	48	0
CAPITAL ACCOUNTS AND RESERVES	523	186	19	318	0
NUMBER OF REPORTING INSTITUTIONS	44	30	6	8	0

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

Table 12a
U.S. BANKING INSTITUTIONS OWNED BY BANKS IN ---------------JAPAN
FOR MONTHLY REPORT DATE IN ----APRIL 1977
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES ***	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL ASSETS	23,491	15,330	2,453	5,708	0
ASSETS OF "STANDARD" BANKING BUSINESS	18,281	11,170	1,981	5,130	0
LOANS AND CREDITS	13,995	9,379	1,595	3,021	0
COMMERCIAL AND INDUSTRIAL **	12,915	9,371	1,595	1,949	0
(U.S.)	(9,992)	(7,356)	(984)	(1,653)	(0)
(FOREIGN)	(2,923)	(2,015)	(611)	(296)	(0)
MISC. U.S. LOANS INCLUDING RETAIL	1,080	8	0	1,072	0
MONEY-MARKET ASSETS	3,344	1,468	328	1,548	0
INTERBANK LOANS AND DEPOSITS	1,784	1,060	318	406	0
(U.S.)	(1,540)	(855)	(294)	(390)	(0)
(FOREIGN)	(244)	(205)	(24)	(15)	(0)
LOANS TO SECURITY DEALERS	62	10	1	52	0
U.S. GOVT. AND AGENCY SECURITIES	1,498	398	10	1,090	0
MISCELLANEOUS ASSETS	942	323	58	561	0
ASSETS ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	5,210	4,160	472	577	0
CLEARING BALANCES DUE FROM OTHERS	1,029	517	116	396	0
DUE FROM U.S. BANKING AFFILIATES	2,890	2,740	126	24	0
DUE FROM FOREIGN PARENT & AFFILIATES	1,292	904	230	158	0

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

** INCLUDES CUSTOMERS' LIABILITIES ON ACCEPTANCES OUTSTANDING AND ON DEFERRED PAYMENT LETTERS OF CREDIT.

*** INCLUDES FOREIGN BANK-OWNED AGREEMENT CORPORATION.

Table 12b

U.S. BANKING INSTITUTIONS OWNED BY BANKS IN ---------------JAPAN
FOR MONTHLY REPORT DATE IN ----APRIL 1977
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES***	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL LIABILITIES AND EQUITY	23,491	15,330	2,453	5,708	0
LIABILITIES OF "STANDARD" BANKING BUSINESS	15,336	9,605	1,095	4,636	0
LIABILITIES TO CORPORATIONS AND OTHER NON-BANKS	6,187	1,374	599	4,214	0
DEMAND DEPOSITS AND CREDIT BALANCES	1,305	136	54	1,115	0
TIME AND SAVINGS DEPOSITS AND OTHER BORROWINGS	4,882	1,238	545	3,099	0
(DEPOSITS OF U.S. RESIDENTS)	(5,243)	(939)	(520)	(3,784)	(0)
(DEPOSITS OF FOREIGNERS)	(944)	(435)	(79)	(430)	(0)
MONEY-MARKET LIABILITIES					
INTER-BANK BORROWINGS AND DEPOSIT LIABILITIES	6,442	6,000	312	130	0
U.S. BANKS	6,422	6,000	308	114	0
FOREIGN BANKS	20	0	4	16	0
MISCELLANEOUS LIABILITIES	2,708	2,231	185	292	0
LIABILITIES ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	7,340	5,518	1,324	497	0
CLEARING BALANCES DUE TO OTHERS	842	559	104	179	0
DUE TO U.S. BANKING AFFILIATES	3,351	2,330	746	274	0
DUE TO FOREIGN PARENT AND AFFILIATES	3,146	2,628	474	44	0
CAPITAL ACCOUNTS AND RESERVES	816	208	34	574	0
NUMBER OF REPORTING INSTITUTIONS	52	31	11	10	0

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

*** INCLUDES FOREIGN BANK-OWNED AGREEMENT CORPORATION.

Table 13a

U.S. BANKING INSTITUTIONS OWNED BY BANKS IN CANADA
FOR MONTHLY REPORT DATE IN NOVEMBER 1972
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL ASSETS	5,033	4,083	567	382	0
ASSETS OF "STANDARD" BANKING BUSINESS	3,200	2,617	244	339	0
LOANS AND CREDITS	1,317	940	227	150	0
COMMERCIAL AND INDUSTRIAL **	1,131	906	156	70	0
(U.S.)	(996)	(772)	(155)	(68)	(0)
(FOREIGN)	(135)	(134)	(0)	(2)	(0)
MISC. U.S. LOANS INCLUDING RETAIL	186	34	71	81	0
MONEY-MARKET ASSETS	1,720	1,586	3	131	0
INTERBANK LOANS AND DEPOSITS	626	607	0	19	0
(U.S.)	(563)	(544)	(0)	(18)	(0)
(FOREIGN)	(64)	(63)	(0)	(1)	(0)
LOANS TO SECURITY DEALERS	783	768	1	14	0
U.S. GOVT. AND AGENCY SECURITIES	311	211	2	98	0
MISCELLANEOUS ASSETS	163	91	14	57	0
ASSETS ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	1,833	1,467	323	43	0
CLEARING BALANCES DUE FROM OTHERS	368	314	21	33	0
DUE FROM U.S. BANKING AFFILIATES	280	36	240	4	0
DUE FROM FOREIGN PARENT & AFFILIATES	1,185	1,117	62	6	0

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

** INCLUDES CUSTOMERS' LIABILITIES ON ACCEPTANCES OUTSTANDING AND ON DEFERRED PAYMENT LETTERS OF CREDIT.

Table 13b

U.S. BANKING INSTITUTIONS OWNED BY BANKS IN -----------CANADA
FOR MONTHLY REPORT DATE IN -NOVEMBER 1972
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL LIABILITIES AND EQUITY	5,033	4,083	567	382	0
LIABILITIES OF "STANDARD" BANKING BUSINESS	1,140	354	486	301	0
LIABILITIES TO CORPORATIONS AND OTHER NON-BANKS	931	200	449	283	0
DEMAND DEPOSITS AND CREDIT BALANCES	338	129	72	137	0
TIME AND SAVINGS DEPOSITS AND OTHER BORROWINGS	593	70	377	146	0
(DEPOSITS OF U.S. RESIDENTS)	(667)	(49)	(416)	(202)	(0)
(DEPOSITS OF FOREIGNERS)	(264)	(151)	(33)	(80)	(0)
MONEY-MARKET LIABILITIES					
INTER-BANK BORROWINGS AND DEPOSIT LIABILITIES	108	88	19	1	0
U.S. BANKS	107	88	19	1	0
FOREIGN BANKS	1	0	0	1	0
MISCELLANEOUS LIABILITIES	101	66	18	17	0
LIABILITIES ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	3,820	3,720	79	21	0
CLEARING BALANCES DUE TO OTHERS	392	367	17	8	0
DUE TO U.S. BANKING AFFILIATES	284	284	0	1	0
DUE TO FOREIGN PARENT AND AFFILIATES	3,143	3,069	62	12	0
CAPITAL ACCOUNTS AND RESERVES	73	10	3	60	0
NUMBER OF REPORTING INSTITUTIONS	21	9	4	8	0

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

Table 14a

U.S. BANKING INSTITUTIONS OWNED BY BANKS IN ——————CANADA
FOR MONTHLY REPORT DATE IN —DECEMBER 1974
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL ASSETS	8,892	7,827	503	561	0
ASSETS OF "STANDARD" BANKING BUSINESS	5,082	4,198	396	488	0
LOANS AND CREDITS	2,738	2,090	359	289	0
COMMERCIAL AND INDUSTRIAL **	2,453	2,060	231	162	0
(U.S.)	(2,113)	(1,731)	(225)	(156)	(0)
(FOREIGN)	(340)	(329)	(6)	(5)	(0)
MISC. U.S. LOANS INCLUDING RETAIL	285	30	127	128	0
MONEY-MARKET ASSETS	2,018	1,858	14	146	0
INTERBANK LOANS AND DEPOSITS	1,295	1,271	6	18	0
(U.S.)	(650)	(627)	(6)	(17)	(0)
(FOREIGN)	(645)	(644)	(0)	(1)	(0)
LOANS TO SECURITY DEALERS	409	395	3	11	0
U.S. GOVT. AND AGENCY SECURITIES	313	191	6	116	0
MISCELLANEOUS ASSETS	327	251	23	53	0
ASSETS ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	3,810	3,629	107	74	0
CLEARING BALANCES DUE FROM OTHERS	666	601	10	55	0
DUE FROM U.S. BANKING AFFILIATES	260	191	68	1	0
DUE FROM FOREIGN PARENT & AFFILIATES	2,884	2,837	29	17	0

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

** INCLUDES CUSTOMERS' LIABILITIES ON ACCEPTANCES OUTSTANDING AND ON DEFERRED PAYMENT LETTERS OF CREDIT.

Table 14b

U.S. BANKING INSTITUTIONS OWNED BY BANKS IN ——————CANADA
FOR MONTHLY REPORT DATE IN -DECEMBER 1974
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL LIABILITIES AND EQUITY	8,892	7,827	503	561	0
LIABILITIES OF "STANDARD" BANKING BUSINESS	3,014	2,185	427	401	0
LIABILITIES TO CORPORATIONS AND OTHER NON-BANKS	1,086	396	318	371	0
DEMAND DEPOSITS AND CREDIT BALANCES	497	239	88	170	0
TIME AND SAVINGS DEPOSITS AND OTHER BORROWINGS	589	158	230	201	0
(DEPOSITS OF U.S. RESIDENTS)	(707)	(139)	(277)	(291)	(0)
(DEPOSITS OF FOREIGNERS)	(379)	(257)	(41)	(80)	(0)
MONEY-MARKET LIABILITIES					
INTER-BANK BORROWINGS AND DEPOSIT LIABILITIES	1,626	1,531	80	15	0
U.S. BANKS	1,576	1,528	35	13	0
FOREIGN BANKS	50	3	45	2	0
MISCELLANEOUS LIABILITIES	302	258	29	15	0
LIABILITIES ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	5,772	5,620	67	86	0
CLEARING BALANCES DUE TO OTHERS	736	716	9	12	0
DUE TO U.S. BANKING AFFILIATES	302	243	23	36	0
DUE TO FOREIGN PARENT AND AFFILIATES	4,734	4,662	35	38	0
CAPITAL ACCOUNTS AND RESERVES	106	22	10	75	0
NUMBER OF REPORTING INSTITUTIONS	25	11	6	8	0

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

Table 15a
U.S. BANKING INSTITUTIONS OWNED BY BANKS IN -------------CANADA
FOR MONTHLY REPORT DATE IN ----APRIL 1977
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL ASSETS	6,893	5,362	818	713	0
ASSETS OF "STANDARD" BANKING BUSINESS	4,363	3,068	627	668	0
LOANS AND CREDITS	2,432	1,520	516	396	0
COMMERCIAL AND INDUSTRIAL**	2,104	1,492	405	207	0
(U.S.)	(1,853)	(1,258)	(402)	(193)	(0)
(FOREIGN)	(251)	(233)	(3)	(14)	(0)
MISC. U.S. LOANS INCLUDING RETAIL	328	28	111	190	0
MONEY-MARKET ASSETS	1,523	1,291	18	214	0
INTERBANK LOANS AND DEPOSITS	1,173	1,077	13	83	0
(U.S.)	(1,051)	(959)	(13)	(79)	(0)
(FOREIGN)	(121)	(118)	(0)	(3)	(0)
LOANS TO SECURITY DEALERS	183	173	1	9	0
U.S. GOVT. AND AGENCY SECURITIES	168	40	4	123	0
MISCELLANEOUS ASSETS	408	257	93	57	0
ASSETS ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	2,530	2,294	191	44	0
CLEARING BALANCES DUE FROM OTHERS	533	473	26	34	0
DUE FROM U.S. BANKING AFFILIATES	34	26	5	4	0
DUE FROM FOREIGN PARENT & AFFILIATES	1,962	1,795	161	6	0

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

** INCLUDES CUSTOMERS' LIABILITIES ON ACCEPTANCES OUTSTANDING AND ON DEFERRED PAYMENT LETTERS OF CREDIT.

Table 15b

U.S. BANKING INSTITUTIONS OWNED BY BANKS IN -------------CANADA
FOR MONTHLY REPORT DATE IN ----APRIL 1977
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL LIABILITIES AND EQUITY	6,893	5,362	818	713	0
LIABILITIES OF "STANDARD" BANKING BUSINESS	2,250	1,011	704	535	0
LIABILITIES TO CORPORATIONS AND OTHER NON-BANKS	1,420	323	587	510	0
DEMAND DEPOSITS AND CREDIT BALANCES	457	151	109	197	0
TIME AND SAVINGS DEPOSITS AND OTHER BORROWINGS	963	171	479	313	0
(DEPOSITS OF U.S. RESIDENTS)	(989)	(118)	(514)	(357)	(0)
(DEPOSITS OF FOREIGNERS)	(431)	(204)	(74)	(153)	(0)
MONEY-MARKET LIABILITIES					
INTER-BANK BORROWINGS AND DEPOSIT LIABILITIES	575	513	60	2	0
U.S. BANKS	525	513	10	2	0
FOREIGN BANKS	50	0	50	0	0
MISCELLANEOUS LIABILITIES	255	175	57	23	0
LIABILITIES ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	4,519	4,328	104	87	0
CLEARING BALANCES DUE TO OTHERS	753	726	15	11	0
DUE TO U.S. BANKING AFFILIATES	219	156	54	9	0
DUE TO FOREIGN PARENT AND AFFILIATES	3,548	3,446	36	66	0
CAPITAL ACCOUNTS AND RESERVES	123	22	10	91	0
NUMBER OF REPORTING INSTITUTIONS	26	12	6	8	0

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

Table 16a
U.S. BANKING INSTITUTIONS OWNED BY BANKS IN ----EUROPE*
FOR MONTHLY REPORT DATE IN -NOVEMBER 1972
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL ASSETS	7,099	466	3,815	1,503	1,316
ASSETS OF "STANDARD" BANKING BUSINESS	5,176	252	2,493	1,348	1,084
LOANS AND CREDITS	2,448	77	970	684	717
COMMERCIAL AND INDUSTRIAL **	2,216	76	939	504	696
(U.S.)	(1,598)	(56)	(561)	(473)	(508)
(FOREIGN)	(618)	(20)	(379)	(31)	(188)
MISC. U.S. LOANS INCLUDING RETAIL	232	1	31	180	21
MONEY-MARKET ASSETS	2,224	166	1,365	465	229
INTERBANK LOANS AND DEPOSITS	1,391	155	1,070	87	81
(U.S.)	(1,007)	(52)	(853)	(56)	(46)
(FOREIGN)	(384)	(103)	(217)	(31)	(34)
LOANS TO SECURITY DEALERS	339	0	183	60	95
U.S. GOVT. AND AGENCY SECURITIES	494	11	112	318	53
MISCELLANEOUS ASSETS	504	9	158	199	138
ASSETS ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES'	1,923	214	1,322	155	232
CLEARING BALANCES DUE FROM OTHERS	923	14	596	139	175
DUE FROM U.S. BANKING AFFILIATES	31	0	24	2	5
DUE FROM FOREIGN PARENT & AFFILIATES	969	200	702	14	53

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

* FRANCE, GERMANY, GREECE, ITALY, THE NETHERLANDS, SPAIN, SWEDEN, SWITZERLAND, THE UNITED KINGDOM, AND THE EURO-AMERICAN GROUP.

** INCLUDES CUSTOMERS' LIABILITIES ON ACCEPTANCES OUTSTANDING AND ON DEFERRED PAYMENT LETTERS OF CREDIT.

Table 16b

U.S. BANKING INSTITUTIONS OWNED BY BANKS IN EUROPE*
FOR MONTHLY REPORT DATE IN NOVEMBER 1972
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL LIABILITIES AND EQUITY	7,099	466	3,815	1,503	1,316
LIABILITIES OF "STANDARD" BANKING BUSINESS	3,914	329	1,597	1,160	828
LIABILITIES TO CORPORATIONS AND OTHER NON-BANKS	2,837	139	1,232	1,012	454
DEMAND DEPOSITS AND CREDIT BALANCES	732	8	262	353	108
TIME AND SAVINGS DEPOSITS AND OTHER BORROWINGS	2,105	130	970	659	345
(DEPOSITS OF U.S. RESIDENTS)	(1,631)	(3)	(668)	(868)	(92)
(DEPOSITS OF FOREIGNERS)	(1,206)	(136)	(564)	(144)	(362)
MONEY-MARKET LIABILITIES					
INTER-BANK BORROWINGS AND DEPOSIT LIABILITIES	734	137	269	80	248
U.S. BANKS	360	16	248	64	33
FOREIGN BANKS	374	121	22	16	215
MISCELLANEOUS LIABILITIES	344	54	95	68	126
LIABILITIES ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	2,884	128	2,202	174	380
CLEARING BALANCES DUE TO OTHERS	658	44	333	120	160
DUE TO U.S. BANKING AFFILIATES	34	11	11	7	5
DUE TO FOREIGN PARENT AND AFFILIATES	2,192	73	1,858	47	214
CAPITAL ACCOUNTS AND RESERVES	301	8	16	169	108
NUMBER OF REPORTING INSTITUTIONS	36	11	13	9	3

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

* FRANCE, GERMANY, GREECE, ITALY, THE NETHERLANDS, SPAIN, SWEDEN, SWITZERLAND, THE UNITED KINGDOM, AND THE EURO-AMERICAN GROUP.

Table 17a
U.S. BANKING INSTITUTIONS OWNED BY BANKS IN EUROPE*
FOR MONTHLY REPORT DATE IN DECEMBER 1974
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL ASSETS	20,430	1,302	9,232	7,577	2,320
ASSETS OF "STANDARD" BANKING BUSINESS	14,497	849	6,106	5,665	1,878
LOANS AND CREDITS	7,278	286	2,712	3,142	1,138
COMMERCIAL AND INDUSTRIAL **	5,743	285	2,677	1,674	1,107
(U.S.)	(4,319)	(200)	(1,834)	(1,471)	(813)
(FOREIGN)	(1,424)	(86)	(842)	(202)	(294)
MISC. U.S. LOANS INCLUDING RETAIL	1,535	0	35	1,468	31
MONEY-MARKET ASSETS	5,462	513	2,939	1,517	493
INTERBANK LOANS AND DEPOSITS	3,597	498	2,550	290	258
(U.S.)	(2,212)	(313)	(1,547)	(232)	(119)
(FOREIGN)	(1,385)	(185)	(1,003)	(58)	(139)
LOANS TO SECURITY DEALERS	97	0	49	38	10
U.S. GOVT. AND AGENCY SECURITIES	1,768	15	339	1,189	225
MISCELLANEOUS ASSETS	1,757	50	456	1,006	246
ASSETS ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	5,933	453	3,126	1,912	442
CLEARING BALANCES DUE FROM OTHERS	3,933	70	1,660	1,885	317
DUE FROM U.S. BANKING AFFILIATES	379	225	129	13	11
DUE FROM FOREIGN PARENT & AFFILIATES	1,622	157	1,336	14	114

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

* FRANCE, GERMANY, GREECE, ITALY, THE NETHERLANDS, SPAIN, SWEDEN, SWITZERLAND, THE UNITED KINGDOM, AND THE EURO-AMERICAN GROUP.

** INCLUDES CUSTOMERS' LIABILITIES ON ACCEPTANCES OUTSTANDING AND ON DEFERRED PAYMENT LETTERS OF CREDIT.

Table 17b

U.S. BANKING INSTITUTIONS OWNED BY BANKS IN EUROPE*
FOR MONTHLY REPORT DATE IN DECEMBER 1974
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL LIABILITIES AND EQUITY	20,430	1,302	9,232	7,577	2,320
LIABILITIES OF "STANDARD" BANKING BUSINESS	12,112	702	4,657	5,180	1,573
LIABILITIES TO CORPORATIONS AND OTHER NON-BANKS	8,029	181	2,842	4,339	667
DEMAND DEPOSITS AND CREDIT BALANCES	2,506	21	582	1,728	175
TIME AND SAVINGS DEPOSITS AND OTHER BORROWINGS	5,523	160	2,260	2,610	493
(DEPOSITS OF U.S. RESIDENTS)	(4,963)	(32)	(743)	(4,045)	(142)
(DEPOSITS OF FOREIGNERS)	(3,066)	(148)	(2,099)	(294)	(525)
MONEY-MARKET LIABILITIES					
INTER-BANK BORROWINGS AND DEPOSIT LIABILITIES	2,967	439	1,553	402	573
U.S. BANKS	1,852	405	1,189	161	99
FOREIGN BANKS	1,114	34	364	242	474
MISCELLANEOUS LIABILITIES	1,116	83	262	439	333
LIABILITIES ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	7,503	583	4,521	1,794	605
CLEARING BALANCES DUE TO OTHERS	2,742	153	779	1,537	273
DUE TO U.S. BANKING AFFILIATES	420	12	367	24	16
DUE TO FOREIGN PARENT AND AFFILIATES	4,340	417	3,375	233	315
CAPITAL ACCOUNTS AND RESERVES	816	17	54	602	143
NUMBER OF REPORTING INSTITUTIONS	62	16	32	11	3

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

* FRANCE, GERMANY, GREECE, ITALY, THE NETHERLANDS, SPAIN, SWEDEN, SWITZERLAND, THE UNITED KINGDOM, AND THE EURO-AMERICAN GROUP.

Table 18a

U.S. BANKING INSTITUTIONS OWNED BY BANKS IN ----EUROPE*
FOR MONTHLY REPORT DATE IN ----APRIL 1977
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES***	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL ASSETS	30,451	2,288	18,193	8,034	1,936
ASSETS OF "STANDARD" BANKING BUSINESS	23,189	1,571	13,598	6,554	1,465
LOANS AND CREDITS	9,244	527	4,503	3,585	628
COMMERCIAL AND INDUSTRIAL**	7,621	527	4,406	2,067	620
(U.S.)	(5,080)	(305)	(2,683)	(1,595)	(497)
(FOREIGN)	(2,540)	(222)	(1,723)	(472)	(124)
MISC. U.S. LOANS INCLUDING RETAIL	1,623	0	98	1,518	8
MONEY-MARKET ASSETS	11,515	964	8,420	1,540	590
INTERBANK LOANS AND DEPOSITS	9,535	907	7,768	465	396
(U.S.)	(5,315)	(653)	(4,090)	(328)	(244)
(FOREIGN)	(4,220)	(254)	(3,678)	(138)	(151)
LOANS TO SECURITY DEALERS	355	31	272	38	13
U.S. GOVT. AND AGENCY SECURITIES	1,625	26	380	1,037	181
MISCELLANEOUS ASSETS	2,430	80	674	1,428	248
ASSETS ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	7,262	717	4,595	1,480	470
CLEARING BALANCES DUE FROM OTHERS	3,672	215	1,927	1,254	277
DUE FROM U.S. BANKING AFFILIATES	1,188	338	688	110	53
DUE FROM FOREIGN PARENT & AFFILIATES	2,402	165	1,980	116	141

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

* FRANCE, GERMANY, GREECE, ITALY, THE NETHERLANDS, SPAIN, SWEDEN, SWITZERLAND, THE UNITED KINGDOM, AND THE EURO-AMERICAN GROUP.

** INCLUDES CUSTOMERS' LIABILITIES ON ACCEPTANCES OUTSTANDING AND ON DEFERRED PAYMENT LETTERS OF CREDIT.

*** INCLUDES FOREIGN BANK-OWNED AGREEMENT CORPORATION.

Table 18b

U.S. BANKING INSTITUTIONS OWNED BY BANKS IN ----EUROPE*
FOR MONTHLY REPORT DATE IN ----APRIL 1977
(IN MILLIONS OF DOLLARS)

	ALL REPORTERS	AGENCIES	BRANCHES	COMMERCIAL BANKS	INVESTMENT COS.
TOTAL LIABILITIES AND EQUITY	30,451	2,288	18,193	8,034	1,936
LIABILITIES OF "STANDARD" BANKING BUSINESS	19,571	1,277	10,695	6,571	1,028
LIABILITIES TO CORPORATIONS AND OTHER NON-BANKS	13,870	342	7,284	5,692	552
DEMAND DEPOSITS AND CREDIT BALANCES	2,881	12	756	1,897	216
TIME AND SAVINGS DEPOSITS AND OTHER BORROWINGS	10,989	330	6,527	3,795	337
(DEPOSITS OF U.S. RESIDENTS)	(8,317)	(29)	(2,976)	(5,248)	(63)
(DEPOSITS OF FOREIGNERS)	(5,553)	(312)	(4,308)	(444)	(489)
MONEY-MARKET LIABILITIES					
INTER-BANK BORROWINGS AND DEPOSIT LIABILITIES	4,429	773	3,047	343	267
U.S. BANKS	3,836	752	2,589	235	260
FOREIGN BANKS	593	21	458	108	6
MISCELLANEOUS LIABILITIES	1,271	162	364	536	209
LIABILITIES ARISING FROM TRANSACTIONS INVOLVING PARENT AND AFFILIATES	9,824	982	7,393	716	732
CLEARING BALANCES DUE TO OTHERS	2,523	242	1,116	617	549
DUE TO U.S. BANKING AFFILIATES	1,111	311	762	14	25
DUE TO FOREIGN PARENT AND AFFILIATES	6,189	430	5,516	86	158
CAPITAL ACCOUNTS AND RESERVES	1,057	29	105	747	175
NUMBER OF REPORTING INSTITUTIONS	80	21	42	12	5

NOTE: DETAILS MAY NOT ADD TO TOTALS DUE TO ROUNDING.

* FRANCE, GERMANY, GREECE, ITALY, THE NETHERLANDS, SPAIN, SWEDEN, SWITZERLAND, THE UNITED KINGDOM, AND THE EURO-AMERICAN GROUP.

** INCLUDES FOREIGN BANK-OWNED AGREEMENT CORPORATION.

Table 19

LOCATION OF FOREIGN BANKING INSTITUTIONS IN THE U.S. AS OF APRIL 1977

COUNTRY OF PARENT BANK	CATEGORY OF INSTITUTION					
STATE OF REPORTER	AGENCIES	BRANCHES	SUB. COMM. BANKS	INVESTMENT COS.	AGREEMENT CORPS.	TOTAL
JAPAN						
NEW YORK	15	6	3	0	0	24
CALIFORNIA	15	-	6	-	0	21
ILLINOIS	-	2	1	-	0	3
ALL OTHERS	0	3	0	-	1	4
TOTAL	30	11	10	0	1	52
CANADA						
NEW YORK	6	0	5	-	0	11
CALIFORNIA	6	-	3	-	0	9
ILLINOIS	-	0	0	-	0	0
ALL OTHERS	0	6	0	-	0	6
TOTAL	12	6	8	0	0	26
UNITED KINGDOM						
NEW YORK	1	5	2	1	0	9
CALIFORNIA	3	-	3	-	0	6
ILLINOIS	-	4	0	-	0	4
ALL OTHERS	1	3	0	-	0	4
TOTAL	5	12	5	1	0	23
CONTINENTAL EUROPE						
NEW YORK	5	19	4	4	0	32
CALIFORNIA	10	-	1	-	0	11
ILLINOIS	-	11	1	-	1	13
ALL OTHERS	0	0	1	-	0	1
TOTAL	15	30	7	4	1	57
REST OF THE WORLD						
NEW YORK	16	11	2	0	0	29
CALIFORNIA	14	-	2	-	0	16
ILLINOIS	-	5	0	-	0	5
ALL OTHERS	1	1	0	-	0	2
TOTAL	31	17	4	0	0	52
ALL REPORTERS						
NEW YORK	43	41	16	5	0	105
CALIFORNIA	48	-	15	-	0	63
ILLINOIS	-	22	2	-	1	25
ALL OTHERS	2	13	1	-	1	17
TOTAL	93	76	34	5	2	210

Table 20a
Foreign Banking Institutions in the United States
Listed by Type of Institution, as of April 1977

INSTITUTE CODE

01 AGENCIES

BANK NAME	CITY	PARENT BANKING ORGANIZATION
BANCO DI NAPOLI AGENCY	NEW YORK	BANCO DI NAPOLI
BANCO NACL DE MEXICO AGENCY	NEW YORK	BANCO NACL DE MEXICO
BANGKOK BANK LTD AGENCY	NEW YORK	BANGKOK BANK
TAIYO KOBE LTD AGENCY	NEW YORK	TAIYO KOBE BANK
BANK LEUMI LE-ISRAEL	NEW YORK	BANK LEUMI LE-ISRAEL
BANK MELLI IRAN AGENCY	NEW YORK	BANK MELLI IRAN
BANK OF MONTREAL AGENCY	NEW YORK	BANK OF MONTREAL
BANK OF NOVA SCOTIA AGENCY	NEW YORK	BANK OF NOVA SCOTIA
BANK SADERAT IRAN AGENCY	NEW YORK	BANK SADERAT IRAN
BANK OF TOKYO LTD AGENCY	NEW YORK	BANK OF TOKYO
CANAD IMPL BK OF COMM AGENCY	NEW YORK	CANAD IMPL BK OF COMM
THOS COOK AND SON AGENCY	NEW YORK	THOS COOK AND SON
DAI-ICHI KANGYO BANK AGENCY	NEW YORK	DAI-ICHI KANGYO BANK
DAIWA BANK LTD AGENCY	NEW YORK	DAIWA BANK
FUJI BANK LTD AGENCY	NEW YORK	FUJI BANK
INTL COMM BK OF CHINA AGENCY	NEW YORK	INTL COMM BK OF CHINA
KOREA EXCHANGE BANK AGENCY	NEW YORK	KOREA EXCHANGE BANK
MITSUBISHI BANK LTD AGENCY	NEW YORK	MITSUBISHI BANK
MITSUI BANK LTD AGENCY	NEW YORK	MITSUI BANK
ROYAL BANK OF CANADA AGENCY	NEW YORK	ROYAL BANK OF CANADA
SUMITOMO BANK LTD AGENCY	NEW YORK	SUMITOMO BANK
TOKAI BANK LTD AGENCY	NEW YORK	TOKAI BANK
TORONTO DOMINION B AND T CO	NEW YORK	TORONTO DOMINION BANK
THE SAITAMA BANK, LTD.	NEW YORK	SAITAMA BANK
INDUSTRIAL BANK OF JAPAN LTD	NEW YORK	INDUST BANK OF JAPAN
HOKKAIDO TAKUSHOKU BANK LTD.	NEW YORK	HOKKAIDO TAKUSHOKU
OVERSEAS UNION BANK, LTD	NEW YORK	OVERSEAS UNION BANK
KYOWA BANK AGENCY	NEW YORK	KYOWA BANK
BANCO DO ESTADO DE SAO PAULO	NEW YORK	ESTADO DE SAO PAULO
THE MITSUI TR & BKG CO LTD	NEW YORK	MITSUI TR & BKG CO
MITSUBISHI TR & BKG CORP	NEW YORK	MITSUBISHI TR & BKG
BANCO MERCANTIL DE SAO PAULO	NEW YORK	MERCANTL DE SAO PAULO
BANCO URQUIJO	NEW YORK	BANCO URQUIJO
BANCO DE BILBAO	NEW YORK	BANCO DE BILBAO
BANCO UNION C.A.	NEW YORK	BANCO UNION
BANCO IND DE VENEZUELA C.A.	NEW YORK	BANCO INDUSTL DE VEN
BANK OF NEW SOUTH WALES	NEW YORK	BK OF NEW SOUTH WALES
COMMERCIAL BANK OF KOREA	NEW YORK	COMM BANK OF KOREA
AUSTRALIA & N ZEALAND BKG GR	NEW YORK	AUST & NEW ZEALAND GR
BANCO DE VIZCAYA	NEW YORK	BANCO DE VIZCAYA
BANCO HISPANO-AMERICANO	NEW YORK	BCO HISPANO-AMERICANO
COMM BK OF AUSTRALIA	NEW YORK	COMM BK OF AUSTRALIA
BANQUE CANADIENNE NATIONALE	NEW YORK	BANQUE CANAD NATLE

INSTITUTE CODE

01 AGENCIES

Table 20a, page 2

BANK NAME	CITY	PARENT BANKING ORGANIZATION
BARCLAYS BANK INTL AGENCY	ATLANTA	BARCLAYS GROUP
TAIYO KOBE AGENCY	LOS ANGELES	TAIYO KOBE BANK
BANK OF TOKYO AGENCY	LOS ANGELES	BANK OF TOKYO
DAI-ICHI KANGYO BANK AGENCY	LOS ANGELES	DAI-ICHI KANGYO BANK
DAIWA BANK AGENCY	LOS ANGELES	DAIWA BANK
EUROPEAN-AMERICAN BKG CORP	LOS ANGELES	EUROPEAN-AMER 'GROUP'
FUJI BANK AGENCY	LOS ANGELES	FUJI BANK
KOREA EXCHANGE BANK AGENCY	LOS ANGELES	KOREA EXCHANGE BANK
MITSUBISHI BANK LTD AGENCY	LOS ANGELES	MITSUBISHI BANK
MITSUI BANK LTD AGENCY	LOS ANGELES	MITSUI BANK
SWISS CREDIT BANK AGENCY	LOS ANGELES	SWISS CREDIT BANK
TOKAI BANK AGENCY	LOS ANGELES	TOKAI BANK
BANCO DI ROMA AGENCY	SAN FRANCISCO	BANCO DI ROMA
BANK OF MONTREAL AGENCY	SAN FRANCISCO	BANK OF MONTREAL
BANK OF NOVA SCOTIA AGENCY	SAN FRANCISCO	BANK OF NOVA SCOTIA
BANK OF TOKYO AGENCY	SAN FRANCISCO	BANK OF TOKYO
BANQUE NATLE DE PARIS AGENCY	SAN FRANCISCO	BANQUE NATLE DE PARIS
BARCLAYS BANK INTL AGENCY	SAN FRANCISCO	BARCLAYS GROUP
CANAD IMPL BK OF COMM AGENCY	SAN FRANCISCO	CANAD IMPL BK OF COMM
CHARTD BANK OF LONDON AGENCY	SAN FRANCISCO	STAND-CHARTERED GROUP
HONGKONG & SHANGHAI BK AGENC	SAN FRANCISCO	HONGKONG AND SHANGHAI
NATL WESTMINSTER BANK AGENCY	SAN FRANCISCO	NATL WESTMINSTER BANK
PHILIPPINE NATL BANK AGENCY	SAN FRANCISCO	PHILIPPINE NATL BANK
ROYAL BANK OF CANADA AGENCY	SAN FRANCISCO	ROYAL BANK OF CANADA
SANWA BANK LTD AGENCY	SAN FRANCISCO	SANWA BANK
SUMITOMO BANK LTD AGENCY	SAN FRANCISCO	SUMITOMO BANK
SWISS BANK CORP AGENCY	SAN FRANCISCO	SWISS BANK CORP
TORONTO DOMINION BANK AGENCY	SAN FRANCISCO	TORONTO DOMINION BANK
SHANGHAI COMMERCIAL BANK LTD	SAN FRANCISCO	SHANGHAI COMM BANK
BANK OF BRITISH COLUMBIA	SAN FRANCISCO	BANK OF BRIT COLUMBIA
BANCO DO BRAZIL	SAN FRANCISCO	BANCO DO BRASIL
INDUSTRIAL BANK OF JAPAN LTD	LOS ANGELES	INDUST BANK OF JAPAN

INSTITUTE CODE

01 AGENCIES

Table 20a, page 3

BANK NAME	CITY	PARENT BANKING ORGANIZATION
BANCO DE COMERCIO	LOS ANGELES	BANCO DE COMERCIO
EUROPEAN-AMERICAN BKG CORP	SAN FRANCISCO	EUROPEAN-AMER 'GROUP'
CREDIT LYONNAIS PARIS	LOS ANGELES	CREDIT LYONNAIS
BANCA COMMERCIALE ITALIANA	LOS ANGELES	BANCA COMM ITALIANA
DRESDNER BK AG FRANKFORT	LOS ANGELES	DRESDNER BANK
HOKKAIDO TAKUSHOKU	LOS ANGELES	HOKKAIDO TAKUSHOKU
SAITAMA BANK	LOS ANGELES	SAITAMA BANK
BANCO DO BRASIL	LOS ANGELES	BANCO DO BRASIL
ALGEMENE BK NEDERLAND	LOS ANGELES	ALGEMENE BK NEDERLAND
BANCO NATL DE MEXICO AGENCY	LOS ANGELES	BANCO NACL DE MEXICO
KYOWA BANK AGENCY	LOS ANGELES	KYOWA BANK
BANCO REAL AGENCY	LOS ANGELES	BANCO REAL
BANCO DO ESTADO DE SAO PAULO	SAN FRANCISCO	ESTADO DE SAO PAULO
BANK LEUMI LE-ISRAEL,B.M.	BEVERLY HILLS	BANK LEUMI LE-ISRAEL
BANGKOK BANK LTD AGENCY	SAN FRANCISCO	BANGKOK BANK
BANK SADERAT IRAN AGENCY	LOS ANGELES	BANK SADERAT IRAN
BANK HAPOALIM, B.M.	BEVERLY HILLS	BANK HAPOALIM
PHILIPPINE NATL BANK AGENCY	HONOLULU	PHILIPPINE NATL BANK

INSTITUTE CODE

02 BRANCHES

Table 20a, page 4

BANK NAME	CITY	PARENT BANKING ORGANIZATION
BARCLAYS BANK INT	BOSTON	BARCLAYS GROUP
BANCO DE BOGOTA	NEW YORK	BANCO DE BOGOTA
BANCO DI ROMA	NEW YORK	BANCO DI ROMA
BANCO DO BRASIL BRANCH	NEW YORK	BANCO DO BRASIL
BANCA COMM ITALIANA BRANCH	NEW YORK	BANCA COMM ITALIANA
BANCA DEL LAVORO BRANCH	NEW YORK	BANCA NAZL DEL LAVORO
BANCO DE LA NACION	NEW YORK	BANCO DE LA NACION
BANCO REAL BRANCH	NEW YORK	BANCO REAL
BANK FUR GEMEINWIRTSCHAFT	NEW YORK	BK GEMEINWIRTSCHAFT
BANK HAPOALIM B.M.	NEW YORK	BANK HAPOALIM
BNQ FRAN DE COM EXTERIEUR	NEW YORK	BNQ FRAN DE COM EXT
BARCLAYS BANK INTL BRANCH	NEW YORK	BARCLAYS GROUP
BANQUE NATIONALE DE PARIS	NEW YORK	BANQUE NATLE DE PARIS
BERLIN HANDELS & FRNKFRT BK	NEW YORK	BERLIN HANDLS & FRKFT
CHARTD BANK OF LONDON BRANCH	NEW YORK	STAND-CHARTERED GROUP
COMMERZBANK AKT BRANCH	NEW YORK	CUMMERZBANK
CREDIT INDUSTRIEL ET COMML	NEW YORK	COMP FIN DE SUEZ
CREDIT LYONNAIS BRANCH	NEW YORK	CREDIT LYONNAIS
CREDITO ITALIANO	NEW YORK	CREDITO ITALIANO
DEUTSCHE GENOSSENSCHAFTSBK	NEW YORK	DEUT GENOSSENSCHAFTBK
DRESDNER BANK BRANCH	NEW YORK	DRESDNER BANK
HABIB BANK BRANCH	NEW YORK	HABIB BANK
HUNGKONG & SHANGHAI BK BRANC	NEW YORK	HONGKONG AND SHANGHAI
ISRAEL DISCOUNT BANK	NEW YORK	ISRAEL DISCOUNT BANK
LLOYDS BK INTL LTD	NEW YORK	LLOYDS GROUP
LONG-TERM CREDIT BK OF JAPAN	NEW YORK	LONG TERM CREDIT
NATL BANK OF PAKISTAN BRANCH	NEW YORK	NATL BANK OF PAKISTAN
NATL WESTMINSTER BANK BRANCH	NEW YORK	NATL WESTMINSTER BANK
ALGEMENE BK NEDERLAND BRANCH	NEW YORK	ALGEMENE BK NEDERLAND
NIPPON FUDOSAN BANK LTD	NEW YORK	NIPPON FUDOSAN BANK
PHILIPPINE NATL BANK BRANCH	NEW YORK	PHILIPPINE NATL BANK
SANWA BANK LTD BRANCH	NEW YORK	SANWA BANK
STANDARD CHARTERED BANK LTD	NEW YORK	STAND-CHARTERED GROUP
STATE BANK OF INDIA BRANCH	NEW YORK	STATE BANK OF INDIA
SUMITOMO TR & BKG CO LTD	NEW YORK	SUMITOMO TR & BKG CO
SWISS BANK CORP BRANCH	NEW YORK	SWISS BANK CORP
SWISS CREDIT BANK BRANCH	NEW YORK	SWISS CREDIT BANK
TOYO TRUST & BANKING CO LTD	NEW YORK	TOYO TR & BKG CO
UNION BANK OF BAVARIA	NEW YORK	UNION BANK OF BAVARIA
UNION BANK OF SWITZERLAND	NEW YORK	UNION BANK OF SWITZ

INSTITUTE CODE

02 BRANCHES

Table 20a, page 5

BANK NAME	CITY	PARENT BANKING ORGANIZATION
WESTDEUTSCHE LANDESBANK	NEW YORK	WESTDEUTSCHE LANDESBK
YASUDA TRUST & BKG CO LTD	NEW YORK	YASUDA TR & BKG CO
BANK OF NOVA SCOTIA BRANCH	SAN JUAN	BANK OF NOVA SCOTIA
ROYAL BANK OF CANADA BRANCH	SAN JUAN	ROYAL BANK OF CANADA
BANK OF NOVA SCOTIA BRANCH	CHRISTENSTED	BANK OF NOVA SCOTIA
BARCLAYS BANK INTL BRANCH	CHARLOTTE AMAL	BARCLAYS GROUP
ROYAL BANK OF CANADA BRANCH	CHRISTENSTED	ROYAL BANK OF CANADA
ALGEMENE BANK NEDERLAND N.V.	CHICAGO	ALGEMENE BK NEDERLAND
BANCA COMMERCIALE ITALIANA	CHICAGO	BANCA COMM ITALIANA
BANK LEUMI LE-ISRAEL	CHICAGO	BANK LEUMI LE-ISRAEL
BARCLAYS BANK INTL BRANCH	CHICAGO	BARCLAYS GROUP
BANQUE NATIONALE DE PARIS	CHICAGO	BANQUE NATLE DE PARIS
BNQ DE LINDOCHINE ET DE SUEZ	CHICAGO	COMP FIN DE SUEZ
THE CHARTERED BANK	CHICAGO	STAND-CHARTERED GROUP
COMMERZBANK AKT BRANCH	CHICAGO	COMMERZBANK
CREDIT LYONNAIS BRANCH	CHICAGO	CREDIT LYONNAIS
DRESDNER BANK BRANCH	CHICAGO	DRESDNER BANK
HONGKONG & SHANGHAI BK BRANC	CHICAGO	HONGKONG AND SHANGHAI
KOREA EXCHANGE BANK BRANCH	CHICAGO	KOREA EXCHANGE BANK
INTL COMM BK OF CHINA BRANCH	CHICAGO	INTL COMM BK OF CHINA
LLOYDS BK INTL LTD	CHICAGO	LLOYDS GROUP
NATIONAL BK OF GREECE S.A.	CHICAGO	NATL BANK OF GREECE
NATL WESTMINSTER BANK BRANCH	CHICAGO	NATL WESTMINSTER BANK
SANWA BANK BRANCH	CHICAGO	SANWA BANK
STATE BANK OF INDIA BRANCH	CHICAGO	STATE BANK OF INDIA
THE SUMITOMO BK LTD	CHICAGO	SUMITOMO BANK
SWISS BANK CORP BRANCH	CHICAGO	SWISS BANK CORP
UNION BANK OF BAVARIA	CHICAGO	UNION BANK OF BAVARIA
UNION BANK OF SWITZERLAND	CHICAGO	UNION BANK OF SWITZ
BANK OF TOKYO LTD BRANCH	PORTLAND	BANK OF TOKYO
CANAD IMPL BK OF COMM BRANCH	PORTLAND	CANAD IMPL BK OF COMM
BANK OF TOKYO LTD BRANCH	SEATTLE	BANK OF TOKYO
CANAD IMPL BK OF COMM BRANCH	SEATTLE	CANAD IMPL BK OF COMM
THE CHARTERED BANK	SEATTLE	STAND-CHARTERED GROUP
HONGKONG & SHANGHAI BKG CORP	SEATTLE	HONGKONG AND SHANGHAI
TAIYO KOBE BANK LTD	SEATTLE	TAIYO KOBE BANK

INSTITUTE CODE

03 BANKING SUBSIDIARIES

Table 20a, page 6

BANK NAME	CITY	PARENT BANKING ORGANIZATION
ATLANTIC BANK OF NEW YORK	NEW YORK	NATL BANK OF GREECE
BANK LEUMI TRUST CO	NEW YORK	BANK LEUMI LE-ISRAEL
BANK OF MONTREAL TRUST CO	NEW YORK	BANK OF MONTREAL
BANK OF NOVA SCOTIA TRUST CO	NEW YORK	BANK OF NOVA SCOTIA
BANK OF TOKYO TRUST CO	NEW YORK	BANK OF TOKYO
BARCLAYS BANK OF NEW YORK	NEW YORK	BARCLAYS GROUP
CANAD IMPL BK COMM TRUST CO	NEW YORK	CANAD IMPL BK OF COMM
EUROPEAN-AMERICAN B AND T CO	NEW YORK	EUROPEAN-AMER 'GROUP'
FUJI BANK & TRUST CO	NEW YORK	FUJI BANK
INDUSTRIAL BANK OF JAPAN	NEW YORK	INDUST BANK OF JAPAN
ISRAEL DISCOUNT BANK	NEW YORK	ISRAEL DISCOUNT BANK
REPUBLIC NATL BANK OF NY	NEW YORK	TRADE DEVELOPMENT BK
ROYAL BK OF CANADA TRUST CO	NEW YORK	ROYAL BANK OF CANADA
SCHRODER TRUST CO	NEW YORK	SCHRODER GROUP
TORONTO DOMINION BANK AGENCY	NEW YORK	TORONTO DOMINION BANK
U.B.A.F. ARAB-AMERICAN BANK	NEW YORK	BQS ARABES & FRAN
FIRST NATIONAL BK PUERTO RIC	HATO REY	BANCO DE SANTANDER
BANCO DI ROMA	CHICAGO	BANCO DI ROMA
FIRST PACIFIC BK OF CHICAGO	CHICAGO	DAI-ICHI KANGYO BANK
KOREA EXCHANGE BK OF CALIF	LOS ANGELES	KOREA EXCHANGE BANK
LLOYDS BK OF CALIF	LOS ANGELES	LLOYDS GROUP
MITSUBISHI BANK OF CALIF	LOS ANGELES	MITSUBISHI BANK
MITSUI BK OF CALIFORNIA	LOS ANGELES	MITSUI BANK
TOKAI BK OF CALIFORNIA	LOS ANGELES	TOKAI BANK
BANK OF MONTREAL-CALIFORNIA	SAN FRANCISCO	BANK OF MONTREAL
BARCLAYS BANK OF CALIFORNIA	SAN FRANCISCO	BARCLAYS GROUP
CALIFORNIA CANADIAN BANK	SAN FRANCISCO	CANAD IMPL BK OF COMM
CALIFORNIA FIRST BANK	SAN FRANCISCO	BANK OF TOKYO
CHARTERED BK OF LONDON-CALIF	SAN FRANCISCO	STAND-CHARTERED GROUP
FRENCH BANK OF CALIFORNIA	SAN FRANCISCO	BANQUE NATLE DE PARIS
HONGKONG BK OF CALIFORNIA	SAN FRANCISCO	HONGKONG AND SHANGHAI
SANWA BANK OF CALIFORNIA	SAN FRANCISCO	SANWA BANK
SUMITOMO BANK OF CALIFORNIA	SAN FRANCISCO	SUMITOMO BANK
TORONTO DOMINION BK OF CALIF	SAN FRANCISCO	TORONTO DOMINION BANK

INSTITUTE CODE

05 INVESTMENT COMP.

Table 20a, page 7

BANK NAME	CITY	PARENT BANKING ORGANIZATION
EUROPEAN-AMERICAN BKG CORP	NEW YORK	EUROPEAN-AMER 'GROUP'
FRENCH-AMERICAN BKG CORP	NEW YORK	BANQUE NATLE DE PARIS
J HENRY SCHRODER BKG CORP	NEW YORK	SCHRODER GROUP
NORDIC AMERICAN BANKING CORP	NEW YORK	SVENSKA HANDELSBANKEN
BAER AMERICAN BKG CORP	NEW YORK	BAER AMER BKG CORP

INSTITUTE CODE
06 AGREEMENT CORPORATIONS

Table 20a, page 8

BANK NAME	CITY	PARENT BANKING ORGANIZATION
EUROPEAN-AMERICAN BKG CORP	CHICAGO	EUROPEAN-AMER 'GROUP'
TOKYO BANCORP INTERNATIONAL	HOUSTON	BANK OF TOKYO

Table 20b
Foreign Banking Institutions in the United States
Listed by Country of Parent Bank, as of April 1977

PARENT COUNTRY	PARENT BANKING ORGANIZATION	INST CODE	BANK NAME	CITY
FRANCE				
	BANQUE NATLE DE PARIS	05	FRENCH-AMERICAN BKG CORP	NEW YORK
		02	BANQUE NATIONALE DE PARIS	NEW YORK
		02	BANQUE NATIONALE DE PARIS	CHICAGO
		01	BANQUE NATLE DE PARIS AGENCY	SAN FRANCISCO
		03	FRENCH BANK OF CALIFORNIA	SAN FRANCISCO
	CREDIT LYONNAIS	02	CREDIT LYONNAIS BRANCH	NEW YORK
		02	CREDIT LYONNAIS BRANCH	CHICAGO
		01	CREDIT LYONNAIS PARIS	LOS ANGELES
	COMP FIN DE SUEZ	02	CREDIT INDUSTRIEL ET COMML	NEW YORK
		02	BNQ DE LINDOCHINE ET DE SUEZ	CHICAGO
	BQS ARABES & FRAN	03	U.B.A.F. ARAB-AMERICAN BANK	NEW YORK
	BNQ FRAN DE COM EXT	02	BNQ FRAN DE COM EXTERIEUR	NEW YORK
GERMANY, FEDERAL REPUBLIC OF				
	COMMERZBANK	02	COMMERZBANK AKT BRANCH	NEW YORK
		02	COMMERZBANK AKT BRANCH	CHICAGO
	DRESDNER BANK	02	DRESDNER BANK BRANCH	NEW YORK
		02	DRESDNER BANK BRANCH	CHICAGO
		01	DRESDNER BK AG FRANKFORT	LOS ANGELES
	UNION BANK OF BAVARIA	02	UNION BANK OF BAVARIA	NEW YORK
		02	UNION BANK OF BAVARIA	CHICAGO
	WESTDEUTSCHE LANDESBK	02	WESTDEUTSCHE LANDESBANK	NEW YORK
	BK GEMEINWIRTSCHAFT	02	BANK FUR GEMEINWIRTSCHAFT	NEW YORK
	BERLIN HANDLS & FRKFT	02	BERLIN HANDELS & FRNKFRT BK	NEW YORK
	DEUT GENOSSENSCHAFTBK	02	DEUTSCHE GENOSSENSCHAFTSBK	NEW YORK
GREECE				
	NATL BANK OF GREECE	03	ATLANTIC BANK OF NEW YORK	NEW YORK
		02	NATIONAL BK OF GREECE S.A.	CHICAGO
ITALY				
	BANCA COMM ITALIANA	02	BANCA COMM ITALIANA BRANCH	NEW YORK
		02	BANCA COMMERCIALE ITALIANA	CHICAGO
		01	BANCA COMMERCIALE ITALIANA	LOS ANGELES
	BANCA NAZL DEL LAVORO	02	BANCA DEL LAVORO BRANCH	NEW YORK
	BANCO DI NAPOLI	01	BANCO DI NAPOLI AGENCY	NEW YORK
	BANCO DI ROMA	02	BANCO DI ROMA	NEW YORK
		03	BANCO DI ROMA	CHICAGO
		01	BANCO DI ROMA AGENCY	SAN FRANCISCO

Table 20b, page 2

PARENT COUNTRY	PARENT BANKING ORGANIZATION	INST CODE	BANK NAME	CITY
ITALY				
	CREDITO ITALIANO	02	CREDITO ITALIANO	NEW YORK
NETHERLANDS				
	ALGEMENE BK NEDERLAND	02	ALGEMENE BK NEDERLAND BRANCH	NEW YORK
		02	ALGEMENE BANK NEDERLAND N.V.	CHICAGO
		01	ALGEMENE BK NEDERLAND	LOS ANGELES
SPAIN				
	BANCO URQUIJO	01	BANCO URQUIJO	NEW YORK
	BANCO DE BILBAO	01	BANCO DE BILBAO	NEW YORK
	BANCO DE VIZCAYA	01	BANCO DE VIZCAYA	NEW YORK
	BCO HISPANO-AMERICANO	01	BANCO HISPANO-AMERICANO	NEW YORK
	BANCO DE SANTANDER	03	FIRST NATIONAL BK PUERTO RIC	HATO REY
SWEDEN				
	SVENSKA HANDELSBANKEN	05	NORDIC AMERICAN BANKING CORP	NEW YORK
SWITZERLAND				
	TRADE DEVELOPMENT BK	03	REPUBLIC NATL BANK OF NY	NEW YORK
	SWISS BANK CORP	02	SWISS BANK CORP BRANCH	NEW YORK
		02	SWISS BANK CORP BRANCH	CHICAGO
		01	SWISS BANK CORP AGENCY	SAN FRANCISCO
	SWISS CREDIT BANK	02	SWISS CREDIT BANK BRANCH	NEW YORK
		01	SWISS CREDIT BANK AGENCY	LOS ANGELES
	UNION BANK OF SWITZ	02	UNION BANK OF SWITZERLAND	NEW YORK
		02	UNION BANK OF SWITZERLAND	CHICAGO
	BAER AMER BKG CORP	05	BAER AMERICAN BKG CORP	NEW YORK
UNITED KINGDOM				
	BARCLAYS GROUP	02	BARCLAYS BANK INT	BOSTON
		02	BARCLAYS BANK INTL BRANCH	NEW YORK
		03	BARCLAYS BANK OF NEW YORK	NEW YORK
		02	BARCLAYS BANK INTL BRANCH	CHARLOTTE AMALIE
		01	BARCLAYS BANK INTL AGENCY	ATLANTA
		02	BARCLAYS BANK INTL BRANCH	CHICAGO

Table 20b, page 3

PARENT COUNTRY	PARENT BANKING ORGANIZATION	INST CODE	BANK NAME	CITY
UNITED KINGDOM				
	BARCLAYS GROUP	01	BARCLAYS BANK INTL AGENCY	SAN FRANCISCO
		03	BARCLAYS BANK OF CALIFORNIA	SAN FRANCISCO
	STAND-CHARTERED GROUP	02	CHARTD BANK OF LONDON BRANCH	NEW YORK
		02	STANDARD CHARTERED BANK LTD	NEW YORK
		02	THE CHARTERED BANK	CHICAGO
		01	CHARTD BANK OF LONDON AGENCY	SAN FRANCISCO
		03	CHARTERED BK OF LONDON-CALIF	SAN FRANCISCO
		02	THE CHARTERED BANK	SEATTLE
	SCHRODER GROUP	05	J HENRY SCHRODER BKG CORP	NEW YORK
		03	SCHRODER TRUST CO	NEW YORK
	LLOYDS GROUP	02	LLOYDS BK INTL LTD	NEW YORK
		02	LLOYDS BK INTL LTD	CHICAGO
		03	LLOYDS BK OF CALIF	LOS ANGELES
	NATL WESTMINSTER BANK	02	NATL WESTMINSTER BANK BRANCH	NEW YORK
		02	NATL WESTMINSTER BANK BRANCH	CHICAGO
		01	NATL WESTMINSTER BANK AGENCY	SAN FRANCISCO
	THOS COOK AND SON	01	THOS COOK AND SON AGENCY	NEW YORK
OTHER WESTERN EUROPE				
	EUROPEAN-AMER 'GROUP'	05	EUROPEAN-AMERICAN BKG CORP	NEW YORK
		03	EUROPEAN-AMERICAN B AND T CO	NEW YORK
		06	EUROPEAN-AMERICAN BKG CORP	CHICAGO
		01	EUROPEAN-AMERICAN BKG CORP	LOS ANGELES
		01	EUROPEAN-AMERICAN BKG CORP	SAN FRANCISCO
CANADA				
	BANK OF MONTREAL	01	BANK OF MONTREAL AGENCY	NEW YORK
		03	BANK OF MONTREAL TRUST CO	NEW YORK
		01	BANK OF MONTREAL AGENCY	SAN FRANCISCO
		03	BANK OF MONTREAL-CALIFORNIA	SAN FRANCISCO
	BANK OF NOVA SCOTIA	01	BANK OF NOVA SCOTIA AGENCY	NEW YORK
		03	BANK OF NOVA SCOTIA TRUST CO	NEW YORK
		02	BANK OF NOVA SCOTIA BRANCH	SAN JUAN
		02	BANK OF NOVA SCOTIA BRANCH	CHRISTENSTED
		01	BANK OF NOVA SCOTIA AGENCY	SAN FRANCISCO
	CANAD IMPL BK OF COMM	01	CANAD IMPL BK OF COMM AGENCY	NEW YORK
		03	CANAD IMPL BK COMM TRUST CO	NEW YORK
		01	CANAD IMPL BK OF COMM AGENCY	SAN FRANCISCO
		03	CALIFORNIA CANADIAN BANK	SAN FRANCISCO
		02	CANAD IMPL BK OF COMM BRANCH	PORTLAND
		02	CANAD IMPL BK OF COMM BRANCH	SEATTLE

Table 20b, page 4

PARENT COUNTRY	PARENT BANKING ORGANIZATION	INST CODE	BANK NAME	CITY
CANADA				
	ROYAL BANK OF CANADA	01	ROYAL BANK OF CANADA AGENCY	NEW YORK
		03	ROYAL BK OF CANADA TRUST CO	NEW YORK
		02	ROYAL BANK OF CANADA BRANCH	SAN JUAN
		02	ROYAL BANK OF CANADA BRANCH	CHRISTENSTED
		01	ROYAL BANK OF CANADA AGENCY	SAN FRANCISCO
	TORONTO DOMINION BANK	01	TORONTO DOMINION B AND T CO	NEW YORK
		03	TORONTO DOMINION BANK AGENCY	NEW YORK
		01	TORONTO DOMINION BANK AGENCY	SAN FRANCISCO
		03	TORONTO DOMINION BK OF CALIF	SAN FRANCISCO
	BANK OF BRIT COLUMBIA	01	BANK OF BRITISH COLUMBIA	SAN FRANCISCO
	BANQUE CANAD NATLE	01	BANQUE CANADIENNE NATIONALE	NEW YORK
ARGENTINA				
	BANCO DE LA NACION	02	BANCO DE LA NACION	NEW YORK
BRAZIL				
	BANCO DO BRASIL	02	BANCO DO BRASIL BRANCH	NEW YORK
		01	BANCO DO BRAZIL	SAN FRANCISCO
		01	BANCO DO BRASIL	LOS ANGELES
	BANCO REAL	02	BANCO REAL BRANCH	NEW YORK
		01	BANCO REAL AGENCY	LOS ANGELES
	ESTADO DE SAO PAULO	01	BANCO DO ESTADO DE SAO PAULO	NEW YORK
		01	BANCO DO ESTADO DE SAO PAULO	SAN FRANCISCO
	MERCANTL DE SAO PAULO	01	BANCO MERCANTIL DE SAO PAULO	NEW YORK
COLOMBIA				
	BANCO DE BOGOTA	02	BANCO DE BOGOTA	NEW YORK
MEXICO				
	BANCO NACL DE MEXICO	01	BANCO NACL DE MEXICO AGENCY	NEW YORK
		01	BANCO NATL DE MEXICO AGENCY	LOS ANGELES
	BANCO DE COMERCIO	01	BANCO DE COMERCIO	LOS ANGELES
VENEZUELA				
	BANCO UNION	01	BANCO UNION C.A.	NEW YORK

93-031 O - 77 - 7

Table 20b, page 5

PARENT COUNTRY	PARENT BANKING ORGANIZATION	INST CODE	BANK NAME	CITY
VENEZUELA				
	BANCO INDUSTL DE VEN	01	BANCO IND DE VENEZUELA C.A.	NEW YORK
HONG KONG				
	HONGKONG AND SHANGHAI	02	HONGKONG & SHANGHAI BK BRANC	NEW YORK
		02	HONGKONG & SHANGHAI BK BRANC	CHICAGO
		01	HONGKONG & SHANGHAI BK AGENC	SAN FRANCISCO
		03	HONGKONG BK OF CALIFORNIA	SAN FRANCISCO
		02	HONGKONG & SHANGHAI BKG CORP	SEATTLE
	SHANGHAI COMM BANK	01	SHANGHAI COMMERCIAL BANK LTD	SAN FRANCISCO
INDIA				
	STATE BANK OF INDIA	02	STATE BANK OF INDIA BRANCH	NEW YORK
		02	STATE BANK OF INDIA BRANCH	CHICAGO
IRAN				
	BANK MELLI IRAN	01	BANK MELLI IRAN AGENCY	NEW YORK
	BANK SADERAT IRAN	01	BANK SADERAT IRAN AGENCY	NEW YORK
		01	BANK SADERAT IRAN AGENCY	LOS ANGELES
ISRAEL				
	BANK LEUMI LE-ISRAEL	01	BANK LEUMI LE-ISRAEL	NEW YORK
		03	BANK LEUMI TRUST CO	NEW YORK
		02	BANK LEUMI LE-ISRAEL	CHICAGO
		01	BANK LEUMI LE-ISRAEL,B.M.	BEVERLY HILLS
	ISRAEL DISCOUNT BANK	02	ISRAEL DISCOUNT BANK	NEW YORK
		03	ISRAEL DISCOUNT BANK	NEW YORK
	BANK HAPOALIM	02	BANK HAPOALIM B.M.	NEW YORK
		01	BANK HAPOALIM, B.M.	BEVERLY HILLS
JAPAN				
	TAIYO KOBE BANK	01	TAIYO KOBE LTD AGENCY	NEW YORK
		01	TAIYO KOBE AGENCY	LOS ANGELES
		02	TAIYO KOBE BANK LTD	SEATTLE
	BANK OF TOKYO	01	BANK OF TOKYO LTD AGENCY	NEW YORK
		03	BANK OF TOKYO TRUST CO	NEW YORK

Table 20b, page 6

PARENT COUNTRY	PARENT BANKING ORGANIZATION	INST CODE	BANK NAME	CITY
JAPAN				
	BANK OF TOKYO	06	TOKYO BANCORP INTERNATIONAL	HOUSTON
		01	BANK OF TOKYO AGENCY	LOS ANGELES
		01	BANK OF TOKYO AGENCY	SAN FRANCISCO
		03	CALIFORNIA FIRST BANK	SAN FRANCISCO
		02	BANK OF TOKYO LTD BRANCH	PORTLAND
		02	BANK OF TOKYO LTD BRANCH	SEATTLE
	DAI-ICHI KANGYO BANK	01	DAI-ICHI KANGYO BANK AGENCY	NEW YORK
		03	FIRST PACIFIC BK OF CHICAGO	CHICAGO
		01	DAI-ICHI KANGYO BANK AGENCY	LOS ANGELES
	DAIWA BANK	01	DAIWA BANK LTD AGENCY	NEW YORK
		01	DAIWA BANK AGENCY	LOS ANGELES
	FUJI BANK	01	FUJI BANK LTD AGENCY	NEW YORK
		03	FUJI BANK & TRUST CO	NEW YORK
		01	FUJI BANK AGENCY	LOS ANGELES
	HOKKAIDO TAKUSHOKU	01	HOKKAIDO TAKUSHOKU BANK LTD.	NEW YORK
		01	HOKKAIDO TAKUSHOKU	LOS ANGELES
	INDUST BANK OF JAPAN	01	INDUSTRIAL BANK OF JAPAN LTD	NEW YORK
		03	INDUSTRIAL BANK OF JAPAN	NEW YORK
		01	INDUSTRIAL BANK OF JAPAN LTD	LOS ANGELES
	MITSUBISHI BANK	01	MITSUBISHI BANK LTD AGENCY	NEW YORK
		01	MITSUBISHI BANK LTD AGENCY	LOS ANGELES
		03	MITSUBISHI BANK OF CALIF	LOS ANGELES
	MITSUI BANK	01	MITSUI BANK LTD AGENCY	NEW YORK
		01	MITSUI BANK LTD AGENCY	LOS ANGELES
		03	MITSUI BK OF CALIFORNIA	LOS ANGELES
	SANWA BANK	02	SANWA BANK LTD BRANCH	NEW YORK
		02	SANWA BANK BRANCH	CHICAGO
		01	SANWA BANK LTD AGENCY	SAN FRANCISCO
		03	SANWA BANK OF CALIFORNIA	SAN FRANCISCO
	SUMITOMO BANK	01	SUMITOMO BANK LTD AGENCY	NEW YORK
		02	THE SUMITOMO BK LTD	CHICAGO
		01	SUMITOMO BANK LTD AGENCY	SAN FRANCISCO
		03	SUMITOMO BANK OF CALIFORNIA	SAN FRANCISCO
	SAITAMA BANK	01	THE SAITAMA BANK, LTD.	NEW YORK
		01	SAITAMA BANK	LOS ANGELES
	TOKAI BANK	01	TOKAI BANK LTD AGENCY	NEW YORK
		01	TOKAI BANK AGENCY	LOS ANGELES
		03	TOKAI BK OF CALIFORNIA	LOS ANGELES
	KYOWA BANK	01	KYOWA BANK AGENCY	NEW YORK
		01	KYOWA BANK AGENCY	LOS ANGELES
	LONG TERM CREDIT	02	LONG-TERM CREDIT BK OF JAPAN	NEW YORK
	MITSUBISHI TR & BKG	01	MITSUBISHI TR & BKG CORP	NEW YORK
	MITSUI TR & BKG CO	01	THE MITSUI TR & BKG CO LTD	NEW YORK
	TOYO TR & BKG CO	02	TOYO TRUST & BANKING CO LTD	NEW YORK
	YASUDA TR & BKG CO	02	YASUDA TRUST & BKG CO LTD	NEW YORK

Table 20b, page 7

PARENT COUNTRY	PARENT BANKING ORGANIZATION	INST CODE	BANK NAME	CITY
JAPAN				
	NIPPON FUDOSAN BANK	02	NIPPON FUDOSAN BANK LTD	NEW YORK
	SUMITOMO TR & BKG CO	02	SUMITOMO TR & BKG CO LTD	NEW YORK
KOREA, SOUTH				
	KOREA EXCHANGE BANK	01	KOREA EXCHANGE BANK AGENCY	NEW YORK
		02	KOREA EXCHANGE BANK BRANCH	CHICAGO
		01	KOREA EXCHANGE BANK AGENCY	LOS ANGELES
		03	KOREA EXCHANGE BK OF CALIF	LOS ANGELES
	COMM BANK OF KOREA	01	COMMERCIAL BANK OF KOREA	NEW YORK
PAKISTAN				
	HABIB BANK	02	HABIB BANK BRANCH	NEW YORK
	NATL BANK OF PAKISTAN	02	NATL BANK OF PAKISTAN BRANCH	NEW YORK
PHILIPPINES				
	PHILIPPINE NATL BANK	02	PHILIPPINE NATL BANK BRANCH	NEW YORK
		01	PHILIPPINE NATL BANK AGENCY	SAN FRANCISCO
		01	PHILIPPINE NATL BANK AGENCY	HONOLULU
SINGAPORE				
	OVERSEAS UNION BANK	01	OVERSEAS UNION BANK, LTD	NEW YORK
CHINA, REPUBLIC OF TAIWAN				
	INTL COMM BK OF CHINA	01	INTL COMM BK OF CHINA AGENCY	NEW YORK
		02	INTL COMM BK OF CHINA BRANCH	CHICAGO
THAILAND				
	BANGKOK BANK	01	BANGKOK BANK LTD AGENCY	NEW YORK
		01	BANGKOK BANK LTD AGENCY	SAN FRANCISCO
AUSTRALIA				
	BK OF NEW SOUTH WALES	01	BANK OF NEW SOUTH WALES	NEW YORK
	AUST & NEW ZEALAND GR	01	AUSTRALIA & N ZEALAND BKG GR	NEW YORK
	COMM BK OF AUSTRALIA	01	COMM BK OF AUSTRALIA	NEW YORK

Table 21

PAGE 1 OF 3

LOCATION OF FOREIGN BANKING INSTITUTIONS IN THE U.S.
BY COUNTRY AND "FAMILY" AS OF APRIL 1977

COUNTRY / FAMILY	01 MA	02 NY	02 VI	02 PR	06 GA	07 IL	11 TX	12 CA	12 HA	12 OR	12 WA	TOTAL
(EUROPE)												
FRANCE												
BANQUE NATLE DE PARIS		B I				B		A S				5
COMP FIN DE SUEZ		B				B						2
CREDIT LYONNAIS		B				B		A				3
BQS ARABES & FRANCAIS		S										1
BNQ FRAN DE COM EXT		B										1
GERMANY												
BERLIN HANDLS & FRKFT		B										1
BK GEMEINWIRTSCHAFT		B										1
COMMERZBANK		B				B						2
DEUT GENOSSENSCHAFTBK		B										1
DRESDNER BANK		B				B		A				3
UNION BANK OF BAVARIA		B				B						2
WESTDEUTSCHE LANDESBK		B										1
GREECE												
NATL BANK OF GREECE		S				B						2
ITALY												
BANCA COMM ITALIANA		B				B		A				3
BANCA NAZL DEL LAVORO		B										1
BANCO DI NAPOLI		A										1
BANCO DI ROMA		B				S		A				3
CREDITO ITALIANO		B										1
NETHERLANDS												
ALGEMENE BK NEDERLAND		B				B		A				3
SPAIN												
BANCO DE BILBAO		A										1
BANCO DE SANTANDER				S								1
BANCO DE VIZCAYA		A										1
BANCO URQUIJO		A										1
BCO HISPANO-AMERICANO		A										1
SWEDEN												
SVENSKAHANDELSBANKEN		I										1
SWITZERLAND												
BAER AMER BKG CORP		I										1
SWISS BANK CORP		B				B		A				3
SWISS CREDIT BANK		B						A				2
TRADE DEVELOPMENT BK		S										1
UNION BANK OF SWITZ		B				B						2
UNITED KINGDOM												
BARCLAYS GROUP	B	B S	B		A	B		A S				8
LLOYDS GROUP		B				B		S				3
NATL WESTMINSTER BANK		B				B		A				3
SCHRODER GROUP		SI										2
STAND-CHARTERED GROUP		BB				B		A S			B	6
THOMAS COOK AND SON		A										1
OTHER WESTERN EUROPE												
EUROPEAN-AMER 'GROUP'		SI				C		AA				5

Table 21

LOCATION OF FOREIGN BANKING INSTITUTIONS IN THE U.S.
BY COUNTRY AND "FAMILY" AS OF APRIL 1977

COUNTRY / FAMILY	01 MA	02 NY	02 VI	02 PR	06 GA	07 IL	11 TX	12 CA	12 HA	12 OR	12 WA	TOTAL
CANADA												
BANK OF BRIT COLUMBIA								A				1
BANK OF MONTREAL		A S						A S				4
BANK OF NOVA SCOTIA		A S	B	B				A				5
CANAD IMPL BK OF COMM		A S						A S		B	B	6
ROYAL BANK OF CANADA		A S	B	B				A				5
TORONTO DOMINION BANK		A S						A S				4
BANQUE CANAD NATLE		A										1
(LATIN AMERICA)												
ARGENTINA												
BANCO DE LA NACION		B										1
BRAZIL												
BANCO DO BRASIL		B						AA				3
BANCO REAL		B						A				2
ESTADO DE SAO PAULO		A						A				2
MERCANTL DE SAO PAULO		A										1
COLUMBIA												
BANCO DE BOGOTA		B										1
MEXICO												
BANCO DE COMERCIO								A				1
BANCO NACL DE MEXICO		A						A				2
VENEZUELA												
BANCO IND DE VENEZUEL		A										1
BANCO UNION		A										1
(ASIA)												
HONGKONG												
HONGKONG AND SHANGHAI		B				B		A S			B	5
SHANGHAI COMM BANK								A				1
INDIA												
STATE BANK OF INDIA		B				B						2
IRAN												
BANK MELLI IRAN		A										1
BANK SADERAT IRAN		A						A				2
ISRAEL												
BANK HAPOALIM		B						A				2
BANK LEUMI LE-ISRAEL		A S				B		A				4
ISRAEL DISCOUNT BANK		B S										2
JAPAN												
BANK OF TOKYO		A S					C	AA S		B	B	8
DAI-ICHI KANGYO BANK		A				S		A				3
DAIWA BANK		A						A				2
FUJI BANK		A S						A				3
HOKKAIDO TAKUSHOKU		A						A				2
INDUST BANK OF JAPAN		A S						A				3
KYOWA BANK		A						A				2
LONG-TERM CREDIT BANK		B										1

Table 21

PAGE 3 OF 3

LOCATION OF FOREIGN BANKING INSTITUTIONS IN THE U.S.
BY COUNTRY AND "FAMILY" AS OF APRIL 1977

COUNTRY / FAMILY	01 MA	02 NY	02 VI	02 PR	06 GA	07 IL	11 TX	12 CA	12 HA	12 OR	12 WA	TOTAL
(ASIA, CONTINUED)												
JAPAN, CONTINUED												
MITSUBISHI BANK		A						A S				3
MITSUBISHI TR & BKG		A										1
MITSUI BANK		A						A S				3
MITSUI TR & BKG		A										1
NIPPON FUDOSAN BANK		B										1
SAITAMA BANK		A						A				2
SANWA BANK		B				B		A S				4
SUMITOMO BANK		A				B		A S				4
SUMITOMO TR & BKG CO		B										1
TAIYO KOBE BANK		A						A			B	3
TOKAI BANK		A						A S				3
TOYO TRUST & BKG CO		B										1
YASUDA TR & BKG CO		B										1
KOREA, SOUTH												
COMM BANK OF KOREA		A										1
KOREA EXCHANGE BANK		A				B		A S				4
PAKISTAN												
HABIB BANK		B										1
NATL BANK OF PAKISTAN		B										1
PHILIPPINES												
PHILIPPINE NATL BANK		B						A	A			3
SINGAPORE												
OVERSEAS UNION BANK		A										1
CHINA(REPUBLIC OF TAIWAN)												
INTL COMM BK OF CHINA		A				B						2
THAILAND												
BANGKOK BANK		A						A				2
AUSTRALIA												
BK OF NEW SOUTH WALES		A										1
AUST & NEW ZEALAND GR		A										1
COMM BK OF AUSTRALIA		A										1
TOTALS												
A (AGENCIES)	0	43	0	0	1	-	-	48	1	0	0	93
B (BRANCHES)	1	41	3	2	0	22	-	-	0	2	5	76
S (SUB. COMM. BKS.)	0	16	0	1	0	2	0	15	0	0	0	34
C (AGREEMENT CORPS.)	0	0	0	0	0	1	1	0	0	0	0	2
I (NY INVESTMENT COS.)	-	5	-	-	-	-	-	-	-	-	-	5
ALL REPORTERS	1	105	3	3	1	25	1	63	1	2	5	210

TOTAL FAMILIES = 94

COMPENDIUM OF SUPPORTING MATERIALS

FOR H.R. 7325

THE INTERNATIONAL BANKING ACT OF 1977

LIST OF EXHIBITS

EXHIBIT "A"	Federal Reserve Press Release of May 26, 1977, including letter from Chairman Burns dated May 25, 1977 to Chairman St Germain and Accompanying Statement of Proposed Amendments
EXHIBIT "B"	Proposed Amendments to H.R. 7325, The International Banking Act of 1977, prepared by staff of the Federal Reserve
EXHIBIT "C"	Letter from Vice Chairman Gardner dated June 2, 1977 to Dr. Wolfgang Jahn of Commerzbank
EXHIBIT "D"	Proposed Alternative to Section 5(a) of H.R. 7325-- Imposing Edge Act Limitations on Future Out-of-State Agencies

FEDERAL RESERVE
press release

May 26, 1977

EXHIBIT "A"

For immediate release

The Board of Governors of the Federal Reserve System has informed Congressional leaders concerned with bank regulation that it strongly supports the International Banking Act of 1977 that was introduced in the House this week.

The Board said such legislation is needed because of recent rapid growth of foreign bank operations here, the increasingly important share of the domestic market that is controlled by foreign banks and the lack of any national regulation and supervision of these operations.

"We are primarily concerned about the absence of a national policy and regulatory framework in this increasingly important area and its attendant ramifications for the formulation of monetary policy, the development of a sound and competitive banking system, and the coordination of policies with national monetary and regulatory authorities abroad," the Board said in a letter to the Congressional leaders.

The Board's recommendation was accompanied by proposals for a number of amendments.

Since 1974 the Board has backed foreign bank legislation aimed at national treatment of foreign banks operating here, that is, to place foreign banks under the same type of Federal banking and monetary regulation that affects comparable domestic banks.

A copy of the Board's letter, and its accompanying proposals for changes in the bill, are attached. The letter went to the chairmen and minority leaders of the House and Senate banking committees and to chairmen of related subcommittees.

-0-

CHAIRMAN OF THE BOARD OF GOVERNORS
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

May 25, 1977

The Honorable Fernand J. St Germain
Chairman
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
Committee on Banking, Currency and Housing
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Board has for the past several years strongly recommended to Congress that it enact legislation providing for the regulation and supervision of foreign banks operating in the United States. In particular, the Board has recommended that any such legislation embody the principle of national treatment and thus place foreign banks under the same type of federal banking and monetary regulation that structures the operations of comparable domestic banking institutions. In 1974 and 1975, the Board submitted its own draft legislative proposals to accomplish these purposes. Last year, we strongly supported enactment of H.R. 13876--The International Banking Act of 1976 ("IBA")--which was passed by the House of Representatives and which, of course, was the product of substantial efforts by the members of your Committee.

In recommending enactment of foreign bank legislation, we have been influenced by the rapid growth of these operations in recent years, their increasing importance in our domestic banking and monetary system, and the need to establish a comprehensive and coherent national regulatory policy concerning such operations.

Our experience since introduction of our first legislative proposal in 1974 has served to reaffirm these conclusions. First, foreign bank operations in this country have continued to expand at a rapid rate. Since introduction of the Board's legislative proposal in 1974, total assets of U.S. offices of foreign banks have increased 30 per cent to $73 billion, and 21 additional foreign banks have entered our markets and 14 foreign banks already here have expanded their banking operations into additional States. As of March, 1977, 92 foreign banks were operating some 207 banking facilities in this country and more offices have been opened or announced since then. Second, foreign banks have been assuming an increasingly important share of the market for commercial and industrial loans, have been increasing their penetration into regional markets and retail banking services, and have been active participants in domestic money markets. As of March 31, 1977, commercial and industrial loans extended to domestic borrowers by U.S. offices of foreign banks amounted to approximately $16 billion, a figure equal to approximately 14 per cent of domestic commercial and industrial loans extended by large domestic banks that report weekly to the Federal Reserve. And third, the lack of any significant national regulation and supervision of such operations, which may have been justified when such operations were a relatively insignificant part of our banking system, has resulted in an ever-widening gap in our regulatory structure through which a growing number of foreign banks can conduct multi-State operations and securities activities and escape Federal Reserve monetary policy controls.

From the Board's standpoint, we are primarily concerned about the absence of a national policy and regulatory framework in this increasingly important area and its attendant ramifications for the formulation of monetary policy, the development of a sound and competitive banking system, and the coordination of policies with national monetary and regulatory authorities abroad. While we have no reason to doubt that State banking authorities are doing a competent job of local banking regulation in this area, there is a need for a federal presence to take into account the broader national and international implications of foreign bank operations in this country. In this regard, we believe that foreign banks should be encouraged to enter and expand within this country and to participate fully in our banking and financial markets. We further believe, however, that such entry and expansion should not occur under fifty different sets of rules but rather should occur under a set of national standards uniformly applied to all foreign banks.

Continued deferral of action on foreign bank legislation while the Congress studies areas of domestic banking reform is, in our judgment, a course of action that will over time create many more problems than it will solve. For example, reasonable grandfathering of existing multi-State and securities operations of foreign banks, which in our judgment is an essential element of any acceptable foreign bank proposal, becomes more difficult and uncertain as such operations expand in the interval. By establishing national ground rules for foreign banking institutions at this time, we can ensure that no matter what directions may be taken in future domestic banking reform, domestic and foreign banks will be equally affected.

Given the similarity between the IBA and the Board's earlier legislative proposals and the substantial progress made by the IBA in the last Congress, we strongly support the introduction of the IBA in the 95th Congress as the International Banking Act of 1977 and recommend that it be given early consideration. We believe, however, that certain changes in the IBA would be desirable and we urge the Congress to give careful consideration to the amendments proposed in the statement that accompanies this letter. Legislative language accomplishing these and other more technical amendments to the IBA, as recently introduced in the House of Representatives, is currently being prepared by the Board's staff and will be furnished shortly. We would note that many of these proposals reflect Board suggestions presented by Vice Chairman Gardner in his Senate testimony of last year on the IBA.

In conclusion, the Board hopes that Congress will act favorably and expeditiously on these recommendations.

Sincerely yours,

Arthur F. Burns

Arthur F. Burns

Enclosure

PROPOSED AMENDMENTS TO THE INTERNATIONAL BANKING ACT OF 1976

Summary of Principal Substantive Amendments

The Board strongly supports enactment of the International Banking Act of 1977 ("IBA") because it would accomplish the two basic public policy goals that have guided the Board in recommending legislation to regulate foreign banks. First, the IBA implements the principle of national treatment by affording foreign banks the same opportunities and by subjecting them to the same rules and regulations that structure the operations of comparable domestic banking institutions. Second, the IBA provides for a comprehensive Federal presence in the regulation and supervision of foreign bank operations in order to insure appropriate national regulation of those activities of foreign banks in this country that have broader national and international implications. The Board believes, however, that revisions of certain provisions of the IBA would be desirable because, in our judgment, they would further the goals stated above. Our suggestions in this regard concern the following areas: (1) Monetary Policy Controls; (2) Interstate Banking; (3) Federal Deposit Insurance; (4) Grandfathering of Securities Activities; (5) Federal Review of Entry; and (6) Nonbanking Prohibitions.

Monetary Policy Controls

A major objective of the Board in recommending the enactment of foreign bank legislation has been to place this increasingly important segment of domestic banking under the same monetary and supervisory controls that apply to comparable U.S. banks. The IBA largely accomplishes this objective without requiring formal membership in the Federal Reserve System--a solution that is acceptable to the Board. We are concerned, however, that the IBA would not subject State-chartered subsidiaries of large foreign banks to these same controls. The situation of a State bank owned by a multi-billion-dollar foreign bank must realistically be distinguished from that of a small State non-member bank that primarily serves local communities. A bank owned by a large foreign bank is from both a market and monetary policy viewpoint an integral part of a larger foreign institution and, as such, competes primarily with major domestic banks, virtually all of whom are members of the System. The Board thus believes that the appropriate test for determining imposition of monetary controls is the capability of the foreign institution to compete and participate through its U.S. affiliate in our major money and credit markets and not the organizational form in which it chooses to operate. Accordingly, the Board recommends that section 7 of the IBA be amended to permit the imposition of Federal Reserve monetary controls on all U.S. operations of a foreign bank that has $1 billion or more in worldwide assets, irrespective of whether its U.S. operations are conducted in the form of agencies, branches, bank or New York Investment Company subsidiaries.

Interstate Banking

The Board strongly supports the principles adopted in section 5 of the IBA subjecting foreign banks to the same interstate restrictions that apply to domestic banks and grandfathering existing operations from the reach of such restrictions. The Board does, however, believe tnat section 5 may be improved in two ways. First, we would recommend that the restrictions be applied as well to agencies of foreign banks the activities of which, in terms of both total assets and loans, are greater than the activities of branches. In this regard, it should be stressed that agencies are not mere loan production offices, but, except for their inability to accept deposits from the public, are full-fledged commercial banking offices. Based on their activities, agencies would clearly be considered "branches" of national banks under the McFadden Act definition and their credit balance accounts overlap many of the same services provided large commercial customers by domestic banks. Essentially, we believe that many of the international banking services now provided by agencies can be appropriately conducted through Edge Act Corporations, foreign bank ownership of which is provided in the IBA; in this connection to make such facilities more comparable to other banking facilities, we recommend that the leveraging limits and minimum 10 per cent reserve requirements of that Act be amended. Secondly, we would recommend that direct imposition of the branching restrictions of the McFadden Act be limited only to Federal branches and agencies; State branches and agencies should be put on the same competitive footing as State banks in their home State. In this way, foreign banks may benefit from future reciprocal interstate branching compacts that may be agreed upon between the States.

In a related context, we do not believe that the States should have the authority in section 4 of the IBA to veto the entry of a Federal branch or agency. Such a State veto is not permitted in the case of the establishment of national banks or Edge Corporations, or even under the Bank Holding Company Act, and would thus represent a clear departure from the traditional operation of our dual-banking system. It may also serve to restrict both the development of and competition in new international banking markets in this country. We recommend therefore that State bank authorities instead be given a consultative role on Federal branch or agency entrance into their State.

Federal Deposit Insurance

While section 6 of the IBA does afford some protection to depositors of U.S. branches of foreign banks, the Board believes that it would be unwise not to make use of our deposit insurance system which has effectively protected U.S. depositors over some 40 years. Therefore, we were encouraged last year to see the Federal Deposit Insurance Corporation suggest that, in lieu of the surety bond and pledge of assets requirements of section 6 of the IBA, it would be possible to extend deposit insurance to domestic deposits at U.S. branches of foreign banks if adequate provisions were made to protect the FDIC fund. We would, however, modify the FDIC's suggestions by making insurance mandatory for deposits at these offices. All national banks, State member banks, and bank subsidiaries of bank holding companies are required to become insured and we can see no reason to exempt branches of foreign banks from this general requirement that structures the operations of their domestic competitors. A key element of public confidence in this nation's banking system is our system of deposit insurance and we do not feel that this confidence should in any way be lessened by failing to insure deposits at foreign bank branches, many of which actively solicit retail customers.

Grandfathering of Securities Activities

While the Board has recommended that foreign banks should be subject to the same securities activity restrictions that apply to domestic banks, we have also recommended that existing securities affiliates of foreign banks be grandfathered from those restrictions for reasons of equity and of mitigating any retaliatory sentiments abroad. Statements made and submitted at the Senate's hearings on the IBA last year made clear that the existing provisions of the IBA do not effectively grandfather existing activities and are a source of considerable controversy with the regional stock exchanges. It is possible that there are compromises on this issue that can satisfy the legitimate concerns of all involved; based on proposals put forward last year, however, it is likely that any such compromises will be so involved and technical as to defy efficient administration. The Board thus continues to favor permanent grandfathering of such activities with discretionary review under the nonbanking standards of the Bank Holding Company Act to prevent any abuses that might arise.

Federal Review of Entry

The Board does not advocate or see the necessity for the detailed guideline provisions on foreign bank entry in section 9 of the IBA. We believe in this regard that the provisions of the IBA providing for consultation between the bank regulatory authorities and the Secretaries of State and Treasury on new foreign bank operations should be adequate to ensure that foreign policy issues are considered when appropriate.

Nonbanking Prohibitions

In his testimony of last year on the IBA, Vice Chairman Gardner, on behalf of the Board, presented for Congress' consideration a proposed amendment to the IBA that would have prevented the Bank Holding Company Act provisions of the IBA from interfering unnecessarily with the essentially foreign shareholdings and activities of foreign banks. The Board again would like to endorse strongly this proposal, which we believe relieves the concerns of many foreign banks about the scope of the IBA, and, in this regard, would like to reiterate the following explanation provided in Vice Chairman Gardner's earlier statement:

> "I would like to discuss what I believe is a misconception on the part of some foreign banks about the reach of the nonbanking prohibitions of the Bank Holding Company Act. Apparently, some foreign banks believe that the nonbanking prohibitions of the Bank Holding Company Act would seriously interfere with their foreign nonbanking interests. I would note first that section 2(h) of the Bank Holding Company Act specifically exempts the wholly foreign activities and shareholdings of foreign banks from the nonbanking prohibitions of the Act. Next, I would emphasize that even when a foreign company in which a foreign bank has an equity interest does conduct a part of its business in the United States, the Board has used its discretionary authority under section 4(c)(9) of the Act to prevent the nonbanking prohibitions of the Act from unnecessarily interfering with essentially foreign shareholdings. . . . In this regard, I think it is important to quote a provision of Chairman Burns' previous testimony on this issue before the Senate Banking Committee in 1970:

'. . .[W]e believe that bank holding companies that are principally engaged in banking abroad should be allowed to retain interests in foreign-chartered nonbanking companies that are also principally engaged in business outside the United States. We do not believe Congress intended the Act to be applied in such a way as to impose our ideas of banking upon other countries. To do so might invite foreign retaliation against our banks operating abroad, to the detriment of the United States. The provisions of the House-passed bill authorizing the Board to grant exemptions in this area would be most useful in dealing with these problems.'

The Board would continue to be guided by these principles in its administration of the Bank Holding Company Act vis-a-vis the foreign banks that would be covered by this proposed legislation.

While the Board believes that it has sufficient regulatory authority under section 4(c)(9) to deal with problems that may occur in this area, we also believe that it would be desirable at this time for the Congress to adopt a more well-defined legislative policy. A great number of foreign banks emanating from a great variety of banking environments would become subject to the nonbanking prohibitions of the Bank Holding Company Act as a result of this proposed legislation. The lack of a statutory policy could initially cause some misunderstanding by foreign banks of the Act's effects on foreign companies with U.S. operations and would make more difficult the task of formulating appropriate general regulations.

Therefore, the Board recommends that H.R. 13876 be amended to make clear that the nonbanking prohibitions of the Bank Holding Company Act are not meant to prevent foreign banks principally engaged in banking abroad from retaining or acquiring interests in foreign-chartered nonbanking companies that are also principally engaged in business outside the

United States. We do feel, however, that as a corollary to any such amendment, a domestic office of a foreign bank should be required to deal with the domestic operations of a foreign company in which it may have an equity interest on a strictly arms-lengh basis so as not to give the firm or bank involved an advantage over their respective U.S. competitors."

CONCLUSION

The Board believes that the proposed substantive amendments will prove useful in developing a bill that will gain expeditious and widespread acceptance in both the House and Senate. We, of course, stand ready to be of further assistance and, in this connection, will shortly provide the Congress with legislative language to accomplish the above and other more technical amendments that may be desirable.

EXHIBIT "B"

PROPOSED AMENDMENTS TO H.R. 7325

THE INTERNATIONAL BANKING ACT OF 1977

Prepared by the staff of the

Board of Governors of the Federal Reserve System

1. Page 1, line 10 insert "checks are paid, or money is lent" after the word "powers,".

Explanation: The words "checks are paid, or money is lent" were deleted from the definition of "agency" as a result of certain technical amendments adopted during House passage of the International Banking Act of 1976 (H.R. 13876) (see daily ed. Cong. Rec. July 29, 1976 at 7945). It appears from the precise language of the technical amendment adopted by the House of Representatives, that is, deletion of the phrase, "and checks are paid or money is lent," that the amendment was intended to apply to the definition of "branch" not "agency" (see discussion infra). Accordingly, it is recommended that the deleted phrase be reinserted.

2. Page 2, lines 7-8, strike the words "and checks are paid or money is lent".

Explanation: In its passage of H.R. 13876, the House of Representatives adopted the following technical amendment without explanation--page 2, line 6 strike the words "and checks are paid or money is lent." The page and line references were to the definition of "agency"; however, the precise phrase is contained in the definition of "branch". It is believed that the amendment was intended to apply to the definition of "branch" in order to close a potential loophole. Technically, under the existing definition of "branch", if a U.S. office of a foreign bank accepted deposits but did not also lend money or pay checks, it would not be defined as either a "branch" or "agency". By striking "and checks are paid or money is lent" in the "branch" definition, this potential loophole would be closed and it would be made clear that any office receiving deposits would be defined as a branch. If a foreign bank office did not accept deposits but did lend money or pay checks or maintain credit balances, it would be defined as an "agency" and would not otherwise escape the Act's coverage.

3. Page 2, strike lines 17 through 25, and page 3 strike lines 1 through 7 and insert in lieu thereof the following:

> "(7) 'foreign bank' means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, that has the power to engage in the business of banking, or any subsidiary or affiliate organized under such laws of any such company, except that in administering their respective responsibilities under this Act the Board and Comptroller are authorized to adopt, by regulation or order, such other definitions as may be necessary and appropriate to enable them to effectuate the various provisions of this Act and prevent evasions thereof."

Explanation: The present definition of "foreign bank" in section 1(b)(7) of H.R. 7325 covers only foreign-chartered institutions that principally conduct their banking business outside the United States. There are two major problems with this definition. First, it would exclude a foreign bank that principally conducts its banking business in this country; since this definition generally applies to all provisions of the Act, it would illogically exclude from the interstate and other restrictions foreign banks whose primary business is in this country. For example, if a group of individuals chartered a bank in the Cayman Islands and that bank in turn established U.S. branches and agencies, it would not be covered by the Act. Second, it is not clear whether the "principally conduct" test is a continuing one; for example, a foreign institution may come within the definition at the time the Act is made effective, but may later no longer qualify e.g., it expands to the point where its business is now being principally conducted in the U.S.

The inherent problem with a general definition in the Act is that it may be desirable to have broad definitions for some provisions e.g., section 8 which restricts the combination of banking and nonbanking activities in the United States, and to have more limited definitions for other provisions, e.g., sections 2-4 where a defined foreign bank is given the ability to apply for certain direct or indirect banking powers in the U.S. Accordingly, the proposed definition attempts to distill two very general criteria: (a) incorporation or organization abroad, and (b) the power to engage in the business of banking.1/ With respect to particular provisions of the Act, it is left to the agencies to adopt, if needed, other definitions of the term as may be necessary

---

1/ If an organization is required to be actually engaged in a banking business outside the U.S. to qualify as a foreign bank, a shell banking corporation organized abroad to do business solely in the U.S. would still not be covered.

or appropriate to carry out the provisions of the Act or prevent evasions thereof. This gives flexibility to consider the purposes of each provision and to tailor the definition as needed.

4. Page 4, line 3, insert the following new definition:

> "(12) 'consolidated' means consolidated in accordance with generally accepted accounting principles in the United States consistently applied."

Explanation: The amount threshold for imposition of monetary controls on foreign banks in Sections 7(a)(2) and (3) of H.R. 7325 both rely on a "consolidated" test applied to foreign banks. The recommended amendment would make clear that U.S. accounting principles are to be applied in determining what must be consolidated for purposes of computing the threshold.

5. Page 4, line 4, strike the title "Establishments of National Banks" and insert in lieu thereof "Directors of National Banks".

Explanation: Section 2 of H.R. 7325 refers only to directors of national banks owned by foreign banks; the present title is a holdover from earlier provisions of the legislation and may be misleading.

6. Page 4, line 23, strike the period and insert in lieu thereof ", and the last sentence of said paragraph is amended by inserting a period after 'prescribe' and striking 'but in no event less than 10 per centum of its deposits'".

Explanation: The Edge Act presently requires that Edge Corporations carry reserves on deposits received in the United States in such amounts as the Board may prescribe, but in no event less than 10 per centum of its deposits. The Board presently requires Edge Corporations to carry the same reserves as member banks, subject to this statutory minimum. To assure competitive equality between branches and agencies of foreign banks and Edge Corporations, it is recommended that the minimum requirement be eliminated so that all of these organizations will be subject to the same requirements.

7. Page 6, line 12, insert "which engages directly in a banking business outside the United States" after the word "bank".

Explanation: It is suggested that only foreign banks engaged directly in a banking business outside the United States be allowed to open direct branches or agencies in the U.S. (see discussion supra on the definition of foreign bank).

8. Page 6, line 13, strike "(1)" and line 14 insert a period after "law" and strike lines 15-17.

Explanation: Under the present section 4(a)(2) of H.R. 7325, a foreign bank cannot establish a Federal branch or agency in any State where a foreign bank is "prohibited by State law" from establishing a branch or agency. As discussed on pages 3 and 4 of the Statement (the "Statement") accompanying the Board's letter of May 25, 1977 to the Congress, the Board has recommended that the States not be given a right to veto foreign bank entry through a federal branch or agency. Rather, the Board has recommended that the State authorities be afforded a consultative role only. (See existing section 9(d) of H.R. 7325).

9. Page 8, lines 7-8, strike "engage in the business of receiving deposits or exercising" and insert in lieu thereof "receive deposits or exercise".

Explanation: The suggested language change avoids the problem of defining what it means to be engaged "in the business" of receiving deposits; the prohibition should be simply against the receipt of deposits by an agency.

10. Page 8, line 25, strike the word "or".

11. Page 9, line 1, strike the word "agency".

12. Page 9, line 18, and page 10, line 8 strike the words "or agency".

Explanation: Amendments 10-12 would remove the requirement of a capital equivalency deposit for "Federal agencies". Foreign bank agencies are generally not required to maintain capital equivalency deposits under State laws because of their inability to accept deposits from the general public; imposition of such a requirement on Federal agencies could put them at a competitive disadvantage.

13. Page 10, line 16, insert the following new paragraph (4).

> "(4) Subject to such conditions and requirements as may be prescribed by the Comptroller, each foreign bank shall hold in each State in which it has a Federal branch or agency, assets of such types and in such amount as the Comptroller may prescribe by general or specific regulation or ruling as necessary or desirable for the maintenance of a sound financial condition, the protection of depositors, creditors and the public interest. In determining compliance with any such prescribed asset requirements,

the Comptroller shall give credit to (i) assets required to be maintained pursuant to paragraphs (1) and (2) of this subsection, (ii) reserves required to be maintained pursuant to section 7(a) of the International Banking Act of 1977, (iii) assets pledged to the Federal Deposit Insurance Corporation pursuant to section 6(a) of the International Banking Act of 1977, and (iv) the amount of any surety bond obtained pursuant to section 6(a) of the International Banking Act of 1977. The Comptroller may prescribe different asset requirements for branches or agencies in different States, in order to ensure competitive equality of Federal branches and agencies with State branches and agencies and domestic banks in those States."

Explanation: State laws generally require foreign banks maintaining branches or agencies to maintain assets in the State equal to 108 per centum of the liabilities payable at or through such offices in the State. The general purpose of such requirement is to ensure that, in the event of insolvency, there will be sufficient assets in the State to satisfy the claims of U.S. creditors and depositors of that office. Federal branches and agencies should have similar asset requirements in order to insure adequate protection to U.S. customers and competitive equality with State branches and agencies. Under this provision, each foreign bank would be required to hold assets in each State in which it has a Federal bank or agency under rules and regulations to be prescribed by the Comptroller. The Comptroller would be given the authority to set different requirements for different States, in order to equalize competition in the States between Federal and State branches and agencies, and between Federal branches and agencies of domestic banks.

14. Page 12, line 4, insert "(1)" before "Whenever the Comptroller" and line 20 insert a new paragraph (2) as follows:

> "(2) In any receivership proceeding ordered pursuant to this subsection (j), whenever there has been paid to each and every depositor and creditor of such foreign bank whose claim or claims shall have been proved or allowed, the full amount of such claims arising out of transactions had by them with any branch or agency of such foreign bank located in any State of the United States, except (1) claims that would not represent an enforceable legal obligation against such branch or agency if such branch or agency were a separate legal entity, and (2) amounts due and other liabilities to other offices or branches or agencies of, and wholly-owned (except for a nominal number of directors' shares) subsidiaries of, such foreign bank, and all expenses of the receivership, the Comptroller or the Federal Deposit Insurance Corporation, where that Corporation has been appointed receiver of the foreign bank, shall turn over the remainder, if any, of the assets and proceeds of such foreign bank to the head office of such foreign bank, or to the duly appointed domiciliary liquidator or receiver of such foreign bank."

Explanation: Section 4(j) provides, generally, that the Comptroller may appoint a receiver of a federal branch or agency in certain extreme situations. The receiver is given the same rights, privileges, powers and authority as the receiver of a national bank. It is probable that if a foreign bank failed, creditors from all over the world would seek to present their claims in any forum where substantial assets were located; a federal receiver of a federal branch or agency could be put in the difficult position of having to consider claims from creditors of the foreign bank having no direct relation to the business of the foreign bank at its offices in this country. The proposed amendments would have the federal receiver pay out claims arising directly out of transactions had by depositors or creditors with U.S. branches and agencies of the foreign bank. Once such claims and costs of the receivership have been paid in full out of available assets, the receiver would turn over any surplus to the foreign bank, or more likely its domiciliary liquidator. Thus, claims not related to U.S. branch or agency transactions would be considered in the general liquidation.

15. Page 12, strike lines 22 through 25 and page 13 strike lines 1 through 13 and insert in lieu thereof the following:

> "SEC. 5. (a) Except as provided by subsection (b), (1) no foreign bank may directly or indirectly operate a Federal branch or agency outside its home State unless the State is one in which it could operate a branch or agency if it were a national bank located in its home State; (2) no foreign bank may directly or indirectly operate a State branch or agency outside its home State unless (A) the statute laws of the State in which such branch or agency is to be located specifically authorize a State bank organized under the laws of such foreign bank's home State to establish or operate such branch or agency, by language to that effect and not merely by implication, and (B) the State branch or agency is approved by the bank regulatory authority of the State in which such branch or agency is to be located; (3) no foreign bank or company of which it is a subsidiary may directly or indirectly acquire any voting shares of, interest in or substantially all of the assets of a commercial lending company located outside of its home State unless (A) the statute laws of the State in which such company is to be located specifically authorize a State

bank organized under the laws of such foreign bank's home State to acquire any such company, by language to that effect and not merely by implication, and (ii) the acquisition is approved by the bank regulatory authority of the State in which such commercial lending company is to be located; and (4) no foreign bank may directly or indirectly acquire any voting shares of, interest in or substantially all of the assets of a bank located outside of its home State unless such acquisition would be permissible under section 3 of the Bank Holding Company Act of 1956 if the foreign bank were a bank holding company the operations of whose banking subsidiaries were principally conducted in the foreign bank's home State."

Explanation: This recommended amendment to section 5(a) of H.R. 7325 makes three substantive changes discussed on pages 2 and 3 of the Statement, as well as certain technical changes. First, it would subject agencies of foreign banks to the same interstate restrictions that apply to branches. As stated in Vice Chairman Gardner's testimony on H.R. 13876, though agencies do not accept deposits, their credit balance accounts serve many of the same functions as deposits and agencies may perform many other commercial banking activities that are carried on by branches of U.S. banks, such as the making of commercial loans, that cannot be engaged in by U.S. banks at out-of-State offices. Second, while the McFadden Act test has been retained for federal branches and agencies, it has been deleted for State branches and agencies. Under the amendment, a foreign bank would be able to establish a State branch or agency outside of its home State if a State bank in its home State could establish such an office. Thus, if reciprocal branching legislation were passed between two States, foreign banks could benefit from such changes in State law. Third, foreign banks would not be allowed to acquire interests in commercial lending subsidiaries outside of their home State unless the statute laws of the receiving State specifically allowed a State bank in their home State to make such acquisition. This parallels the interstate tests for agencies and commercial lending companies in view of their similar powers.

16. Page 13, line 20. The Congress may wish to move the grandfathering date for interstate operations up to the date of introduction in the 95th Congress, and may wish to make clear that if a foreign bank converts a grandfathered office to another form of organization e.g., converts a grandfathered branch to an agency, it would not lose its grandfather rights.

17. Page 13, strike lines 21 through 25, and page 14 strike lines 1 through 10 and insert in lieu thereof the following:

> "(C) For the purposes of this section, the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in more than one State, is whichever of such States is determined by election of the foreign bank, or, in default of such election, by the Board."

Explanation: If, as suggested *supra*, agencies and commercial lending companies are treated the same as branches and subsidiary banks, respectively, then a foreign bank should simply be allowed to choose which State is to be its home State, regardless of the form of organization that is maintained in any State.

93-031 O - 77 - 9

18. Page 15, strike lines 5 through 24, and page 16 strike lines 1 through 3 and insert in lieu thereof the following:

INSURANCE OF DEPOSITS

"SEC. 6. (a) Any branch of a foreign bank must become an insured bank under the Federal Deposit Insurance Act (12 U.S.C. 1811-31b) with respect to its domestic deposits, as defined by regulation by the Board of Directors of the Federal Deposit Insurance Corporation. Upon so becoming an insured bank, a Federal branch shall thereafter be treated as if it were a national member bank, and any other branch shall thereafter be treated as if it were a State member bank, for purposes of applying the Federal Deposit Insurance Act to such branch's domestic activities. Any branch which becomes an insured bank shall maintain with the Federal Deposit Insurance Corporation, or as the Corporation may otherwise direct, a surety bond or a pledge of assets in such amount and subject to such conditions and rules as the Corporation may prescribe for the purpose of providing some additional protection to the deposit insurance fund against the additional risks entailed in insuring the domestic deposits of a foreign bank whose activities, assets, and personnel are in large part outside the jurisdiction of the United States. In prescribing such rules, however, the Corporation shall, to the maximum extent it considers appropriate, endeavor to avoid imposing requirements on such branches that would place them at an undue competitive disadvantage vis-a-vis domestically incorporated banks with which they compete.

(b) Subsection (a) of this section shall take effect 180 days after enactment hereof. Within 90 days after enactment and as may be appropriate thereafter, the Corporation shall submit to the Congress its recommendations for amending the Federal Deposit Insurance Act so as to enable the Corporation to implement the provisions of this section in a manner fully consistent with the purposes of that Act."

Explanation: This amendment would strike the existing section 6 of H.R. 7325 and replace it with the alternative suggested by Chairman Barnett of the FDIC in his letter of August 26, 1976, to Senator McIntyre on H.R. 13876, except that this proposed amendment would make insurance mandatory for branches, whereas Chairman Barnett's proposal would have insurance be optional. The Board, as explained more fully on page 4 of the Statement, has consistently recommended that insurance be made mandatory for reasons of both national treatment and protection of U.S. depositors.

19. Page 16, line 10, insert the words "bank and" before "commercial lending company", and line 13 insert the word "bank" before "or".

Explanation: See explanation for amendments numbered 22-30.

20. Page 16, line 10 insert the words "directly or indirectly" after "controlled".

Explanation: The insertion of directly or indirectly would make clear that a bank or commercial lending subsidiary would be subject to monetary policy controls even if it was held indirectly by a group of foreign banks through a domestic or foreign bank holding company. See similar changes in amendments numbered 23, 27 and 29.

21. Page 16, line 15 change the semi-colon after "Act" to a period and strike the remainder of the line and lines 16 through 25, except for "The" on line 25.

Explanation: The language struck permitted the Board to set different reserve and interest rate requirements for branches, agencies and New York Investment Company subsidiaries of foreign banks. While such provision was apparently intended to allow the Board flexibility in setting monetary policy requirements, its inclusion is inconsistent with the principle of national treatment and should be omitted. Through its ability to graduate in the imposition of reserve requirements over a period of time and to define and classify deposits and prescribe rates, the Board would seem to have sufficient legal authority to deal with any problems that might arise in imposing reserve requirements on U.S. operations of foreign banks.

22. Page 17, line 2, insert the word "banks" before "and commercial lending companies".

23. Page 17, line 14, insert the words "bank or" before "commercial lending company", and line 15 insert the words "directly or indirectly" before "controlled".

24. Page 18, lines 7-8, strike "any commercial lending company" and insert in lieu thereof "any bank or commercial lending company subject to section 7(a) of the International Banking Act of 1977".

25. Page 18, line 10, insert a period after "bank" and strike the phrase beginning with "if such branch" and ending with "Act of 1977" on line 13.

26. Page 18, lines 14, 16 and 18, insert the word "bank" before the word "or" in each line, and insert a comma after "branch" in line 14.

27. Page 19, line 1, insert "bank or" before "commercial lending company", and line 2 insert "directly or indirectly" before "controlled".

28. Page 19, line 11, insert the word "bank" at the beginning of the line.

29. Page 19, line 19, insert the words "bank or" before "commercial", and line 20 insert "directly or indirectly" before "controlled".

30. Page 20, line 9, insert the word ", banks" before "or".

Explanation: Proposed amendments 22 through 30 would amend section 7 of H.R. 7325 to subject U.S. bank subsidiaries of foreign banks to the same monetary and regulatory controls to be applied to branches, agencies and commercial lending company subsidiaries of foreign banks. As pointed out by Vice Chairman Gardner in his testimony on H.R. 13876, and as discussed more fully on pages 1 and 2 of the Statement, exemption of foreign bank subsidiaries from monetary controls could result in an anomalous situation whereby part of a foreign bank's operations would be subject to monetary controls and another part would not--for example, a foreign bank that maintains both a non-member subsidiary bank and branches or agencies. The amended section would only apply to subsidiaries of those foreign banks that have worldwide consolidated assets in excess of $1 billion.

31. Page 21, line 16, insert the following new sections 7(f) and 7(g):

"(f) Unless the Board determines that adequate provision exists under the laws of the State in which each agency or branch of a foreign bank is established or operating pursuant to State law, each foreign bank shall hold in each State in which it has a State branch or agency the same amount and types of assets that would be required of a federal branch or agency in that State pursuant to section 4(g)(4) of the Internation Banking Act of 1977.

(g) Each bank organized under the laws of a foreign country and with an office or doing business directly or indirectly through a subsidiary in the United States shall make to the Board such reports which shall be in such form and shall contain such information as the Board may require to enable it to carry out its responsibilities under this Act and the Federal Reserve Act."

Explanation: It is recommended in new section 7(f) that the domestic asset requirements recommended for federal branches and agencies in proposed amendment number 13 (new section 4(g)(4)), and which has already been adopted by most States that license agencies or branches of foreign banks (New York, California and Illinois) also be applied equally to all State branches and agencies. If State law contained an adequate provision to protect domestic depositors and creditors, section 7(f) would not apply.

The new section 7(g) would expand the authority of the Board to require reports of foreign banks without banking offices but nevertheless doing business in the United States--such as through representative offices at which U.S. deposits and loans may be solicited but not made.

32. Page 23, line 22, strike the words "Notwithstanding any exercise of the authority", and strike lines 23 through 25.

33. Page 24, strike lines 1 through 16.

Explanation: Amendments 32 and 33 would, as recommended by the Board on pages 4-5 of the Statement, amend Section 8 of H.R. 7325 by removing the limitations and restrictions imposed on the grandfathering of securities affiliates of foreign banks. Under the amended proposal, securities affiliates would be permanently grandfathered if established before December 3, 1974--the original date of introduction of the Board's bill.

34. Page 25, line 25 is amended by adding the following new section (e):

> "(e) Section 2(h) of the Bank Holding Company Act of 1956 is amended by striking the proviso to that section and inserting in lieu thereof the following:
>
> > 'Provided, however, That the prohibitions of Section 4 of this Act shall not apply to shares of any company organized under the laws of a foreign country (or to shares of any subsidiary of such company principally engaged in activities incidental to the business of the parent) that is principally engaged in business outside the United States if such shares are held or acquired by a bank holding company organized under the laws of a foreign country that is principally engaged in the banking business outside the United States, except that (1) such a company (A) may engage in the business of underwriting, selling or distributing securities in

> the United States only to the extent that a bank holding company may do so under this Act and under regulations or orders issued by the Board under this Act, and (B) may engage in the United States in any banking or financial operations or types of activities permitted under section 4(c)(8) or in any order or regulation issued by the Board under such section only with the Board's prior approval under that section, and (2) no domestic office or subsidiary of a bank holding company or subsidiary thereof holding shares of such company may extend credit to a domestic office or subsidiary of such company on terms more favorable than those afforded similar borrowers in the United States. For purposes of this subsection--(i) a bank holding company may not in any case be considered to be 'principally engaged in the banking business outside the United States' if its principal banking subsidiary is located in the United States; and (ii) 'domestic' means located in the United States or organized under the laws of the United States or any State thereof.'"

Explanation: The present section 2(h) of the Bank Holding Company Act provides that the nonbanking prohibitions of the Act "shall not apply to shares of any company organized under the laws of a foreign country that does not do any business in the United States, if such shares are held or acquired by a bank holding company that is principally engaged in the banking business outside the United States." Thus, under the current section, a foreign nonbanking company held or acquired by a foreign bank is only eligible for a statutory exemption from the Act's nonbanking prohibitions if it does no business in the United States.

This amendment, first proposed by Vice Chairman Gardner in his testimony on H.R. 13876 and endorsed again by the Board on pp. 5-7 of the Statement, would amend section 2(h) of the Act to give foreign bank holding companies principally engaged in banking abroad a statutory exemption under which they could retain and acquire interests in foreign-chartered nonbanking companies that are principally engaged in business outside the United States, even if they have U.S. operations. This would exempt both controlling and minority interests in such companies.

Three important exceptions, however, are made to the exemption. First, no company may qualify for the exemption if it conducts a U.S. securities business that would not be permissible for a domestic bank holding company; this serves to prevent this exemption from being used as a way to avoid Glass-Steagall prohibitions. Secondly, no foreign bank holding company may use this exemption as a means of evading the requirements of § 4(c)(8) of the Act. For example, if a foreign bank owns a foreign leasing company that company may only establish or retain offices in the United States to conduct leasing operations in accordance with the same limitations and procedures that apply to domestic bank holding companies under § 4(c)(8) of the Act and the Board's Regulation Y. Thirdly, it is provided that no domestic office or subsidiary of a foreign bank or subsidiary thereof may extend credit to a domestic office or subsidiary of a foreign nonbanking company qualifying for the exemption on terms more favorable than those afforded similar borrowers in the United States. This condition is imposed so as not to give the foreign bank or nonbank firms involved in advantage over their respective U.S. competitors.

In addition, appropriate governing definitions have been proposed in the amendment. For example, in order for a foreign bank holding company to be "principally engaged in the banking business outside the United States" and thus eligible to use the exemption, it is provided that its principal banking subsidiary cannot be located in the United States. This latter definition prevents large U.S. banking organizations from ever being able to use the exemption.

The general purpose of the proposed amendment is to make clear that the Bank Holding Company Act and H.R. 7325 are not meant to apply our ideas of banking to foreign bank operations that derive from and have their primary effects in countries outside the U.S. Since the companies exempted must be principally engaged in business outside the United States and since the foreign bank must be principally engaged in the business outside the United States, it is not anticipated that the amendment would have significant effects on the concentration of domestic resources or give foreign banks or their nonbank affiliates significant competitive advantages. The proposed amendment would also be consistent with the U.S. approach of encouraging foreign investment in this country; lack of a statutory exemption may discourage major foreign nonbanking companies from establishing facilities in the U.S. because of a foreign bank shareholder. Finally, the proposed amendment should lessen the possibility of any retaliatory measures being taken abroad against U.S. banks.

35. Page 26, line 1 strike "GUIDELINES FOR" and insert in lieu thereof "STATEMENT OF POLICY AND INTERAGENCY CONSULTATION ON".

36. Page 26, lines 2 and 3 strike "The Secretary of the Treasury in issuing guidelines under this section, and", and capitalize "the" on line 3, and strike the comma after "Act" on line 4.

37. Page 26, strike lines 17 through 25.

38. Page 27, strike lines 1 through 11, and redesignate subsections "(d)" and "(e)", lines 12 and 20, as subsections "(b)" and "(c)".

39. Page 28, lines 6 and 20, redesignate subsections "(f)" and "(g)" as subsections "(d) and "(e)".

Explanation: Amendments 35-39 and 41 would, as recommended by the Board on page 5 of the Statement, eliminate the detailed guidelines provisions in section 9 of H.R. 7325.

40. Page 31, line 16 insert the following new section:

> "AMENDMENT TO THE BANKING ACT OF 1933
>
> SEC. 12. Section 21 of the Banking Act of 1933 (12 U.S.C. 378) is amended by striking clause (B) of paragraph (2) of subsection (a) thereof and inserting in lieu thereof the following:
>
> > '(B) shall be permitted by the United States, any State, Territory, or District to engage in such business and shall be subjected by the laws of the United States, or such State, Territory or District to examination and regulation.'"

Explanation: This amendment recognizes that a foreign bank may lawfully engage in a deposit-taking business in the United States through the establishment of a federal branch under section 4 of H.R. 7325.

The current provisions of the Banking Act of 1933 do not cover such a possibility and accordingly an amendment is needed in order to avoid any possible conflict between the federal branch provisions of H.R. 7325 and Section 21 of the Banking Act of 1933 which provides criminal penalties for any violation of its provisions.

41. Page 31, line 18 redesignate "SEC. 12." as "SEC. 13.", and strike the comma after "Comptroller" and insert in lieu thereof the word "and" and strike ", and the Secretary of the Treasury" continuing on line 19.

EXHIBIT "C"

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

STEPHEN S. GARDNER
VICE CHAIRMAN

June 2, 1977

Dr. Wolfgang Jahn
Managing Director
Commerzbank A.G.
25 Breite Strasse
4000 Dusseldorf 1, Germany

Dear Dr. Jahn:

During my talk at the recent convention of the Bankers' Association for Foreign Trade, time did not permit an answer to one of the questions you put to me. I have been anxious to correct that omission as the question you raised is an important one and deserves a serious response.

To generally restate your question: Is there truly a need for the Federal Reserve to control foreign banks for domestic monetary policy purposes and because of their role as conduits for flows of funds to and from the United States?

It is important in approaching this question to keep two things in mind: first, the character of the foreign banks operating in this country and the nature of their business; second, the tools employed by the Federal Reserve in the conduct of monetary policy. On the first of these points, there must surely be agreement that the foreign banks coming to this country are, for the most part, very large institutions of multinational repute and clearly key institutions in their home countries; that their business in this country is intended to be largely of a wholesale nature including loans to multinational corporations; that their location here is also motivated by a desire to obtain a U.S. dollar base for their multinational operations as well as to assist in clearing and foreign exchange operations; and that the inevitable effect is for them to have a significant role in U.S. money and credit markets in competition with the large money center banks.

Dr. Wolfgang Jahn
Page Two

With regard to the second of these points, reserve requirements have been employed as one of the principal tools of monetary policy in the United States in conjunction with open market operations. The utility of reserve requirements rests in their function as a fulcrum on which the lever of open market operations can work to affect the cash position of member banks and, hence, their ability to extend credit and create monetary liabilities. The ability to alter the level of reserve requirements provides a means for changing the leverage of those operations.

Currently, about two-fifths of the commercial banks in the United States are member banks and these banks account for about three-fourths of the deposits in all insured banks. A substantial proportion of commercial bank liabilities is thus directly subject to reserve requirements. However, the proportion of banks that are member banks and the proportion of deposits that is lodged in member banks have been declining in recent years. The Federal Reserve has consequently become seriously concerned about the impact of this membership erosion on its ability to conduct monetary policy efficiently. One expression of this concern has been to seek legislative authority for the extension of reserve requirements to all commercial banks.

Viewed against this background, the foreign banks form another set of banking institutions in the United States that is growing very rapidly and whose liabilities are not subject to reserve requirements. Moreover, this set of institutions is conducting a banking business in essentially the same ways as the large domestic banks that are members of the Federal Reserve System. The following comparisons of selective activities of the foreign banks here with those of the 175 large member banks that report weekly to the Federal Reserve are revealing.

Dr. Wolfgang Jahn
Page Three

	Large member banks	Foreign banks	Share of foreign banks (per cent)
Total assets	469	76	16
Commercial and industrial loans	104	20	19
Domestic inter-bank loans (mainly Federal funds)	20	8	40
Total deposits and credit balances	352	36	10

Note: Data are as of the end of 1976 and are in billions of dollars. These comparisons are approximate since the data are not exactly comparable --e.g., figures for total assets and deposits of foreign banks include $7 billion of intra-company business, where these are largely but not entirely netted out in the case of large member banks.

The importance of foreign banks' operations in U.S. money and credit markets is clearly indicated in these comparisons. They also illustrate, though in a somewhat rough fashion, the competitive niches that the foreign banks have carved out in a fairly short period of time. It is therefore not surprising that the foreign banks can no longer be ignored by the central bank and that their operations, too, are a matter of concern to the central bank because of their implications for the conduct of monetary and credit policy.

The point is not that the Federal Reserve is incapable of conducting monetary policy because of the operations of

Dr. Wolfgang Jahn
Page Four

these institutions outside the pale of reserve requirements. Nor is the point that reserve requirements per se are essential to the conduct of monetary policy. The point is rather that reserve requirements are highly useful because they enhance the predictability of how central bank operations on the banks' reserve base will affect changes in money and credit aggregates. Thus, it is highly desirable that the base of required reserves be large enough to minimize slippages in that translation process. Hence, it is very important to include in the reserve base the major money-center banks and a group of institutions having comparable characteristics and behavior patterns such as the major foreign banks operating in the U. S.

The importance of the foreign banks here as conduits of international flows of funds has already been recognized by the Federal Reserve and accepted by the foreign banks. As you will recall, in 1973 Chairman Burns called upon the foreign banks here to conform voluntarily to the system of marginal reserve requirements then imposed on net inflows of foreign funds to member banks. The Federal Reserve has been greatly heartened by the full cooperation of the foreign bank community with Chairman Burns' request. That cooperation has connoted recognition of the potential of foreign banks for significant international flows of funds and the potential disruptiveness of the kind of two-tiered market that would result from different institutions being subject to substantially different rules.

In my view, it cannot be stressed too often that the United States is unique among the major countries in that it is the only one in which the foreign banks are not subject to the monetary policy rules of the central bank. In your own country, for example, it is my understanding that the reserve requirements imposed by the Bundesbank apply equally to German banks and to foreign banks. I find it difficult to imagine that the major German banks, such as yours, would not object to such reserve requirements if a large and growing foreign banking sector were exempted.

The essence of the argument for subjecting foreign banking operations to the rules of the central bank may be

Dr. Wolfgang Jahn
Page Five

summarized as follows: The foreign banks in the United States have the same characteristics as the large domestic money-center banks and are in direct competition with them. The large domestic money-center banks are key elements in the functioning of money and credit markets in the United States and, consequently, are key institutions for the effective workings of monetary policy. The large domestic money-center banks are all members of the Federal Reserve System and subject to reserve requirements and other monetary policy rules. For reasons of equity among comparable institutions and for reasons of minimizing slippages in the effectiveness of monetary policy, foreign banks should be subject to the same requirements as the large domestic banks.

I hope that you find this responsive to your question. As I told you, I am sending a copy of this letter to the Bankers' Association for Foreign Trade for inclusion in the record of the meeting so that it will be available to all.

You will have noted that the International Banking Act has been reintroduced into Congress and that the Federal Reserve has commented on the bill, including suggestions for a number of changes. The debate on the merits of the various proposals in the bill may now take place at the legislative level. The Federal Reserve supports the proposal with amendments and has urged the Congress to enact it this year.

Sincerely,

Stephen S. Gardner

Stephen S. Gardner

93-031 O - 77 - 10

EXHIBIT "D"

PROPOSED ALTERNATIVE TO SECTION 5(a) OF

H.R. 7325--IMPOSING EDGE ACT

LIMITATIONS ON FUTURE OUT-OF-STATE AGENCIES*

July 12, 1977

*Note: This proposed alternative is submitted in lieu of amendment number 15 in the staff document entitled "Proposed Amendments to H.R. 7325, The International Banking Act of 1977," that is Exhibit "B" in this Compendium.

1. Page 12, strike lines 22 through 25 and page 13 strike lines 1 through 13 and insert in lieu thereof the following:

"SEC. 5. (a) Except as provided by subsection (b), (1) no foreign bank may directly or indirectly operate a Federal branch or agency outside its home State unless the State is one in which it could operate a branch or agency if it were a national bank located in its home State; (2) no foreign bank may directly or indirectly operate a State branch outside its home State unless (A) the statute laws of the State in which such branch is to be located specifically authorize a State bank organized under the laws of such foreign bank's home State to establish or operate such branch, by language to that effect and not merely by implication, and (B) the State branch is approved by the bank regulatory authority of the State in which such branch is to be located; (3) no foreign bank may operate a State agency outside its home State unless (A) the State agency is approved by the bank regulatory authority of the State in which such agency is to be located, and (B) the State agency limits its activities to those permissible for a Corporation organized under section 25(a) of the Federal Reserve Act; (4) no foreign bank or company of which it is a subsidiary may directly or indirectly acquire any voting shares of, interest in or substantially all of the assets of a commercial lending company located outside of its home State unless (A) the acquisition is approved by the bank regulatory authority of the State in which such commercial lending company is to be located and (B) the commercial lending company limits its activities to those permissible for a Corporation organized under section 25(a) of the Federal Reserve Act; and (5) no foreign bank may directly or indirectly acquire any voting shares of, interest in or substantially all of the assets of a bank located outside of its home State unless such acquisition would be permissible under section 3 of the Bank Holding Company Act of 1956 if the foreign bank were a bank holding company the operations of whose banking subsidiaries were principally conducted in the foreign bank's home State."

Explanation: This recommended amendment to section 5(a) of H.R. 7325 makes two substantive changes, as well as certain technical changes. First, it would permit agencies and commercial lending company subsidiaries of foreign banks to be established in the future outside of a foreign bank's home State, so long as these offices restricted their operations to those international banking activities permissible for Edge Act Corporations. A chart comparing the powers of Edge Act Corporations to those of agencies and branches of foreign banks is attached. Second, while the McFadden Act test has been retained for federal branches and agencies, it has been deleted for State branches. Under the amendment, a foreign bank would be able to establish a State branch outside of its home State *if* a State bank in its home State could establish such an office. Thus, if reciprocal branching legislation were passed between two States, foreign banks could benefit from such change in State laws.

2. Page 13, strike the period in line 20 and add the following new phrase:

> "and may continue to engage in all activities permissible to any such offices or subsidiaries under State law."

Explanation: This amendment would make clear that grandfathered agencies and commercial lending company subsidiaries of foreign banks would be permitted to engage in all activities permissible under State law and would thus not be affected by the Edge Act limitations to be applied on future agencies and commercial lending companies under the first amendment.

Powers and Restrictions on U.S. Activities	Engage in international banking transactions--acceptance and other credit facilities, commercial letters of credit, foreign collections, foreign exchange dealing, remittance of funds, etc.	Engage in domestic lending transactions--C&I loans, federal funds market, consumer lending.	Deposit-taking ability.
*Agencies of Foreign Banks	Yes	Yes, except for consumer lending. Generally able to make domestic C&I loans and participate in federal funds market; generally unable to engage in consumer lending.	No, but can accept credit balances incidental to either international or domestic business. Cannot issue certificates of deposits in any event. No FDIC insurance.
Branches of Foreign Banks.	Yes	Yes, restrictions may apply to consumer lending.	Yes, not limited to internationally related, can issue domestic certificates of deposit. No FDIC insurance.
Edge Act Corporations	Yes	No. Prohibited from engaging in any domestic lending transaction; can engage in federal funds transactions only as necessary to adjust reserve balance, and not as medium of investment.	Yes, but only those incidental to international transactions. Can accept time deposits for foreign accounts, only if proceeds not to be used to pay expenses in the U.S. No FDIC insurance.

*The precise powers of agencies of foreign banks vary somewhat by State law. This chart uses the powers extended agencies of foreign banks in New York as a model.

Mr. St Germain. Thank you, Governor Gardner, for a very excellent statement. We will certainly give serious consideration to the amendments that you have proposed.

Governor Gardner, in the last go-around there were many members who were apprehensive about, and I put this in quotes, "retaliation." Now this subcommittee did, in fact, visit the central banks of Europe 2 years ago, and at the time we were told it was the first time that a committee of Congress had taken this step. The primary reason was to discuss the legislation that is before us today.

We did, in fact, find at no point, any indication that there would be any retaliation. It was a good exchange between the members of the subcommittee and the major central banks of Europe.

Now the Fed is in constant contact with these same central banks that are also in contact with many of the foreign banks. I might say in concluding that all of this red herring about retaliation comes not from the regulatory agencies in those foreign nations but rather from individual banks who have made these statements and given this impression to some of the members.

Governor Gardner. I think you are safe, Mr. Chairman, and I agree with your view. The currents that are runnning, it seems to me, among American banks, are the concerns of those who have very substantial investment abroad, that is certainly proper. They don't want to see retaliation and they are fearful of it. I think the largest number of banks engaged in foreign trade think the bill is desirable and don't believe that the possibility of retaliation outweighs that desirability.

As for the regulatory and central banking agencies abroad, they are very reasonable people. In our judgment they understand that we don't have a banking law governing foreign banks in the United States, and that seems curious to them. It has always seemed curious to foreign banks coming to this country that they had no place in the Federal Government to even consult, because as you know, they are chartered solely by States.

I think foreign bankers, those who have not come here in full force, are probably a little apprehensive about a law being passed, but I also believe that among the foreign bankers you will find—and this subcommittee can check as the hearings proceed—you will find some sentiment for a bill which provides certainty, which is finally enacted by the Congress. Because every year we delay, I believe we are likely to have more issues presented to this subcommittee and to the Congress, and there is a great possibility that a future bill could be more restrictive, less outgoing, less based on national treatment.

Mr. St Germain. Governor Gardner, in your proposed amendment with respect to the securities activities of these foreign banks, you suggest the Board be given the discretionary review of these activities under nonbanking standards of the Bank Holding Company Act to assure no abuses arise.

Two questions: First, is this a proposal for explicit review powers or is it related to the general review of nonbanking activities which is currently required under the Bank Holding Company Act?

Governor Gardner. I think it's the latter, Mr. Chairman.

Mr. St Germain. Second, as you know, the Board admitted, I believe during the FINE Study hearings or at some point, Chairman

Burns admitted that the Board's review and oversight of nonbanking activities and the Bank Holding Company Act left a little bit to be desired. This was about a year or year and a half ago.

Keeping that in mind don't you feel that perhaps these examinations of the securities activities of foreign banks, if they are, in fact, grandfathered, should be conducted in conjunction with the agency of Government specifically designated to do this, to wit, the SEC?

Governor GARDNER. That is a new thought. I don't see anything wrong with it on first appraisal, because certainly the Securities and Exchange Commission does regulate directly the activities of these affiliates. I think it's a partnership form of regulation when it affects banks, and I see no problem with that.

Mr. ST GERMAIN. Would you, therefore, speak to your colleagues at the Board about incorporating that in the amendment?

Governor GARDNER. I will, indeed.

Mr. Chairman, when the Bank Holding Company Act was passed in 1956 and amended in 1970 there was a good deal of grandfathering of prohibited activities, and the Board has in that act the power, should some abberation occur, some economic problem arise, the Board has the power to review those permanently grandfathered activities.

I inquired yesterday and in a fragmentary answer, without complete research, we have never had to initiate any action under that act to require termination of grandfathered activities. There may be such cases. I will research it further.

What I am getting at is that we adopted a permanent grandfathering system in our own country when we specifically grandfathered otherwise prohibited activities in the Bank Holding Company Act.

Mr. ST GERMAIN. Thank you, Governor Gardner.

Mr. Annunzio?

Mr. ANNUNZIO. Thank you, Mr. Chairman. I join you in welcoming Governor Gardner to the subcommittee this morning, and for your very excellent statement.

Governor, you stated that H.R. 7325 is necessary to provide equitable treatment between foreign owned and domestic banks. Is it not true that our domestic bank holding companies, through their many bank and nonbank subsidiaries and other facilities, conduct far more extensive interstate banking activities than do the foreign-owned banks which have established branches?

Governor GARDNER. That is a judgmental question, Congressman Annunzio. I think the interstate foreign bank activities are more directly banking activities.

We permit loan production offices, and we permit representative offices that can't create actual transactions, but foreign banks, as I indicated in my statement, can have full service commercial banks in any of the 50 States that will permit entry. So I would have to say they have the power to do more. Our banks do operate nationally, they can have Edge Act corporations on either coast, but those corporations are restricted to international banking, and cannot engage in domestic banking.

Our banks do conduct various kinds of businesses throughout the United States, but not from full service banking offices, which the foreign banks can do.

[See also Governor Gardner's supplemental reply on page 204 to the question raised above by Congressman Annunzio.]

Mr. ANNUNZIO. Governor, of the 25 foreign bank branches located in Chicago's Loop, only 3 branches have ground floor locations and compete for local retail deposits. Of the three foreign banks with branches in New York, only three Puerto Rican banks are actively competing for retail deposits. With such distinction, why do you feel foreign banks abuse their branching privileges?

Governor GARDNER. I am not sure I would say they are abusing or taking advantage of their branching privileges. It is true, Congressman Annunzio, that on the east coast you find far less participation in domestic consumer business than you do on the west coast, but on the west coast the foreign banks, a number of them, are doing a regular consumer business. Recently, as you know, it was announced that the Sumitomo Bank had acquired 19 branches of the Bank of California out of the 27 they offered for sale, and you will find an incipient growing consumer banking activity on the west coast among foreign banks with American consumers, not necessarily related to international trade. Those powers exist and they could be further developed.

Mr. ANNUNZIO. You talk about the west coast and their consumer activities; what do you find in the Midwest, Chicago, for the record?

Governor GARDNER. I find Chicago is a gateway city. The last time I was there they told me they were 17th in GNP in the world and I find all kinds of international banking activities going on there. But Chicago is a unit banking State. The pressures are less and the foreign banks are there for their international banking activities.

Mr. ANNUNZIO. But in Chicago, my information, if it's correct, is these foreign banks, the great bulk of their business is commercial and they are not doing the domestic business.

Is that true?

Governor GARDNER. That is true. You say the great bulk of their business is commercial?

Mr. Annunzio, that is indeed my belief as well. It's also true, I think, that the securities affiliates of some of the foreign banks are active participants in the Midwest Stock Exchange.

Mr. ANNUNZIO. Can you explain if any of our national objections have been impeded by State or city of foreign banking activity?

Governor GARDNER. You ask me a very sensitive question. New York has a reciprocity law and in that reciprocity law the State Legislature of New York decided a long time ago that if New York banks can't accept deposits in a country abroad, the foreign banks from that country can't continue branch banking operations in New York. That is part of the law of New York State.

Let me just say this: I don't think the United States should have international reciprocity banking policies in 50 different State capitals. It doesn't really make much sense. I don't object to New York's law, but I point it out as something unusual.

Mr. ANNUNZIO. I have one more question, Governor.

A central State like Illinois will never be able to maintain its foreign bank branches if the multi-State prohibitions on branching contained in this bill become law. Is it not in our national interest to continue to promote other areas, New York and California, as international banking centers?

Governor GARDNER. It is, indeed, and that is the reason I proposed this morning that agencies of foreign banks be allowed to conduct a banking business in any city that they so choose, provided their powers are similar to those of our Edge Act corporations which are limited to international business and domestic business that is directly related to that international business.

If we conform the powers of new agencies to those of Edge Act corporations, and if we grandfather the present agencies, then an infinite number of foreign banks could open agencies in Chicago and conduct international banking there, and such domestic business as is strictly related to that international banking.

Mr. ANNUNZIO. As a follow-up, then how would the dual banking system be protected by the passage of the provision of section 7 of the bill which would give the Federal Reserve a veto power over States in determining whether foreign banking institutions could be organized under State law?

Governor GARDNER. I must confess that that was placed in your bill last year when we responded to a simple question, and the question that was addressed to the Federal Reserve was—what are the regulatory powers that are related directly to Federal Reserve controls over State banks and, how do we conform our banking law directly with our domestic law? I think that provision, which is specifically paragraph 7(e), is unnecessary. If the foreign banks are not to be members of the Federal Reserve System, I see no reason that the Federal Reserve should have to pass on a State chartering of a foreign institution, and I would have no difficulty if that provision were eliminated—I don't know why you are smiling—but I just caught up with that provision yesterday.

Mr. ANNUNZIO. My time has expired.

Thank you.

Mr. ST GERMAIN. Thank you, Mr. Annunzio.

I would like to state to the best of my knowledge, there are no foreign banks functioning in Rhode Island, and yet I still feel that there is a need for this legislation.

Mr. Rousselot?

Mr. ROUSSELOT. Thank you, Mr. Chairman.

Mr. Gardner, it is nice to see you again.

Mr. Gardner, on page 7 of your statement that we have before us you have stated that the Federal Reserve supports the extension of compulsory FDIC insurance on deposits in branches of foreign banks. My question is: Are you satisfied that a system has been or can be devised to ensure that it will be only the domestic deposits of the foreign branch that will be insured, and not the foreign bank itself?

Governor GARDNER. My answer, Congressman Rousselot, is that I think the recent proposal of the FDIC, the one they submitted to the Senate after this bill had passed the House, is adequate. I am glad you asked me that question too, because I want to clear up a matter about the FDIC insurance that really hasn't come to everyone's attention.

We are talking about FDIC insurance for branches of foreign banks that have full service, U.S. facilities.

Now, subsidiaries of foreign banks are largely already insured in the United States, and agencies of foreign banks not holding deposits would not be insured. Agencies have credit balances and all we are really saying is that branches of foreign banks that operate just as our banks operate in the United States would be required to have Federal deposit insurance, something the United States is a world leader in. You may remember the difficulty several years ago when a German private bank, uninsured, failed, and now Germany has a deposit insurance scheme.

Almost all U.S. full-service commercial banks are insured. You will hear that the insurance is optional, but that statement should be inspected very carefully by the subcommittee. According to my figures, there are only about 295 banks in the United States that are not insured, and I am persuaded that almost half of those are not really commercial banks at all, but industrial loan companies in the Far West.

Mr. ROUSSELOT. Do I understand your answer then to mean that the FDIC will not be insuring the entire foreign bank but will only be insuring the deposits of the branch?

Governor GARDNER. That is what I think the FDIC proposal covers. If I am wrong——

Mr. ROUSSELOT. That is your understanding of it?

Governor GARDNER. Yes, sir. I will come back to the subcommittee if I am wrong.

Mr. ROUSSELOT. I yield to the chairman of the subcommittee.

Mr. ST GERMAIN. I thank the gentleman for yielding, but the real problem here is that you have a subsidiary of a foreign bank here in the United States.

Governor GARDNER Yes, sir.

Mr. ST GERMAIN. There is no control, the FDIC cannot look at the operations of that foreign bank in its parent country. If the parent fails and the FDIC has no control whatsoever over what is happening at the parent bank, and the subsidiary fails as a result not because of what happened in the subsidiary but what happened in a foreign bank in a foreign land, nevertheless the fund is going to be charged for this loss. That is the phase of it that many of us find very difficult to accept.

Governor GARDNER. We need to clarify this so my statement has some integrity. I think you will find the subsidiaries of foreign banks chartered in this country are now generally insured by the FDIC because they are units, they are banks. They are insured, and the FDIC, and also the Federal Reserve, in the case of member banks, require that adequate capital be maintained here to support such subsidiary banks. So I think we have that protection already for subsidiaries of foreign banks.

What I am proposing and what the Federal Reserve Board thinks is the appropriate position is that branches also be insured, and the FDIC would have some backup to its protection through the deposit of funds or securities in some form to act as local capital in support of the branch's operations.

The issue last year was how do you protect the Federal deposit insurance fund if they are going to insure branches of foreign banks, and I think the answer has been worked out by the FDIC. Again, I will say that agencies, which are the most numerous of the foreign banking offices, don't take deposits, since they would not be covered. They have credit balances, but they are commercial balances related to international trade and they would not be covered by FDIC insurance.

Mr. ROUSSELOT. So your understanding is the FDIC exposure would only be in this country, period.

Governor GARDNER. That is my understanding.

Mr. ROUSSELOT. You keep mentioning what the FDIC worked out with the Senate. What do you mean by that?

Governor GARDNER. They submitted a statement which was characterized as a plan that could be used to insure deposits in foreign branches, and they recommended at that time that the plan could be optional. But if required or if foreign banks applied, they could have Federal deposit insurance for branches. That was a new development after your hearings last year.

Mr. ROUSSELOT. Did the FDIC submit legislative language or just a working agreement?

Governor GARDNER. I think they submitted the language. I will ask my associates.

They submitted the language last year. I am told we expect them also to make a similar recommendation this year. However, mandatory insurance would be limited to subsidiaries. I would extend it to branches as well as subsidiaries.

Mr. ROUSSELOT. Then you would go further than what the FDIC recommended to the Senate?

Governor GARDNER. Yes, I would, without exception, because Federal deposit insurance in this country has a great advantage. It is really a way that our Federal regulatory authorities can prevent bank failures, can continue a bank through merger rather than face liquidation, and can assure that there is no economic upheaval in a city or town or region. That is the great virtue of Federal deposit insurance, the ability of the Federal Deposit Insurance Corporation to go in, to buy and liquidate bad assets and sell the good assets to a continuing bank.

Mr. ROUSSELOT. Then we can assume the FDIC will submit similar recommendations here, I guess.

On page 2, Governor Gardner, you note and I now quote from your statement:

> More than half of these foreign banks operate across State lines, an advantage denied to the domestic banks.

As you know, in the last Congress the FINE Study considered a proposal to liberalize restrictions on interstate branching of domestic banks, but it was not embodied in the legislation which the committee later considered.

Would you prefer to liberalize interstate branching restrictions on domestic banks rather than to tighten restrictions on foreign banks?

Governor GARDNER. My position, Congressman Rousselot, is very simple. I think we should at the moment apply our domestic laws to foreign banks in the hope that, in the wisdom of Congress, the eventual resolution of interstate banking will be done in this committee room, in this Congress, and any such activity would then be appropriately applied to both foreign and domestic banks. So I have to say I want to conform foreign banks to our present law and I would look forward to the day when the Congress would review the interstate banking restrictions that exist in this country.

Mr. ROUSSELOT. But not at this time.

Governor GARDNER. I would not hold up foreign banks until then, because I think that is a trap. That will create——

Mr. ROUSSELOT. A trap?

Governor GARDNER [continuing]. A trap in the sense that the foreign banks have grown from 100 offices to 200 offices in 5 years, and that 5 years from now they may have 1,000 offices. I think it will just enormously complicate your work.

Mr. ROUSSELOT. Thank you, Mr. Chairman.

Mr. ST GERMAIN. Governor Gardner, one point: As far as FDIC is concerned, does the Fed have any information as to the burden placed on the liabilities of the fund as a result of the activities of our domestic multinational banks abroad?

The big question is: Are deposits in our multinational banks, foreign deposits in foreign branches, are they covered by FDIC, and what is the exposure there? Is that exposure a problem to our fund, because, as you know, in many countries your regulatory authorities cannot examine the branches of our multinational banks in those countries, but must restrict themselves to going to the home office here, and hopefully finding the information they need.

Governor GARDNER. Mr. Chairman, I believe that our overseas branches of American banks are not covered by Federal deposit insurance. I believe that issue has been considered and studied at the Corporation. I would be remiss if I tried to comment on their attitude, but I think it also makes pretty good sense, because the central banking authorities in various countries are looking at their form of internal deposit insurance, and it's my belief that in the United Kingdom they are considering deposit insurance that would apply to the domestic offices in the United Kingdom of U.S. banks.

The impact of bank failure is, of course, twofold: One, it always has the possibility of affecting international economies, if the bank involved is international in scope, and second, it also has its first and primary effect on the economy where the bank is domiciled.

Mr. ST GERMAIN. An example was Franklin National, a good example.

Governor GARDNER. I think we should insure the deposits of Americans in foreign banks here, and I think similar protection systems will grow in the rest of the world.

Mr. ST GERMAIN. Thank you.

Mr. Derrick?

Mr. DERRICK. Thank you, Mr. Chairman.

Governor, the question that I have to you was kind of pre-empted by Mr. Rousselot and the chairman, but let me follow along.

I may be just a little repetitious.

In your statement, when I was first listening, on the insurance by FDIC, it sounded like something that was very worthwhile. However, I don't understand. It would seem to me that if we offer this protection here in this country and there are failures that have nothing to do with this country but rather with the mother country of the bank, I don't see what recourse the FDIC could possibly have in a situation like this against the assets of the bank.

Governor GARDNER. You don't see what recourse?

Mr. DERRICK. That's right; I don't see what recourse.

Governor GARDNER. I am on unsteady ground here because I haven't studied their plan in great detail, but they propose a pledge of assets in the United States.

Mr. DERRICK. My next question is going to be: Why do we want to do it anyway?

Governor GARDNER. I think there are ways, Congressman Derrick, to protect the FDIC fund, and I would not be proposing it if I didn't believe that.

Mr. DERRICK. I understand. The banking operations are increasing, multiplying substantially every year, and although it's a minor part of our banking now, in the next few years it could become a substantial part, and I think if there is no recourse and we start insuring, it could possibly affect the very stability of our banking system through the FDIC.

Governor GARDNER. I would not have one bit of doubt, without some protection.

Mr. DERRICK. If there is no recourse, you know. That is what it is all built around.

Governor GARDNER. I think there not only would be recourse in the sense that I think you are using it, but I think the FDIC would require the insured banks to——

Mr. DERRICK. How would they do that?

Governor GARDNER [continuing]. To maintain assets in this country.

Mr. DERRICK. Sufficient to deposits?

Governor GARDNER. Sufficient to give them the normal capital protection they would have in a domestic bank.

Mr. DERRICK. My next question is: Why do we want to encourage domestic deposits in foreign banks to begin with?

Governor GARDNER. We have a national treatment policy. We have foreign banking subsidiaries that have operated here for many years, and some that have come recently. We have branches of foreign banks and, insofar as they deal with American businesses and American consumers, which they do, I think deposit insurance is entirely appropriate.

Mr. DERRICK. I think maybe you misunderstood my question. Maybe I didn't articulate it properly. Why do we want to encourage the domestic deposits to begin with? I mean the insurance by the FDIC would seem to me to be a move in that direction of encouraging domestic deposits in foreign banks. Why do we want to do that to begin with, or what do we possibly have to gain from it?

Governor GARDNER. I can only say that——

Mr. DERRICK. We certainly have adequate banking facilities here in this country.

Governor GARDNER. We have a lot of domestic banks that are owned in part by foreigners. The only thing——

Mr. DERRICK. Let them clip their coupons. That is fine.

Governor GARDNER. The only thing we are talking about here are offices established, primarily owned by major foreign banks.

Mr. DERRICK. I don't have any foreign banks in my home State, but if I did why should I put one there next to one of my domestic banks and give them the same advantage? What could we possibly gain from it?

Governor GARDNER. It seems to me we gain something because we do not have a big population of foreign banks in this country. You have heard Congressman Annunzio, the Governor of Oregon has also just written to your chairman, and I have a copy of that letter, and I think you will hear testimony from other States who want to encourage the foreign trade that comes out of their States and their industries, and one way they believe that they can do that is to attract foreign banks to their cities, and I think our amendment to permit international agencies would take care of their concerns.

That will inevitably bring up the question of deposits in those foreign banks, because that is what a bank is, a depository.

Mr. DERRICK. Governor, if I may, what is your opinion of the advantage?

Governor GARDNER. I think it's all procompetitive. I think it's procompetitive to have foreign banks operating in this country, and to have our banks operating abroad.

Mr. DERRICK. So you think it's desirable to have the competitive situation for domestic deposits?

Governor GARDNER. Yes, in this interdependent world, I think it is desirable.

Mr. DERRICK. What will we gain from that situation?

Governor GARDNER. The world has become smaller in trade and commerce, and finance is a very key part of trade and commerce in our economies, and the large presence of the United States in the international payments mechanism and international trade is supported by the multinational financial system that has grown up in the last few years in the world.

Mr. DERRICK. I thank you, Governor.

Governor GARDNER. Yes, sir.

Mr. ST GERMAIN. Thank you, Mr. Derrick.

Mr. Cavanaugh?

Mr. CAVANAUGH. Thank you, Mr. Chairman.

I would like to welcome the Governor and commend him for his quite enlightening statement.

Governor, I would have a question on page 8, the last paragraph.

There you indicate, I would guess, desire to remove section 9 from the bill. Is that recommendation based upon objections to the substance of section 9 or simply, as your statement would indicate, that you feel section 9 superfluous to powers already existent?

That is, does section 9 create powers that otherwise would not exist or be enforced by the Fed, the Comptroller or the State regulatory agencies?

Governor GARDNER. I think it's superfluous if we are talking about the entry provisions. I think it's superfluous because we charter banks very carefully in this country, and have since the early 1930's or the late 1920's, and we have very careful procedures to appraise, to evaluate charters and branching and other matters, and they are all being administered very strictly for our own domestic banks. So I think we do not need detailed guidelines, as I have indicated.

I happen to think it would be a good idea if the Federal chartering authorities simply informed State and Treasury. There could be a foreign policy issue that might occur.

For example, we have some unfriendly countries in the world. We have other countries that have from time to time required that all our banks in their jurisdictions be nationalized. But really, the U.S. posture in reciprocal trade agreements and similar matters has been most outgoing. Perhaps as outgoing as it properly should be, so I don't see a need for a special set of guidelines.

I think the guidelines inherent in the chartering authority of the Comptroller of the Currency and in the State regulatory agencies are sufficient. So I would say it's superfluous in my judgment.

Mr. CAVANAUGH. Superfluous as opposed to objectionable? That is, the Fed does not object to any proposals or content?

Governor GARDNER. It's possibly objectionable, and it may raise questions——

Mr. CAVANAUGH. Excuse me, that was my question. My reading of your statement would have left me with the feeling that it was superfluous. If it is objectionable, then I would solicit you to address yourself to those objectionable portions of section 9.

Governor GARDNER. I had an opportunity this morning as I came up here to read the State Department's testimony, and I gather they will raise questions on our treaties of friendship, commerce and navigation, and the fact this appears to be a special provision applied solely to foreign banks, which isn't really national treatment under those treaties. Their testimony will express some concerns about section 9. The objectionable feature that I find is that I think the International Banking Act is long overdue. If this is superfluous and possibly divisive in the process, I would remove section 9.

Mr. CAVANAUGH. I yield to my chairman.

Mr. ST GERMAIN. I am bothered by that statement, Governor Gardner. I mean either you stand for something or you don't. What you are essentially saying is if section 9 is going to impede the progress of this legislation then it is objectionable rather than superfluous. I don't like that statement.

Either you stand for it or you stand against it, but you don't give as a reason for an objection the fact that it might be divisive as far as members of the committee of the House or Senate are concerned. That bothers me.

Governor GARDNER. Mr. Chairman, I appreciate your comment. I would only make that comment since I believe it is unnecessary to have a special set of guidelines. Since I think it's unnecessary to have those guidelines, I would, therefore, not want the legislation to suffer any difficulty because those guidelines were in there.

I think I know what I stand for, but I appreciate your comment. We do have a very careful system for chartering and licensing banks in this country. I think it's a good system.

Mr. CAVANAUGH. Do I have time remaining?

Mr. ST GERMAIN. Yes.

Mr. CAVANAUGH. I am not sure if I want to pursue this now. I am getting more confused as I go along. My understanding then would be that in terms of the consultive requirements between the various branches of Government, Treasury, State, Board of Governors, Comptroller, State regulators, that you are saying to us that these things would be done in the normal course, which, in that case, I find no problem with setting them out in legislation.

My question was: Is there anything we put in section 9 in terms of those requirements that would not be beneficial to the regulation of foreign banking from a public policy point of view?

Governor GARDNER. One of the reasons I made this statement is that I think the development of guidelines is a very difficult process and I don't think the development of such guidelines, which will require a great deal of study and then full publication of the guidelines for comments and what have you from all parties in interest, is going to do any more than our present laws do in requiring that adequate capital be in a new institution or that the institution meet all applicable State and Federal laws.

There is a portion of section 9 that talks about discrimination. Banks operating in our country, I believe, are now subject to our antidiscrimination laws.

Mr. CAVANAUGH. In that particular case, in the discrimination clauses of section 9, you would feel those would apply regardless of section 9?

Governor GARDNER I would.

Mr. CAVANAUGH. I do have another area, if I could just quickly. I am referring to the bottom of page 9 in your statement, and I believe you also address it on page 18 of your suggested amendments, your last sentence. In the proposal we included a requirement that any banking transactions of U.S. offices of such foreign affiliates be conducted at competitive rates and terms. Your suggested amendment provides some exemptions for the relationships between the domestic offices and their foreign affiliates.

In light of your remarks to Mr. Derrick, one of the advantages of encouraging foreign banking or providing these, or at least the protections of FDIC or encouraging foreign banking at any rate, is to promote competition. Then how does this restriction upon their relationships with their subsidiaries enhance competition or pass on a benefit to the consumer? It seems it would restrain their competitive ability.

Governor GARDNER. First, what I am talking about here is a foreign bank office in the United States dealing with a subsidiary commercial concern that is owned by the same parent as the foreign bank. I would not want to see a special kind of relationship in terms of rates and terms for lending carried on to the detriment of our own commercial banking industry. I think when I say procompetitive I think they should be at market rates and at market terms. It's the same kind of test we apply in this country to insider transactions under section 23(a), and we have for a long time set up restrictions on transactions between affiliates that appear to be noncompetitive, that could possibly damage the banking institution involved. You are quite right in the thought this might require the foreign bank to work harder for its competitive position.

Mr. CAVANAUGH. Let me put the question this way: Is this recommended provision more restrictive than that imposed on insider transactions or your section 23(a) on domestic banks, or is it the same?

Governor GARDNER. It's the same.

Mr. CAVANAUGH. Thank you.

I have no further questions, Mr. Chairman.

Mr. ST GERMAIN. Thank you, Mr. Cavanaugh.

Mr. Hyde?

Mr. HYDE. Thank you, Mr. Chairman.

Governor Gardner, one of the statements in the press release announcing these hearings from the distinguished chairman of this subcommittee says:

> The continued rapid growth of foreign bank operations in the United States with aggregate assets now totaling $65 billion, a 30 percent increase in the last four years, makes it imperative that the Congress respond favorably to the request of the Federal Reserve Board for appropriate legislation.

Have assets of foreign banks in the United States increased disproportionately when compared with increases for all banks?

Governor GARDNER. I think they have, Congressman Hyde. I don't have the figures here. I can submit a further analysis for the subcommittee. I think they have grown more rapidly than our own banks have grown.

Mr. HYDE What about U.S. banks overseas?

Governor GARDNER. I can't express an opinion on that, but I would be glad to try to make a similar comparison. This comparison will have to be carefully instructed for banks of similar capabilities and size.

Mr. HYDE. All right. I believe you touched on this earlier, but I am uncertain of your response.

Would this bill raise any questions of violations of commercial treaties, treaties of friendship, commerce and navigation that we have with our major trading partners, France, Germany, England, Italy, Switzerland, Japan? Has any study been made of that?

Governor GARDNER. I have to hark back to a former position I held in the Treasury. We attempted to study that then. We believed that they did not, but you will hear testimony from the State Department, I am told, that will indicate that perhaps some features of the bill may violate friendship, commerce and navigation treaties.

I want to make one point as strongly as I can. No other sovereign nation lacks the kinds of controls over foreign banks in their jurisdiction that we lack over foreign banks in ours. So I don't believe the issue would rise to the point of a true violation of friendship, commerce and navigation treaties.

Mr. HYDE. Governor, when you say we lack control over foreign banks, are you speaking from the perspective of the Federal Government?

Governor GARDNER. Yes.

Mr. HYDE. As distinguished from the prospective of the State governments?

Governor GARDNER. Yes, from the perspective of the Federal Government and central banking authorities.

Mr. HYDE. Have there been any problems with the voluntary system of Federal Reserve Board monetary controls of foreign banks?

Governor GARDNER. No. I don't know of any problem. I think foreign banks have been good citizens generally.

Mr. HYDE. On the matter of the Federal Reserve Board control over reserves, why isn't it enough to have effective reporting plus the existing pattern of State reserve requirements? Wouldn't the State-set reserves be an adequate fulcrum for the Fed's open market activities to operate upon?

Governor GARDNER. No, sir, it wouldn't, Congressman Hyde. The difficulty is, of course, that with only one or two exceptions, in our entire universe of major banks dealing in international banking and international flows of funds, those domestic banks are members and subject to the central bank's monetary controls, including reserves. State reserves are liquidity reserves and they are usually held in some form of earning assets, perhaps State securities of one kind or another. No other entity in the United States requires the maintenance of uninvested cash reserves except the central bank. So the banks I am talking about, those of a billion dollars and over, are entirely related, and can be compared to our major U.S. banks, which are, with possibly one or two exceptions, all members of the Federal Reserve.

Mr. HYDE. I notice on page 5 of your statement that the Board recommends that section 7 of the bill be amended to require that Federal Reserve monetary controls be applied to all of the U.S. operations of a foreign bank that have $1 billion or more in worldwide bank assets.

Governor GARDNER. Yes, sir.

Mr. HYDE. Are there any domestic banks that have over $1 billion in assets that are not Federal Reserve members?

Governor GARDNER. Yes, sir.

Mr. HYDE. About how many?

Governor GARDNER. I know of a few, not very many. I can submit that later.

Mr. HYDE. All right. I have no further questions.

Mr. ST GERMAIN. Thank you.

Mr. Allen?

Mr. ALLEN. Thank you, Mr. Chairman.

Governor Gardner, I must confess a degree of lack of knowledge on the subject of international banking, so I want to ask you first this question: In the past 25 years, how many foreign banks doing business in the United States have gone bankrupt?

Governor GARDNER. I can't recall any, Congressman.

Mr. ALLEN. In the past 25 years, how many depositors or investors in foreign banks doing business in the United States have lost money?

Governor GARDNER. Congressman, I can't give you any examples. I will try, but I don't have any now.

Mr. ALLEN. You know of none?

Governor GARDNER. I know of none.

Mr. ALLEN. Of course, you will recognize immediately that I am trying to get at the urgency and need for such legislation as this. If it is not then for the purpose of assuring the safety of investments by citizens of the United States in foreign banks, what then is the major purpose of such legislation as this and the need for it?

Governor GARDNER. First, quickly, monetary controls. Two, the international activities of banks have expanded enormously in recent years, both our banks going abroad, foreign banks coming here. I would not have any confidence that the history that you drew from me of no bank failures for 50 years would be the pattern for the next decade or two. There is a strong possibility, there is always a possibility, that as the system grows, more banks will participate, as international banking becomes a more normal part of our total banking picture here and abroad. Clearly we will have a risk that hasn't occurred or didn't occur in the 50-year period.

I answered you truthfully. I don't know what banks may have failed, but I would like to research this question because I think it is an appropriate question.

Mr. ALLEN. I would appreciate such information that you can give, and verification of your original statement or modification, if you find the facts are different from what you have indicated.

[In response to the request of Congressman Allen, the following information was submitted for the record by Governor Gardner:]

REPLY RECEIVED FROM GOVERNOR GARDNER

Question from Congressman Allen—How many foreign banks doing business in the United States have gone bankrupt?

Aside from situations arising during wartime and possibly during the Depression, the only recent failure we have been able to uncover involving a foreign bank in the U.S. was that of Intra Bank, S.A., Beirut, Lebanon, a Lebanese bank that maintained a branch in New York City. On October 15, 1966, the Superintendent of Banks for the State of New York took possession of the business and property of Intra's New York branch and liquidated its affairs under the New York Banking Law. It is our understanding that local creditors of the New York branch were paid in full in the proceeding, because of provisions in New York law which required Intra Bank to pledge U.S. assets to back up its U.S. indebtedness to depositors and U.S. creditors. The FDIC has recommended a similar asset requirement provision in its alternative insurance proposal.

The advantage of FDIC insurance in such situations is that the FDIC has the authority to arrange alternative solutions to liquidation when such actions appear to be less costly than paying off depositors. This provides a greater range of remedies to protect the interests of U.S. depositors and creditors. For example, assets and liabilities of a failing branch or agency could be purchased and assumed by another banking institution, thus maintaining the continuity of banking services. While it is true that U.S. authorities cannot prevent the failure of a foreign bank abroad, FDIC insurance and federal supervisory controls should help to ensure that local creditors and depositors of a foreign bank's U.S. offices are protected to the maximum extent possible.

Mr. ALLEN. You speak about this bill would give some monetary control. I suppose you mean to the Federal Reserve System over the operation of national banks operating here, and if so, how?

Governor GARDNER. We would, under the bill, be given authority to impose reserve requirements on deposits of money center banks, and those are the banks where large funds flow around our economy and throughout the world, and affect our own money supply. That is what I am talking about when I am talking about monetary controls.

Mr. ALLEN. In other words, your fear, if I understand it, is they will siphon off a lot of money from U.S. depositories that would otherwise be deposited with American banks, and thereby leave us depleted of funds necessary to operate in this country.

Governor GARDNER. I am sorry, I didn't quite hear the end of your question, Congressman Allen. I started to answer by saying that as a larger and larger portion of our basic money and credit supply becomes subject to international and large domestic flows, and is placed outside of the control of the monetary authorities, you have less perfect arrangements to assure that an appropriate monetary policy is being implemented in the United States. And I see growth as one of the dangers, because I think these trends that have been so evident in the last 5 years will continue, and I know of no country that does not have that type of control for foreign banks as well as domestic banks in the major trading nations of the world.

So I would consider it a very normal procedure, and I would think it terribly important for the appropriate conduct of monetary policy in this economy.

Mr. ALLEN. Now we are speaking about the growth of international banks in this country. I believe the question has previously been asked you how their growth has compared with domestic banks, and I think you said you would undertake to furnish that information later.

Governor GARDNER. Yes, sir, and I did say, Congressman Allen, it's my impression that in the last few years the growth of foreign banks has been significantly higher in the United States than the growth of the U.S. bank assets.

Mr. ALLEN. Tell me, do the foreign banks offer higher rates of interest to their deposits than the domestic banks, Federal Reserve member banks are permitted to offer?

Governor GARDNER. No, sir, but they have significant additional opportunities to compete, because they are dealing in international trade, they are dealing with their parents abroad, which are very large banks, and so their growth has been, as I suggested earlier, procompetitive in the sense we have more competition in our markets, and in international transactions they would have some certain advantages which would encourage their growth.

Mr. ALLEN. You speak of advantages without defining them, and I will take you at your word, that you know of certain advantages that have not been listed.

One other point: If indeed we blanket foreign banks under the Federal Deposit Insurance Corporation and local depositors who know their money is just as safe with a foreign bank as it is with a domestic bank, we are talking about the growth of foreign banks, would this not accelerate the attractiveness and the growth of foreign banks if your money was just as safe with them, or the public was made to feel so, as it would be with any of the largest local banks?

Governor GARDNER. I cannot deny that this would give an additional competitive point to foreign banks.

Mr. ALLEN. Thank you, sir.

Mr. ST GERMAIN. Mr. Leach?

Mr. LEACH. Yes, sir; I have just one question.

On page 8 you note that the Board urges that the securities affiliations in place today be permanently grandfathered to quiet the controversy surrounding the issue.

Could you describe exactly what the controversy surrounding the issue is, and specifically do U.S. banks have securities branches in their overseas operations, and if so, is the major fear retaliation in that regard?

Governor GARDNER. There is a major fear of retaliation. I think if we force divestiture, the controversy surrounding the issue, to go to the first part of your question, is that it seems eminently unfair to require divestiture retroactively of something that has been permitted to continue in this country for many years.

There is ample legislative precedent for grandfathering. We have grandfathered for the banking business what we now consider to be impermissible activities of banks under the Bank Holding Company Act. So I suggest that the first appropriate posture, the one that is supported by legislative history, is that when you impose new law and regulation, Congress frequently does grandfather nonstandard activities that have occurred in the past.

Divestiture is a very significant difficulty for any company that has operated here within our laws as they existed at that time. Usually it has an economic cost associated with it. Our banks abroad are frequently engaged in some form of securities transactions, but because the laws of those countries permit their banks to engage in securities transactions.

In other words, national treatment means specifically that when our banks go to the United Kingdom or to the European community, they are generally permitted to do what banks in that host country are permitted to do.

Now, in the United States there is an abnormal situation. U.S. banks, since the imposition of the Glass-Steagall Act, have been divorced from direct security activities. But all during that period since enactment of the Glass-Steagall Act, we have had relatively few affiliates of foreign banks operating here in the securities market just as our broker dealers and investment bankers operate. It seems wrong to require divestiture, because they are at this time not a major part of our securities industry.

I suggest that, if we don't prevent the development of this in the future we have the possibility of the growth of securities affiliates among banks in direct opposition to what the Glass-Steagall Act prevents U.S. banks from doing.

I think the controversy is very severe. Foreign governments, foreign banks, would consider it an unfriendly act to require them to divest themselves of their business here.

The present bill requires divestiture at some future date, but that leaves no option to the owner. Therefore, the owner's opportunity to sell is compromised by the provisions of the bill.

Mr. LEACH. May I interrupt just a second? Specifically, do U.S. banks have securities branches abroad? I mean, do we operate in this fashion? Is that the fear of retaliation?

Governor GARDNER. That is certainly one of the fears.

Mr. LEACH. May I ask what banks have securities operations? For example, are we protecting the interests of one, two, three, four or dozens of banks?

Governor GARDNER. I don't have the figures or a comprehensive list with me today. I can supply it for the subcommittee. We have the possibility of retaliation. I don't really think retaliation abroad is the most significant issue here, but it's certainly present. We may be, in a sense, in a very indirect sense, protecting our American banks overseas that now do a securities business.

Mr. LEACH. Might we also, though——

Governor GARDNER. It's quite an indirect result of this legislation.

Mr. LEACH. To play the devil's advocate, as equally precedented as grandfathering is divestiture in all realms of American enterprise, and it's always a difficult thing. But when you are dealing with equality I think you can make a fairly good case it's not unequal treatment. We are talking about equal treatment.

Second, when you are dealing with competitiveness, there are increasing possibilities that more and more foreign funds are going to be attracted to the U.S. securities markets, and we will directly be placing our own banks at a competitive disadvantage with foreign banks, and we will also be giving up a given type of business that might otherwise follow through to the securities industry of the United States.

I am just wondering if those aren't balancing features to a point of view that is more status quo oriented.

Governor GARDNER. When you say status quo, Congressman, do you mean the present legislation should not require divestiture?

Mr. LEACH. No, I mean that grandfathering implies status quo, and current legislation, which implies divestiture would be non-status quo.

Governor GARDNER. As my testimony has indicated, I think the best way to treat this issue in its present form is one of permanent grandfathering.

Mr. LEACH. Thank you very much.

Mr. ST GERMAIN. Thank you, Mr. Leach.

Mr. Hanley?

Mr. HANLEY. Thank you, Mr. Chairman.

Governor, I regret I had to miss your presentation this morning, and as of this point have not completed reading it. I do have a fair handle on the subject matter, in recognition of our past efforts in this regard.

Just one quick question. What, in your judgment, would be the single most important factor which has made the American market this attractive to the foreign industry when we look upon a ten-fold increase in a 10-year period?

That is rather interesting, and what would be your analysis of the most attractive reason for this?

Governor GARDNER. Very directly, our dollar is the world trading currency. This is the largest economy in the world. The U.S. financial markets, the enormous consumer and commercial and industrial activites in the United States, in my opinion, make the United States the most desired location for any major foreign bank wishing to expand abroad.

Our currency is so important in the Western world trading structure that it seems to me, Congressman Hanley, that I could look for a twenty-fold increase of foreign banks coming here.

Mr. HANLEY. The atmosphere here existed similarly prior to the past decade, and apparently it's only within the last decade that the foreign banks became enlightened with regard to the opportunity, because certainly the opportunity has been traditional.

Governor GARDNER. You will forgive a little bit of patriotism, but I think the very aggressive competitive activities of U.S. banks in the last two decades abroad, when we have seen an enormous rise in international finance, has really been the vanguard reason why international banking has grown so significantly. I think specifically, and I can cite an instance, foreign bankers have become more competitive, have become more outgoing in the last two decades abroad, indeed some of this must be credited to the action of our own banks in going abroad.

I can remember American banks pioneered the term loan or the medium term loan. Foreign banks just didn't make medium term loans 20 or 25 years ago, if my friends from abroad will forgive me.

Some of them still do it in a subsidiary, because it's quite different from the kind of lending that they traditionally did. But as the world's interdependency, financially and economically, has grown in the post-war period, the opportunities for the growth of multinational financial organizations have been quite attractive.

I think a reluctance to come to the United States is explainable. A bill of this kind providing some certainty for foreign banks will probably encourage the development of international financial structures.

Mr. HANLEY. Perhaps you have mentioned this in your statement but how does the American industry involvement in the foreign market compare with the other over the past decade?

Governor GARDNER. Of course, you know our American industry went abroad, which is one of the reasons why American banks went abroad. I think you will find that foreign investment in the United States is certainly not diminishing but increasing, and as foreign investment in the United States increases and the ownership of various facilities in the United States by foreign shareholders and the like increases, you would expect banks from those countries, having dealt with the business concern abroad, to follow their customers, as our banks followed their customers.

Mr. HANLEY. In recognition of the ten-fold increase over the last decade, how does American involvement over there compare?

Governor GARDNER. The ten-fold increase in my statistics I think runs from 1972 to 1977. That may not be correct. I would say that American bank activities abroad may have slowed a little most recently, but as you have pointed out in the first part of the last decade, American bank activities abroad grew very rapidly.

Mr. HANLEY. Thank you very much, Governor, and thank you, Mr. Chairman.

Mr. ST GERMAIN. Thank you, Mr. Hanley.

Ms. OAKAR. Thank you, Mr. Chairman.

Governor, I have a question somewhat related to Mr. Hanley's inquiry. As we observe an increase in foreign banking operations here in the United States, it would appear we are witnessing a decrease in the U.S. banks involved in their own communities financing.

Governor GARDNER. Involved in our country?

Ms. OAKAR. Yes.

Governor GARDNER. I don't think so, but I may not understand your question.

Ms. OAKAR. Perhaps this will clarify my point. Our own chairman, Mr. St Germain, reported we had a number of cattle farmers who simply couldn't get credit from U.S. commercial banks during a period of great capital need and yet I noticed that U.S. commercial banks are lending huge sums to South Africa, Bahamas, and Brazil. Some of the people in our cities—real estate developers, as well as the individual consumer—have had a very difficult time borrowing from the commercial banks in their localities. I merely ask this: Is increased foreign bank activity in the United States related to increased U.S. lending to overseas concerns? In short, is there a correlation?

Governor GARDNER. I don't really see any correlation. The banks that are overseas that are American banks, are largely confined to our giants and near giants.

Ms. OAKAR. Excuse me, I didn't hear your response.

Governor GARDNER. The giant or near giant banks, and, of course, the United States has a very unique banking industry. We have 14,000 or more commercial banks, and we have 20,000 credit unions, 9,000 or 10,000 savings and loans institutions.

Ms. OAKAR. It doesn't mean they always lend to community-based people.

Governor GARDNER. The vast majority of our financial institutions are entirely domestic, and have no overseas business. Only a small fraction are overseas.

Ms. OAKAR. Are you saying only a small fraction of the giants?

Governor GARDNER. No, our giants are overseas, but they are only a small fraction of our banking industry.

Ms. OAKAR. The giants, then, represent a small portion of the entire U.S. banking industry?

Governor GARDNER. Right.

Ms. OAKAR. If I may pursue another point. In his testimony before our subcommittee, Governor Wallich addressed the problem of redlining at the international level. He stated that Government subdivisions and private firms were evaluated as creditworthy; but their countries per se were not evaluated. One of my distinguished colleagues, Mr. Annunzio, for example, expressed concern that Italy might be suffering from some sort of redlining by U.S. lenders.

I wondered if the U.S. banks at times do engage in their own sort of foreign policy making and if this is so are you or the State Department advised on some of these practices? Have you ever noted any of these problems with international redlining?

Governor GARDNER. It's hard for me to answer that, but I will try. The disposition of any financial institution to extend credit to industries and governments abroad has to be related to the ability of those institutions or governments to repay their indebtedness, and our banks have extended a good deal of credit abroad, and I think each bank has to carefully spread its risks among commercial concerns and businesses in various countries, because of a variety of different economies and exchange conditions and security or safety of foreign exchange flows, country indebtness and balance of payments. So I don't call it redlining. I think a bank could easily take the position that they had a sufficient percentage of their portfolio in loans to one country, and that was all that they wanted to put at risk in that one country.

Ms. OAKAR. You would not describe that as redlining?

Governor GARDNER. No, I don't think so.

Ms. OAKAR. Thank you, Governor Gardner. Thank you, Mr. Chairman.

Mr. ST GERMAIN. There will be additional questions that will be submitted in writing. We hope you can get the answers back to us expeditiously, so we will have the benefit of those answers when we come to a markup session.

Governor GARDNER. Thank you, Mr. Chairman. I want to still be optimistic and I very much appreciate the opportunity to appear before this subcommittee today.

Thank you.

Mr. ST GERMAIN. Thank you.

[Letters follow containing: Chairman St Germain's written questions to Governor Gardner regarding H.R. 7325; Chairman Arthur F. Burns, support of the "International Banking Act of 1977"; Governor Gardner's reply to Chairman St Germain's questions; and answers to questions raised by Congressmen Frank Annunzio and Clifford Allen:]

U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
NINETY-FIFTH CONGRESS

WASHINGTON, D.C. 20515

July 13, 1977

The Honorable Stephen S. Gardner, Vice Chairman
Board of Governors
Federal Reserve System
Washington, D. C. 20551

Dear Vice Chairman Gardner:

On behalf of the Subcommittee, I wish to express our appreciation for your testimony yesterday on the provisions of the International Banking Act of 1977, H.R. 7325. As I stated in my opening statement, we are most anxious to complete action as quickly as possible in order for the Senate to complete their deliberations in the 95th Congress.

It is the intention of the Subcommittee to mark up the bill during the week of July 25 through July 29 and, accordingly, I would request that I receive your response to the following questions no later than noon on Thursday, July 21. It is my intention to distribute copies of this letter and your response thereto to each of the Subcommittee Members prior to Subcommittee markup.

The questions follow:

1. Could you elaborate for the benefit of the Subcommittee on the distinction to be made between agencies of foreign banks and powers now granted to federally chartered Edge Act corporations? This follows your suggestion on page 6 which, in my judgment, appears to be a constructive one.

2. Your comment on page 8 concerning the securities affiliate provisions of Section 8 of the bill, I find disappointing. I am, of course, aware of the controversy and the House spoke to this controversy, as you know, last year by its defeat of the Rees-Murphy-Moss amendment. From a practical

point of view, I can understand your reasoning, but should we consider your suggestion, then I feel we will need more testimony concerning how the Board would propose to use its discretion to control the type of abuses that the Board contemplates "might arise over time." During the hearings, you will recall we discussed the possibility of sharing the responsibility for the review of securities affiliate grandfathered activities with the Securities Exchange Commission. I request, as I stated during the hearings, a written response stating the position of the Board of Governors.

3. On page 3, you indicated that many believed foreign bank highly specialized institutions operated only in port and gateway cities and then asserted that the position was erroneous "in view of extraordinary expansion of these banks in the context of the development of multi-national banking." Could you elaborate on your rebuttal argument?

4. Given the statistical evidence at hand which has seen an increase from approximately $7 billion in foreign assets in 1965 to more than $76 billion currently, could you venture an opinion as to whether you feel this trend will continue; and if so, what is your best estimate of the total amount of foreign assets in the United States at the end of the next ten-year period?

The enactment of this bill does not have as its purpose the discouragement of foreign investment which I feel needs to be emphasized in view of the misunderstandings clearly existing today. Would you agree with this comment; and if so, could you discuss briefly how the Fed would propose to exercise the considerable discretion granted to it should the bill with proposed amendments be adopted?

5. Of the 94 foreign banks to which you make reference on page 2 of your statement, how many of those banks have assets in excess of $1 billion?

6. The insurance provisions of this bill appear to be the most difficult to adjust in terms of the various suggestions which have been made. They are also, I think, perhaps the most significant in terms of public policy. I would like to ask you to discuss the possibility that the insurance of foreign banks might expose the fund to undue risk. Even if the risk is not, in your view, unnecessarily great, it does appear that there are risks in addition to those which relate to domestic banks. I would also like you to discuss the larger issue which relates to the question of deposit insurance for overseas branches of U.S. banks. To what extent have the international banking operations of U.S. banks undermined the safeguards of deposit insurance? Could you supply for the record some indication of the proportion of liabilities of the largest U.S. multi-national banks which are insured?

7. Governor Gardner, on page 3 of your statement, you note that "The growth of this international financial community is testing the regulatory framework and monetary system in many other countries," and that banking laws in four other countries are being revised to meet some of the problems resulting from the rapid expansion of multinational banking.

Could you describe some of those revisions and indicate whether or not the concerns of those countries are similar to the concerns embodied in this bill?

8. On page 5 of your statement, you discuss a proposed Federal Reserve amendment imposing reserve requirements on subsidiaries of foreign banks. You are no doubt aware that this will be a very controversial amendment and that it will be criticized as a violation of the dual banking system. I would like to give you an opportunity to explain the Federal Reserve's position more fully. As I understand your concern it related to the fact that foreign banks in the U.S. operate their offices -- whether they be subsidiaries, agencies or branches -- to some extent as a unit. It is possible for them to shift funds between these units regardless of their form of operation and to use the network as a way of minimizing the cost of reserves and to escape regulation and examination. To some extent, this is occurring with respect to U.S. banks as well and holding companies in which only one of several banks is a Federal Reserve member. Have I understood your concern correctly? Would you comment further on it?

9. On page 6 of your statement, you suggest a modification of the interstate prohibitions which would have the effect of restricting the powers of agencies in order to minimize the competitive advantage which they have with regard to U.S. banks not being able to operate in more than one state. Could you describe the present powers of agencies and how you propose to restrict them under this current suggestion?

10. The date at which the Board regularly provides to the Committee on assets and liabilities of foreign banks indicates that there was a drop of $6 billion in the total assets and liabilities of these offices between March and April of this year. At other times, there have been increases in their assets of about the same size. The flow of funds into and out of the U.S. through offices of foreign banks appears to be very substantial. Does the volatility of their operations complicate the conduct of monetary policy? If so, could you explain why?

In addition, the following question is posed on behalf of Congressman Annunzio, and I would appreciate a copy of your response to this question being sent directly to Mr. Annunzio.

The question is as follows:

You have stated that H.R. 7325 is necessary to provide equitable treatment between foreign owned and domestic banks. Is it not true that our domestic bank holding companies, through their many bank and nonbank subsidiaries and other facilities, conduct far more extensive interstate banking activities than do the foreign-owned banks which have established branches?

Again, I do appreciate your assistance and look forward to your responses to the foregoing questions.

Sincerely,

Fernand J. St Germain
Chairman

CHAIRMAN OF THE BOARD OF GOVERNORS
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

July 22, 1977

The Honorable Fernand J. St Germain
Chairman
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
Committee on Banking, Finance and
Urban Affairs
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

I would like to join in Governor Gardner's response to you and to the Committee and assure you of my own support of the International Banking Act of 1977. I hope your efforts to obtain a balanced and appropriate bill will be successful, and we at the Federal Reserve will lend all possible assistance in that endeavor.

In reviewing your questions and Governor Gardner's response, I am persuaded that the difficulties raised by foreign banks and State authorities can be resolved through appropriate amendments. I have no doubt that it is essential to do this to aid passage of the bill. The close links among the world's financial markets, the ease of international fund transfers, and the important role of our currency in this system have created a serious need for a national regulatory structure that includes the foreign banking institutions operating in the United States. The proposals in your bill are essential to assure the safety and soundness of banking in our country. Among other things, they give additional power to our central bank, but I am unaware of any other monetary authorities among our major trading partners who lack such powers.

I hope your efforts will be successful and, again, we at the Board are prepared to assist.

Best wishes.

Sincerely yours,

( ) Arthur F. Burns

Arthur F. Burns

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

STEPHEN S. GARDNER
VICE CHAIRMAN

July 22, 1977

The Honorable Fernand J. St Germain
Chairman
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
Committee on Banking, Finance and
Urban Affairs
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

I want to thank you for and respond to your letter of July 13 requesting that I elaborate on and supplement my testimony of July 12 before the Subcommittee on Financial Institutions, Supervision, Regulation and Insurance. For your convenience and that of the Committee I have provided answers to each question in the enclosed attachments and appendices. I have included answers to questions raised by Congressman Annunzio and Congressman Allen; and, as you suggested, I am sending separate direct responses to Mr. Annunzio as well as to Mr. Allen.

In this covering letter I would also like to provide clarifying comments for you and the Committee on the key issues which you have appropriately identified. Since the original introduction of prospective foreign bank legislation, it has become clear to the Board of Governors that some State governments were and continue to be interested in attracting and chartering agencies of foreign banks to support their local economy's participation in international finance and trade. That development was the guiding force for our proposed amendment to exempt future agencies from the multistate limitations of current national and State law. Since the inception of the Edge Act in 1919, U.S. banks have been given a multistate exemption for similar international banking offices. As you know, if our proposed amendment is adopted, State-chartered agencies can continue to be exempted from multistate restrictions provided they are limited to the powers which similar U.S. concerns can have under the long-standing Edge Act provisions of Federal law. It follows, then, that we would provide national treatment to foreign banks by not restricting States from licensing agencies of foreign banks since there are similar opportunities for U.S. banks under present Federal law.

I hope you will find my answer to the questions you asked concerning the oversight of securities affiliates and the role of the Board and the SEC forthcoming. In short, there will be a shared responsibility if the amendment provisions we suggested for Section 8 are incorporated in the bill. The SEC already has full regulatory and supervisory powers over the securities affiliates of foreign banks. What is lacking at present is the regulatory oversight necessary for the Federal Reserve to deal with any future problems that might occur in the banking affiliate of the securities entity. Cooperation and coordination between the SEC and the Board would be certain if the amended language is incorporated in the bill.

I hope the attachments will also point out clearly that insuring domestic deposits in foreign banks will not expose the FDIC insurance fund to unusual risks. Under the FDIC proposals, foreign bank assets in the U.S. could be segregated and pledged to protect the fund against any undue risk of potential liquidation demands. In a related matter, I am not certain that all members of the Committee understood that, at present, the FDIC does not insure the overseas deposits of American banks. Further, as the attachment to this letter indicates, the international banking operations of U.S. banks do not appear to have undermined the safeguards of our domestic deposit insurance system.

As you point out in Question 8, establishing reserve requirements for large foreign banks has been criticized from the standpoint of the dual banking system. This criticism is directed at our proposal generally and not solely to the question of whether subsidiaries of large foreign banks should be covered. Our present recommendation will not usurp other State powers covering the approval or oversight of branches, agencies, and subsidiaries of foreign banks. However, the need for reserve requirements on large foreign banks is dramatically shown in Appendix II of the attachments. The two largest nonmember banks operating in the United States, the Bank of Tokyo Trust Company and the California First Bank, are subsidiaries of the same foreign bank. Their total assets in the U.S. as of December 31, 1976, were almost $4-1/2 billion. If subsidiaries are not made subject to the reserve requirement provisions in the Act, they will, of course, become the preferred form of entry, and U.S. domestic monetary policy controls will continue to be weakened.

Finally, I would like to observe that your Committee, and this Congress and the last, has been engaged in a courageous, farsighted and appropriate effort. Clearly, each new development in the unregulated structure of foreign banking in the U.S. will complicate the future passage of a fair domestic regulatory measure, such as the International Banking Act of 1977. In the present case, the Committee is debating a bill and various amendments which can provide fair national treatment for foreign banks, encourage competitive entry into the U.S., and establish in the U.S. normal protections for our monetary system and those citizens who transact business with foreign banks. These measures are comparable to those imposed on U.S. banks abroad by sovereign governments and on U.S. banks here by our own government.

I am very anxious to provide any assistance that the Board of Governors can offer to the Committee to assist in your further deliberations on this vital legislation.

All best wishes.

Sincerely,

Stephen S. Gardner

Enclosures

93-031 O - 77 - 12

Questions 1 and 9

> 1. Could you elaborate for the benefit of the Subcommittee on the distinction to be made between agencies of foreign banks and powers now granted to federally chartered Edge Act corporations? This follows your suggestion on page 6 which, in my judgment, appears to be a constructive one.
>
> 9. On page 6 of your statement, you suggest a modification of the interstate prohibitions which would have the effect of restricting the powers of agencies in order to minimize the competitive advantage which they have with regard to U.S. banks not being able to operate in more than one state. Could you describe the present powers of agencies and how you propose to restrict them under this current suggestion?

Answer: Both of these questions relate to the respective powers of Edge Act Corporations and agencies of foreign banks and how the latter would be restricted under the Board's proposed amendment regarding multistate agencies. The Board has proposed that section 5 of H.R. 7325 be amended to subject agencies established outside of a foreign bank's home State to the same limitations of powers that apply to Edge Act Corporations (Section 25(a) of the Federal Reserve Act); the amendment would only affect agencies not qualifying for grandfather privileges.

Concurrent with its proposal, the Board furnished the Subcommittee with appropriate legislative language and a chart briefly comparing the powers of foreign bank agencies and branches to those of Edge Act Corporations. A copy of these materials is appended for the Subcommittee's convenience.

Essentially, agencies are now permitted to engage in any banking and lending activities granted them by the several States that permit these offices. The most common denominator defining agencies under the various State laws is that they are unable to accept deposits from the general public and are unable to engage in trust powers; agencies can, however, maintain credit balances for their loan and other customers. Customers may generally draw against these balances by mail, telephone or cable instruction, and in some cases by draft, which is the functional equivalent of a check, for the purpose of transferring funds to third parties in settlement of a wide variety of financial and commercial transactions. Thus, the only thing that actually distinguishes these balances from normal deposits in a wholesale/commercial banking context is that the deposit relationship must derive from and be incident to a loan or other banking relationship.

Aside from the above-noted restrictions, agencies can generally engage in the types of wholesale banking activities permitted domestic banks; principal among these have been commercial and industrial loans, interbank loans and deposits, and lending and deposit transactions involving the parent bank and affiliated institutions.

Under the Edge Act and the Board's Regulation K, Edge Act Corporations can engage in the full range of international banking and lending transactions usual in financing international commerce in the United States including deposit facilities; loan, overdraft, advance acceptance and other credit facilities; commercial letters of credit; foreign collections; purchase and sale of foreign exchange; remittance of funds abroad; and custody of securities and acceptances for account of customers abroad. The principal difference between an agency and

Edge Act Corporation is that the latter may not engage in any domestic commercial banking activities that are not directly related to financing international trade and commerce. For example, an Edge Act Corporation cannot make a working capital loan to a domestic importer or accept domestic deposits in competition with local banking organizations.

Essentially, then, under the proposed amendment, agencies established in the future outside of a foreign bank's home State would have to confine their activities permitted under State law to those related to financing international trade or commerce--the vast majority of their existing transactions.

PROPOSED ALTERNATIVE TO SECTION 5(a) OF

H.R. 7325--IMPOSING EDGE ACT

LIMITATIONS ON FUTURE OUT-OF-STATE AGENCIES*

July 12, 1977

*Note: This proposed alternative is submitted in lieu of amendment number 15 in the staff document entitled "Proposed Amendments to H.R. 7325, The International Banking Act of 1977," that is Exhibit "B" in this Compendium.

1. Page 12, strike lines 22 through 25 and page 13 strike lines 1 through 13 and insert in lieu thereof the following:

"SEC. 5. (a) Except as provided by subsection (b), (1) no foreign bank may directly or indirectly operate a Federal branch or agency outside its home State unless the State is one in which it could operate a branch or agency if it were a national bank located in its home State; (2) no foreign bank may directly or indirectly operate a State branch outside its home State unless (A) the statute laws of the State in which such branch is to be located specifically authorize a State bank organized under the laws of such foreign bank's home State to establish or operate such branch, by language to that effect and not merely by implication, and (B) the State branch is approved by the bank regulatory authority of the State in which such branch is to be located; (3) no foreign bank may operate a State agency outside its home State unless (A) the State agency is approved by the bank regulatory authority of the State in which such agency is to be located, and (B) the State agency limits its activities to those permissible for a Corporation organized under section 25(a) of the Federal Reserve Act; (4) no foreign bank or company of which it is a subsidiary may directly or indirectly acquire any voting shares of, interest in or substantially all of the assets of a commercial lending company located outside of its home State unless (A) the acquisition is approved by the bank regulatory authority of the State in which such commercial lending company is to be located and (B) the commercial lending company limits its activities to those permissible for a Corporation organized under section 25(a) of the Federal Reserve Act; and (5) no foreign bank may directly or indirectly acquire any voting shares of, interest in or substantially all of the assets of a bank located outside of its home State unless such acquisition would be permissible under section 3 of the Bank Holding Company Act of 1956 if the foreign bank were a bank holding company the operations of whose banking subsidiaries were principally conducted in the foreign bank's home State."

Explanation: This recommended amendment to section 5(a) of H.R. 7325 makes two substantive changes, as well as certain technical changes. First, it would permit agencies and commercial lending company subsidiaries of foreign banks to be established in the future outside of a foreign bank's home State, so long as these offices restricted their operations to those international banking activities permissible for Edge Act Corporations. A chart comparing the powers of Edge Act Corporations to those of agencies and branches of foreign banks is attached. Second, while the McFadden Act test has been retained for federal branches and agencies, it has been deleted for State branches. Under the amendment, a foreign bank would be able to establish a State branch outside of its home State if a State bank in its home State could establish such an office. Thus, if reciprocal branching legislation were passed between two States, foreign banks could benefit from such change in State laws.

2. Page 13, strike the period in line 20 and add the following new phrase:

> "and may continue to engage in all activities permissible to any such offices or subsidiaries under State law."

Explanation: This amendment would make clear that grandfathered agencies and commercial lending company subsidiaries of foreign banks would be permitted to engage in all activities permissible under State law and would thus not be affected by the Edge Act limitations to be applied on future agencies and commercial lending companies under the first amendment.

Powers and Restrictions on U.S. Activities	Engage in international banking transactions--acceptance and other credit facilities, commercial letters of credit, foreign collections, foreign exchange dealing, remittance of funds, etc.	Engage in domestic lending transactions--C&I loans, federal funds market, consumer lending.	Deposit-taking ability.
*Agencies of Foreign Banks	Yes	Yes, except for consumer lending. Generally able to make domestic C&I loans and participate in federal funds market; generally unable to engage in consumer lending.	No, but can accept credit balances incidental to either international or domestic business. Cannot issue certificates of deposits in any event. No FDIC insurance.
Branches of Foreign Banks	Yes	Yes, restrictions may apply to consumer lending.	Yes, not limited to internationally related, can issue domestic certificat of deposit. No FDIC insurance.
Edge Act Corporations	Yes	No. Prohibited from engaging in any domestic lending transaction; can engage in federal funds transactions only as necessary to adjust reserve balance, and not as medium of investment.	Yes, but only those incidental to international transactions. Can accept time deposits for foreign accounts, only if proceeds not to be used to pay expenses in the U.S. No FDIC insurance.

*The precise powers of agencies of foreign banks vary somewhat by State law. This chart uses the powers extended agencies of foreign banks in New York as a model.

Question 2

> Your comment on page 8 concerning the securities affiliate provisions of Section 8 of the bill, I find disappointing. I am, of course, aware of the controversy and the House spoke to this controversy, as you know, last year by its defeat of the Rees-Murphy-Moss amendment. From a practical point of view, I can understand your reasoning, but should we consider your suggestion, then I feel we will need more testimony concerning how the Board would propose to use its discretion to control the type of abuses that the Board contemplates "might arise over time." During the hearings, you will recall we discussed the possibility of sharing the responsibility for the review of securities affiliate grandfathered activities with the Securities Exchange Commission. I request, as I stated during the hearings, a written response stating the position of the Board of Governors.

Answer: When the Bank Holding Company Act was amended in 1970 to cover one bank holding companies, Congress permanently grandfathered all nonbanking operations commenced on or before June 30, 1968. The Congress, however, also provided that the Board could terminate such authority to engage in grandfathered activities if it determined, having due regard to the purposes of the Act, that such action was necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest or unsound banking practices.[1/] It has been recommended by the Board that all permanently grandfathered nonbanking operations of foreign banks under H.R. 7325, including securities affiliates, be subject to such discretionary review. In the case of securities affiliates, the Board has recommended this procedure in lieu of the existing provisions of H.R. 7325 which effectively limit grandfathering till 1985.

1/ In the case of bank holding companies controlling banks with assets in excess of $60 million, the Board was further required to conduct such a grandfather review within two years from the date of enactment of the amendments or from the date on which bank assets exceeded $60 million, whichever was later.

In my testimony, I stated that this authority could be used to correct any abuses that might arise over time; I further stated such grandfathering would permit these affiliates to operate "in essentially the same form and relative size as at present". I chose these words carefully to indicate that the Board saw no immediate problems with grandfathering due to the relative size and importance of these affiliates in our domestic economy. If the grandfathered affiliates--through, for example, significant capital contributions from their foreign bank parents--became among our largest securities concerns, such a development could have very serious repercussions for fair competition in both the investment and commercial banking communities and for the concentration of resources in our financial markets. Thus, one situation that might arise and that would call for review would be a significant expansion of the size and importance of these affiliates. It should be noted, however, that H.R. 7325, even as amended by the Board, would not give foreign banks with grandfathered securities affiliates the authority to expand further by the acquisition of a going concern--i.e., Merrill Lynch--rather they would be limited only to expanding *de novo*.

Aside from problems that might be caused by a significant expansion in the size and business of such affiliates, there are several abuses to which the Glass-Steagall Act and Bank Holding Company Act are addressed that could possibly arise here between U.S. offices of foreign banks and their U.S. securities affiliates. Following are some examples: unsound loans to such affiliates or to companies whose shares were being underwritten, sold or distributed by such affiliates; loss of public confidence in the U.S. banking operations of a foreign bank due to the failure of its U.S. securities affiliate; and anticompetitive tying of commercial banking and investment banking services. These types of abuses or practices, which we must stress we have no reason to believe are now occurring, could be uncovered through the bank examination and supervisory process and, under H.R. 7325, the Board could use its authority to terminate grandfather authority if major abuses should occur or to take cease and desist action to prevent other abuses from escalating. It should be noted that the Board and other banking agencies have increasingly made use of cease and desist authority to deal with violations of law and unsound banking practices.

Your suggestion concerning a sharing of responsibility between the Board and SEC for discretionary review of the grandfathered operations of securities affiliates of foreign banks would be achieved if the Board's recommendations for amendment of Section 8 of the bill are adopted. The SEC already has supervisory and regulatory authority over the operations of these domestically-chartered securities affiliates and thus would be equipped to deal both now and in the future with any securities law problems that might arise with these affiliates. The gap in our present regulatory structure is on the bank regulatory side and it is that gap that would be filled by Section 8 of the bill, since it would give the Board the authority to terminate a foreign bank's affiliation with a domestic securities concern if it led to abuses prohibited by the Congress in the Bank Holding Company Act--an Act which Congress has directed the Board to enforce. In this regard, in exercising its proposed review authority over foreign banks and their securities affiliates, the Board would consult with the SEC in order to benefit from any information or views the SEC might have that would be relevant to the issues that must be considered by the Board under the grandfather review standards of the Bank Holding Company Act.

<u>Question 3</u>

On page 3, you indicated that many believed foreign banks to be highly specialized institutions operating only in port and gateway cities and then asserted that the position was erroneous "in view of extraordinary expansion of these banks in the context of the development of multi-national banking." Could you elaborate on your rebuttal argument?

<u>Answer</u>: My comment about the disparity between the traditional view of foreign banks' activities in port and gateway cities and the realities of multinational banking activities today was based upon the changed character of multinational banking over the past few years. Initially, foreign banks specialized in providing trade financing, largely for customers of their parent bank organization. But gradually over time, as the foreign banks' contacts improved, their knowledge of U.S. financial markets expanded, the opportunities presented by U.S. domestic credit markets became apparent, and the foreign banks broadened their range of services offered. The foreign banks began to compete for domestic commercial and industrial loans and to offer corporate banking services.

In some instances, foreign banks have even been able to compete with domestic banks in retail banking markets, traditionally the most difficult credit market for a newcomer, particularly a foreign bank, to compete with established local banks. Barclays in New York and California, European-American in New York and Lloyds and Bank of Tokyo are the most notable examples of foreign banks which have established or acquired very competitive retail banking networks in this country.

Foreign banks are still heavily engaged in trade financing, both for trade originating in their own country and the increasingly important market for third-country financing. Many smaller and newer foreign banks continue to rely heavily on trade financing for a major part of their business. But increasingly multinational banking has become a highly competitive business in which banks from all countries offer the full spectrum of their banking services to customers in all major cities throughout the world. These business opportunities have been enhanced by the development of multinational firms with manufacturing and sales facilities throughout the world. Such major firms rely on groups of banks, foreign and domestic, to provide working capital loans, term loans, plant financing and many banking services that are not specifically trade-related. Foreign bank offices in the U.S. are increasingly engaged in all types of banking business for domestic and multinational firms.

While the new aggressive conduct of multinational banking today has promoted a healthy environment of international banking competition, it has concommitantly spurred banking authorities everywhere to be more watchful of the consequences for their domestic financial institutions and markets.

Question 4

> Given the statistical evidence at hand which has seen an increase from approximately $7 billion in foreign assets in 1965 to more than $76 billion currently, could you venture an opinion as to whether you feel this trend will continue; and if so, what is your best estimate of the total amount of foreign assets in the United States at the end of the next ten-year period?
>
> The enactment of this bill does not have as its purpose the discouragement of foreign investment which I feel needs to be emphasized in view of the misunderstandings clearly existing today. Would you agree with this comment; and if so, could you discuss briefly how the Fed would propose to exercise the considerable discretion granted to it should the bill with proposed amendments be adopted?

Answer: I wholeheartedly support your statement that the proposed bill is not intended to discourage foreign investment. On the contrary, we believe that the provisions of the International Banking Act are consistent with the longstanding U.S. government policy of encouraging foreign investment in this country. The Act would encourage foreign banks to continue entering the United States by ensuring them of a welcome, by guaranteeing certainty of regulatory treatment in planning their activities, and by establishing a fair and reasonable framework within which they may conduct their operations. The Act's Guidelines clearly spellout these objectives by stating that the purpose of the Act is to "achieve a parity of treatment" between foreign and domestic banks.

The purpose of the discretionary powers given to the Federal Reserve in the proposed amendments is to ensure that fair and equal treatment is afforded foreign banks in the U.S. banking structure. The two most sensitive areas which we feel require discretionary authority are the treatment of foreign-owned security affiliates and relationships between U.S. offices of foreign banks and nonbanking affiliates of the same foreign bank.

The Federal Reserve has no evidence that the present activities of foreign banks' U.S. securities affiliates are harmful to our financial industry. If this were not the case, we would not have vigorously supported provisions to permanently grandfather these institutions. We are not aware of any inappropriate transactions between U.S. foreign banking affiliates and U.S. offices of nonbanking subsidiaries of the same parent organization. In both areas, there is always a potential for future infringement of U.S. banking regulations, and we therefore feel it is wise and appropriate to monitor such activities.

To attempt to forecast the exact nature of the activities of foreign institutions which might pose a threat to the stability, competitiveness or viability of U.S. financial markets in the context of the rapidly changing financial environment of recent years is a practical impossibility. And, consistent with this uncertainty about events, it is also impossible to outline now all the types of measures which may be needed to implement the Board's discretionary powers. However, in Section 8(c) of the IBA, the Congress has ennumerated the conditions which the Board is to prevent through exercise of its discretionary powers. Further the proposed amendments provide the authority to deal with future situations and ensures that the Board will have the flexibility to implement the Congresses mandate.

As you noted, the growth of foreign banks' assets in the U.S. over the past decade has been extraordinary. As indicated in Appendix II, in recent years, they have increased at a rate more than four times faster than comparable domestic bank assets. While I hesitate to extrapolate this trend, it seems likely that they will continue to increase their share of a growing U.S. financial market as other foreign investments rise in the U.S. and as more foreign banks come here. The underlying reasons for this growth, the stability and size of our economy, and the use of the dollar as the world's premier trading currency are unlikely to change. I would not be surprised if foreign bank assets here were to double in the next decade. I would be very surprised if they did not increase at this or a faster pace.

93-031 O - 77 - 13

Question 5

Of the 94 foreign banks to which you make reference on page 2 of your statement, how many of those banks have assets in excess of $1 billion?

Answer: Available statistics indicate that 88 of the 94 or 93 per cent of the foreign banks operating U.S. banking facilities have worldwide assets in excess of $1 billion.

Question 6

> The insurance provisions of this bill appear to be the most difficult to adjust in terms of the various suggestions which have been made. They are also, I think, perhaps the most significant in terms of public policy. I would like to ask you to discuss the possibility that the insurance of foreign banks might expose the fund to undue risk. Even if the risk is not, in your view, unnecessarily great, it does appear that there are risks in addition to those which relate to domestic banks. I would also like you to discuss the larger issue which relates to the question of deposit insurance for overseas branches of U.S. banks. To what extent have the international banking operations of U.S. banks undermined the safeguards of deposit insurance? Could you supply for the record some indication of the proportion of liabilities of the largest U.S. multi-national banks which are insured?

Answer: There are really two parts to this question. First, what are the risks involved to the FDIC fund in insuring deposits at U.S. branches of foreign banks. And, second, does the expansion of the international banking activities of U.S. banks pose significant new problems for the FDIC fund.

In answer to the first part of the question, we believe that the FDIC in submissions to the Subcommittee and in Chairman LeMaistre's testimony has fully identified the range of risks that are peculiar to insuring deposits at U.S. branches of foreign banks. The FDIC, as set forth in their alternative proposal, can limit this risk through two important powers included in that proposal. First, the FDIC is given the authority to define what domestic deposits at branches are to be insured. This makes clear that the FDIC is not insuring overseas operations--a question raised by Congressman Rousselot at the hearings. Moreover, the FDIC can limit their exposure as necessary by insuring only those domestic deposits which they define as such. Second, and most important, the FDIC is given the authority to require a pledge of assets or surety bond to further protect the FDIC fund against the unique risks attaching to insuring deposits at a U.S. office of a foreign institution whose primary assets and management are located abroad. Thus, the FDIC would have an effective means of assuring that, if any payments to depositors are required, there would be sufficient assets in the U.S. to protect its fund.

In answer to the second part of your question, I want to emphasize that deposit insurance was enacted in this country to protect the small depositor and small saver from the consequences of bank failure and in this way to lessen the hardships of bank failures on our local communities and economies. Congress did not decide to fully protect all depositors in insured banks and, in particular, did not, in our opinion, provide insurance on deposits payable only outside the U.S. at foreign branches. The protection of overseas depositors is the responsibility of the authorities in the countries in which those branches are located.

For those depositors in the United States whose bank accounts are fully insured, the development of international banking operations by U.S. banks has not affected the safeguards provided them by FDIC insurance. For the FDIC, on the other hand, the development of international banking operations in insured banks has added another dimension to its responsibilities. While those operations add some different kinds of risk to those already present in domestic operations, at the same time, foreign operations add to the diversification of bank assets. The evidence to date supports the conclusion that international operations of U.S. banks have not weakened the system of deposit insurance we have in this country nor its ability to achieve the public objectives for which it was established.

The table below provides data on the percentage of total deposits which were made at domestic offices for a number of the largest U.S. multinational banks.

Bank	1976 Per cent of total deposits at U.S. offices
BankAmerica Corporation	57
Citicorp	36
Chase Manhattan Corporation	53
Manufacturers Hanover Corporation	65
J. P. Morgan Company, Incorporated	46
Chemical New York Corporation	60
Continental Illinois Corporation	55

These figures provide an indication of the proportion of deposits in these banks on which deposit insurance premiums are paid. They do not represent the percentage of total deposits which are insured in these banks, since individual deposits are insured only up to the first $40,000 and most public funds are insured up to $100,000. Thus the actual insured deposits would be less. Data showing the amount of insured domestic deposits by bank are not available to us. However, the FDIC reported that for 1975, 64 per cent of all domestic deposits were insured. This percentage of insured deposits is probably even lower in the banks listed since wholesale banking and large account holders account for a relatively greater share of business at large banks than at small banks.

Question 7

> Governor Gardner, on page 3 of your statement, you note that "The growth of this international financial community is testing the regulatory framework and monetary system in many other countries," and that banking laws in four other countries are being revised to meet some of the problems resulting from the rapid expansion of multinational banking.
>
> Could you describe some of those revisions and indicate whether or not the concerns of those countries are similar to the concerns embodied in this bill?

Answer: In August 1976 a White Paper was published in Canada containing proposals for the decennial revision of the Bank Act. Among those proposals was one which would allow foreign banks to conduct deposit-banking activities in Canada, something which foreign banks cannot presently do. Such activities would be subject to certain limitations. One of the factors underlying this proposal was the growth in near-banking activities by U.S. and other foreign banks in recent years through Canadian subsidiaries. These subsidiaries have engaged in a broad variety of financing activities, funded through the Canadian money market, but have not been subject to banking regulations. Under the proposals, these subsidiaries would be converted to licensed banks that would be subject to the same banking regulations as domestic Canadian banks.

A White Paper was also published in the United Kingdom in August 1976, which would provide a statutory basis for bank regulation in that country. The United Kingdom has not had a specific banking law governing the entry and operations of banking institutions. In recent years, problems have been encountered with the establishment of companies which called themselves banks, or bankers, and accepted funds from the public without being regulated in any meaningful way. Many of these companies have gotten into serious financial difficulties. Under the proposals contained in the White Paper, all institutions accepting deposits would have to be licensed and only selected institutions would be allowed to call themselves banks. Another of the proposals contained in the White Paper was a recommendation for a deposit protection fund on sterling deposits; the deposit insurance scheme would apply to sterling deposits in branches of foreign banks as well.

In both Canada and the United Kingdom, comments on the White Paper proposals have been received and legislation is now expected to be introduced into the respective Parliaments before the end of the year.

In the banking law enacted by Belgium and the one in the final stages of enactment in the Netherlands, it is of interest to note that provision was made to allow the banking authority to exchange appropriate information with foreign banking supervisors. These provisions are, of course, a direct outgrowth of the development of multinational banking operations and the consequent sharing among nations of responsibility for their supervision.

Question 8

> On page 5 of your statement, you discuss a proposed Federal Reserve amendment imposing reserve requirements on subsidiaries of foreign banks. You are no doubt aware that this will be a very controversial amendment and that it will be criticized as a violation of the dual banking system. I would like to give you an opportunity to explain the Federal Reserve's position more fully. As I understand your concern it related to the fact that foreign banks in the U.S. operate their offices -- whether they be subsidiaries, agencies or branches -- to some extent as a unit. It is possible for them to shift funds between these units regardless of their form of operation and to use the network as a way of minimizing the cost of reserves and to escape regulation and examination. To some extent, this is occurring with respect to U.S. banks as well and holding companies in which only one of several banks is a Federal Reserve member. Have I understood your concern correctly? Would you comment further on it?

Answer: As a central bank, the Federal Reserve is concerned about the operations of foreign banks in the United States because they are large banks conducting large operations comparable in every way to our large banks, but their monetary liabilities are not subject to reserve requirements. These foreign banks happen to conduct their business through several organizational forms: branches, agencies, and subsidiaries, largely to conform to or take advantage of different provisions of various State laws. Almost all of the subsidiary banks belong to an organization that also has a branch or agency (31 out of 34 to be precise).

These subsidiaries operate in conjunction with the branches or agencies with assets and funds readily shifted among them. Some foreign banks have already developed networks of operations in this country using all three organizational forms. The Bank of Tokyo is the most notable example. The Bank of Tokyo operates a subsidiary bank and an agency in New York; another subsidiary bank and an agency in California; a branch each in Washington and Oregon; an Agreement Corporation in Texas; and an affiliate in Chicago. At the end of last year, the assets of this U.S. organization totaled $12.5 billion. Of this amount, $4.5 billion were accounted for by its two nonmember subsidiary banks. To subject branches and agencies to monetary controls but to leave out subsidiary banks would be a large omission, as this example illustrates. The size and sophistication of the foreign banking institutions here and the coordination among their various U.S. offices and with their related institutions in foreign countries clearly affords them an ability to shift business among their U.S. offices so as to avoid reserve requirements where such an opportunity exists.

Question 10

> The date which the Board regularly provides to the Committee on assets and liabilities of foreign banks indicates that there was a drop of $6 billion in the total assets and liabilities of these offices between March and April of this year. At other times, there have been increases in their assets of about the same size. The flow of funds into and out of the U.S. through offices of foreign banks appears to be very substantial. Does the volatility of their operations complicate the conduct of monetary policy? If so, could you explain why?

Answer: The size and character of the credit and deposit business of foreign banking offices in the United States make it important for the efficient conduct of U.S. monetary policy that their activities be subject to Federal Reserve regulations. Access of these foreign-owned banking offices to funds from domestic and international financial markets gives them the capability of expanding their balance sheets rapidly when demands for credit rise. Foreign-owned banking offices, like the largest U.S. banks, have a substantial share of their assets in U.S. commercial and industrial loans, and they have increased these loans rapidly in periods of sharply rising business activity in this country. In such periods when monetary policy is directed toward moderating the pace of business expansion, it can be more efficient in this effort if the monetary policy restraints are applied evenly to all banking institutions.

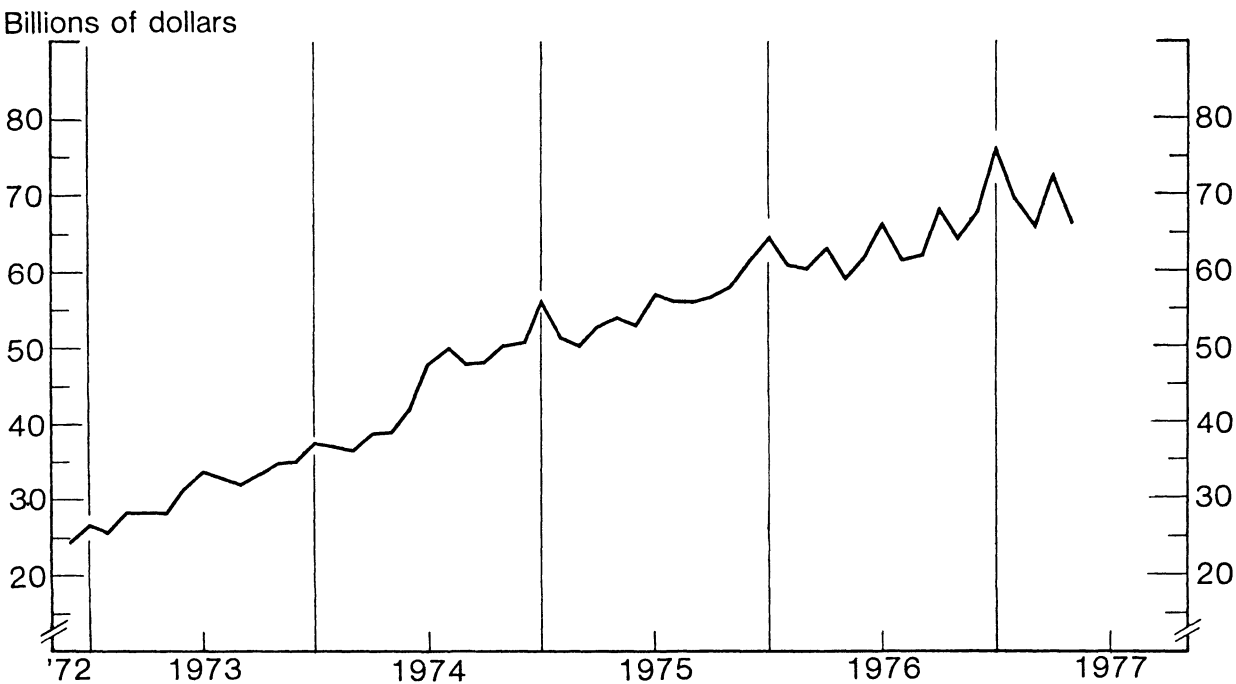
The attached chart presenting monthly data on total assets of foreign banking facilities reveals some sharp month-to-month changes. Too much importance should not be attached to any one of these as a wide variety of factors can lie behind them. Among these factors are seasonalinfluences, shifts in relative interest rates leading to arbitrage transactions, and fluctuations in clearing transactions. To the extent that abrupt shifts in these balance sheets reflect international flows of funds or the arbitraging of interest rates between U.S. and foreign financial markets, they are another element to be taken into account in the day-to-day conduct of monetary policy, and when they are large they can be a complicating factor.

More important to the longer-run conduct of monetary policy are the basic credit and deposit flows in this growing and increasingly significant segment of the banking system. It is nevertheless clear that these facilities, through their links to the other major financial markets through their parents, have the potential to effect large international shifts of funds in the short run, with consequent effects on money markets and credit conditions.

Attachment

TOTAL ASSETS OF FOREIGN BANKING INSTITUTIONS

Source: 886a



199

Appendix I

Non-Member U.S. Banks with Total Assets
Exceeding $1 billion as of December 31, 1976

Bank Name	Total Assets (millions)
Bank of Tokyo Trust Company*	2,245
California First Bank*	2,214
Lloyds Bank of California*	1,475
Bank of Hawaii	1,279
Banco Popular de Puerto Rico	1,250
Equitable Trust Company (Baltimore, Maryland)	1,231
Industrial Valley Bank and Trust Co. (Jenkintown, Pennsylvania)	1,230
Northwestern Bank (North Wilkesboro, North Carolina)	1,206
American Bank and Trust Company of Pennsylvania	1,184
Continental Bank (Norristown, Pennsylvania)	1,178
First-Citizens Bank and Trust Co. (Raleigh, North Carolina)	1,169
Arizona Bank	1,164
Bank Leumi Trust Company of New York*	1,133
Wilmington Trust Company	1,129
First Hawaiian Bank	1,096
Old Stone Bank (Providence, Rhode Island)	1,019

* Affiliates of large foreign banks.

Appendix II

The attached table compares the growth of the U.S. activity of foreign banks, the growth of the U.S. offices of the large banks which report weekly to the Federal Reserve, which are the primary competitors of the U.S. offices of foreign banks, and the growth of the assets of the foreign branches of U.S. banks. The data indicate clearly that the assets of the U.S. offices of foreign banks and foreign branches of U.S. banks have in recent years been growing substantially more rapidly than the assets at domestic offices of the weekly reporting banks.

Attachment

Comparative growth of foreign banks in United States and of U.S. banks
(in billions of dollars)

	December 1972	December 1976	Per cent change	April 1976	April 1977	Per cent change
Foreign banks in U.S.:						
Total Assets	26.8	75.8		59.0	66.2	
Less due from directly related institutions in U.S.	1.2	6.4		5.4	4.2	
	25.6	69.4	171	53.6	62.0	16
Large member banks:						
Total Assets	350.8	469.4	34	501.6	545.2	9
Foreign branches of member banks:						
Total Assets	78.2	219.9		189.4	223.0	
Less intra-branch claims	11.5	46.6		39.6	47.8	
	66.7	173.3	160	149.8	175.2	17

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

STEPHEN S. GARDNER
VICE CHAIRMAN

July 22, 1977

The Honorable Frank Annunzio
House of Representatives
Washington, D.C. 20515

Dear Frank:

I am enclosing an answer to your question about the activities of domestic and inter-State foreign banks. I hope you will find the answers useful.

During your questioning of me, I tried to explain that the Board's amendment to the bill covering agencies would not diminish the opportunity for major industrial centers to attract State-licensed agencies of foreign banks. I think this amendment would be considered fair and appropriate by competing domestic banks. The essence of the proposal, as you know, is that State-licensed agencies could be established in many State locations if they engaged in international banking business. That means they could finance trade and engage in loan transactions and accept balances from U.S. and foreign customers provided those balances, called credit balances, were directly related to the international transactions they handle for foreign and domestic customers. These powers are entirely similar to the powers now granted American banks under the Edge Act.

The amendment strikes a fair balance and conforms the treatment of American banks in the U.S. with the treatment of foreign banks here. It also respects the right of the States to permit entry of foreign bank agencies.

If there is any further explanation I can give you on this important matter, I would be most pleased, as you know, to see you at your convenience.

All best wishes,

Sincerely,

Stephen S. Gardner

Enclosure

Question from Congressman Annunzio

> You have stated that H.R. 7325 is necessary to provide equitable treatment between foreign owned and domestic banks. Is it not true that our domestic bank holding companies, through their many bank and nonbank subsidiaries and other facilities, conduct far more extensive interstate banking activities than do the foreign-owned banks which have established branches?

Answer: The proper answer is no. Domestic bank holding companies are only permitted to conduct nonbanking activities across State lines; principal among these have been consumer finance, mortgage lending, factoring, and leasing. Edge Act Corporations are only permitted to engage in international banking activities. Thus, while it is true that domestic banks through affiliated bank holding companies and Edge Act Corporations conduct a greater range and volume of activities throughout the U.S. than foreign banks, it is currently only foreign banks and the small group of domestic banking organizations which were grandfathered in 1956 and 1966 that are able to conduct a multistate banking business. It should be further noted that, except for certain Edge Act provisions that would be modified by section 3 of H.R. 7325, there is currently no provision of federal law preventing foreign banks from buying nonbanking companies or for that matter, from buying any companies which domestic bank holding companies are excluded from acquiring. Thus, except for the Edge Act, foreign banks have essentially complete freedom to conduct any form of activity--banking or nonbanking--on a multi-State basis.

July 22, 1977

The Honorable Clifford Allen
House of Representatives
Washington, D.C. 20515

Dear Mr. Allen:

I am pleased to furnish you a copy of my written response to the question you asked at the hearing on July 12. I have also furnished a copy of this response to Chairman St Germain for inclusion in the record of the hearing.

Please let me know if I can be of further assistance.

Best wishes,

Sincerely,

s/ Stephen S. Gardner

Stephen S. Gardner

Enclosure

Question from Congressman Allen

How many foreign banks doing business in the United States have gone bankrupt?

Aside from situations arising during wartime and possibly during the Depression, the only recent failure we have been able to uncover involving a foreign bank in the U.S. was that of Intra Bank, S.A., Beirut, Lebanon, a Lebanese bank that maintained a branch in New York City. On October 15, 1966, the Superintendent of Banks for the State of New York took possession of the business and property of Intra' New York branch and liquidated its affairs under the New York Banking Law. It is our understanding that local creditors of the New York branch were paid in full in the proceeding, because of provisions in New York law which required Intra Bank to pledge U.S. assets to back up its U.S. indebtedness to depositors and U.S. creditors. The FDIC has recommended a similar asset requirement provision in its alternative insurance proposal.

The advantage of FDIC insurance in such situations is that the FDIC has the authority to arrange alternative solutions to liquidation when such actions appear to be less costly than paying off depositors. This provides a greater range of remedies to protect the interests of U.S. depositors and creditors. For example, assets and liabilities of a failing branch or agency could be purchased and assumed by another banking institution, thus maintaining the continuity of banking services. While it is true that U.S. authorities cannot prevent the failure of a foreign bank abroad, FDIC insurance and federal supervisory controls should help to ensure that local creditors and depositors of a foreign bank's U.S. offices are protected to the maximum extent possible.

Mr. St Germain. We are running a little short on time because of the popularity of Governor Gardner with the members. As a result thereof we were going to have a panel, and one of the witnesses has graciously consented to be rescheduled to Tuesday, July 19. That is the Bankers Association for Foreign Trade, and we want to express our deep appreciation to them for their cooperation.

Under the circumstances, we will now ask Mr. Edward O'Brien, president of the Securities Industry Association, if he would come forward.

Mr. O'Brien, welcome.

We will place your entire statement in the record and you may proceed to comment as you would like.

STATEMENT OF EDWARD I. O'BRIEN, PRESIDENT, SECURITIES INDUSTRY ASSOCIATION (SIA); ACCOMPANIED BY JAMES W. WALKER, JR., EXECUTIVE VICE PRESIDENT

Mr. O'Brien. Thank you very much, Mr. Chairman.

I am Edward I. O'Brien, president of the Securities Industry Association. Accompanying me today is James W. Walker, Jr., executive vice president of the association.

As you know, the SIA membership includes more than 500 investment banking and brokerage firms located throughout the Nation performing a broad range of services for investors of every size and type.

At the outset, I want to congratulate the subcommittee chairman for his persistent leadership last year in moving this important legislation through the committee and through the House. On behalf of our board of directors, I want to thank you again, and I also want to extend our appreciation to Chairman Reuss and your other colleagues on the Banking Committee who cosponsored H.R. 7325.

We are pleased to appear again before the subcommittee in support of the basic purpose of H.R. 7325, that is to provide for Federal regulation of foreign banks in the United States. The ever-increasing participation of foreign banks in our domestic financial markets certainly justifies the establishment of a national policy with respect to those activities.

We also believe that two interrelated principles reflected in the bill are fair and justified. First, SIA is in complete agreement with the view that organizations offering similar or identical services should be subject to comparable regulation. Second, foreign firms operating in the United States should not receive a competitive edge over domestic firms because they are permitted to engage in certain endeavors which the Congress has determined as a matter of public policy to be inappropriate for American businesses.

As we stated in our testimony before this panel last year, we favor the enactment of H.R. 7325 because it reaffirms a basic tenet of U.S. banking law—that there are limits as to the range of activities in which banks or bank-related companies are permitted to operate.

A review of the legislative history of the Banking Act of 1933—the Glass-Steagall Act—the Banking Holding Company Act of 1956, and the Bank Holding Company Act Amendments of 1970 evidences both congressional recognition that the combination of banking and nonbanking enterprises poses serious economic problems and a consistent congressional intent to separate banking from other areas of commerce.

SIA shares these views and believes they are as valid today as they were in the past. For a more detailed commentary of SIA views on these subjects, we would like to submit for the record a copy of the Securities Industry Association's "Memorandum for Study and Discussion on Bank Securities Activities."

Mr. ST GERMAIN. Without objection, it will be made a part of the record.

[The above referred to publication follows the appendix to Mr. O'Brien's statement.]

Mr. O'BRIEN. Turning to the specific provisions of the bill, section 8 deals with the extent to which foreign banks may conduct nonbanking activities. This section applies the restrictions of the Bank Holding Company Act of 1956 as amended to the nonbanking operations of foreign banks which control branches, agencies or commercial lending companies in the United States.

The primary purpose of that act, reaffirmed again when Congress passed the Bank Holding Company Act Amendments of 1970, was to close the 1956 Act's one bank holding company loophole in order to preserve the basic separation of bank and bank-related activities from other areas of commerce. SIA strongly supports that principle and believes it should apply to foreign banks as well as domestic banks.

The bill also requires that they terminate all nonbanking activities as of December 31, 1985, except that foreign banks which have subsidiaries or affiliates engaged in the underwriting of securities may continue to underwrite after that date if they do not sell securities in the United States. To qualify to continue to underwrite, such affiliates must have been established prior to December 3, 1974, or acquired pursuant to a contract entered into before or on that date.

In addition, foreign banks or companies could continue to engage in such other securities activities "to the extent not prohibited by paragraph 7 of the Revised Statutes of the United States (12 U.S.C. 24), commonly referred to as the Glass-Steagall Act. A relevant passage from that paragraph states:

> . . . The business of dealing in securities and stock shall be limited to purchasing and selling such securities and stocks without recourse, solely upon the order, and for the account of customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock.

For an uninterrupted period of nearly 40 years, this provision was strictly construed by bank regulators. However, in recent years, they have taken a much more permissive attitude in construing what was intended to be a purposeful restraint on bank dealings in securities. Today the only construction on which there is universal agreement is that the quoted language prevents commercial banks from engaging in the classic "underwriting" function of buying securities and from a corporate issuer for the purpose of public distribution and from buying and selling as a dealer for the banks' own account securities not exempt from the act.

We have cited in the appendix a number of specific examples of bank regulatory actions which highlight our concerns. Based on these developments we are led to conclude that what appears to be a plain and clear mandate that banks should not be in the business of soliciting the purchase and sale of securities is not being followed by bank regulators.

We believe it is also fair to conclude that if the Congress wants to reaffirm the principle that banking activities should be separated from other areas of commerce in general and the securities business in particular, it cannot confidently rely on bank regulators, based on recent experiences, to construe the language contained in paragraph 7 in a manner which will carry out that congressional intent.

Therefore, rather than merely incorporate by reference the statutory language which has increasingly been the subject of intense legal debate, this subcommittee should take this opportunity to state with precision what, if any, securities activities should be offered by commercial banks, be they foreign or domestic.

In our view, banks should be prohibited from soliciting orders to purchase or sell securities other than those securities now explicitly exempt from the restrictions of the Glass-Steagall Act. Bank brokerage services would thus be limited to those where the bank provides the service solely at an existing customer's request as an accommodation, the result intended by the act. Banks should also be prohibited from engaging in private placement activities. We believe regulators, bankers, and brokers all would definitely benefit from the greater certainty such a congressional act of clarification would provide. Positive action, indeed, would be timely and in the public interest.

Another issue which sparked controversy last year was the extent to which existing U.S. securities firms with foreign capital invested in them would be affected by the legislation. Certain Members of the House, joined by spokesmen from regional stock exchanges and foreign affiliated securities firms, some of which are SIA members, voiced concern that the bill failed to adequately take into account the impact on the securities marketplaces and on the capital needs of the Nation. Other House Members argued that the legislation was protectionist and could invite foreign governments to retaliate against U.S. commercial and investment bankers abroad.

As a matter of principle, SIA has no difficulty with putting foreign banks to the same choice as U.S. banks, let them choose to be either in the commercial banking business or in the investment banking/securities business, but not both. Preoccupation with ancillary factors mentioned above tend to obscure the basic purpose of the bill.

On the other hand, however, there may be practical considerations which will lead the Congress to temper the potentially disruptive impact of a sound but hard principle with certain modifications. Last year, several proposals were debated and rejected. Whether a more compelling case can be made this year remains to be seen. Certainly, our members, who either have already received foreign bank capital or who may look to foreign banks as a source of capital in the future, would urge that some allowance or accommodation be made.

While these concerns may be valid, let me reiterate that as a matter of principle that SIA supports the position that commercial banks should not be in the business of soliciting the purchase and sale of securities and that foreign institutions conducting a commercial banking business in the United States should be treated no differently than their domestic counterparts.

We appreciate the opportunity to share with you our views on this important legislation.

[The appendix to Mr. O'Brien's statement, along with a publication entitled "Securities Industry Association Memorandum for Study and Discussion on Bank Securities Activities," follow:]

APPENDIX

ILLUSTRATIONS OF REGULATORY TREND RELATING TO BANKS OFFERING SECURITIES SERVICES

Securities organizations have had to seek legal redress to correct the permissive interpretations of the Glass-Steagall Act by bank regulators. The following events summarize the two important cases.

The Comptroller of the Currency, in 1965, ruled it was permissible under Glass-Steagall for banks, in effect, to sell mutual fund shares. The Investment Company Institute (ICI) challenged the ruling but had to go all the way to the U.S. Supreme Court to resolve the dispute. The highest court held in the Investment Company Institute v. Camp 401 U.S. 617 (1971), the leading case interpreting the scope of permissible activities under the Act, that the Comptroller was in error and that such activities were in violation of the law.

The Comptroller of the Currency, this time in 1974, said that the Glass-Steagall Act did not bar banks from offering automatic investment service (AIS) plans to its customers. The ICI, joined by the New York Stock Exchange (NYSE), have sued to overturn this opinion. The Comptroller's decision was upheld by a Federal District Court in 1975, but the ICI and the NYSE currently have an appeal pending before the U.S. Court of Appeals.

Disputes also occur when bank regulators make a more limited construction of the Glass-Steagall Act. The following events relating to banks' private placement activities, which amounted to an estimated $1.3 billion in 1976 -- a more than 10 fold increase since 1972 -- provide an interesting illustration:

The Deputy Comptroller of the Currency, in letter rulings dated in late 1974 and early 1975, ruled that national banks and their subsidiaries should not participate in any substantial degree in negotiations between their clients and prospective purchasers of securities, nor should they charge a fee contingent upon a successful placement of securities since such role "lies at the heart of the investment banking business and undoubtedly constitutes a proscribed underwriting, selling, or distribution of securities". The content of these letters did not become public knowledge until early 1976. When asked last year by securities industry spokesmen what plans the office of the Comptroller had either to publicize these rulings or to enforce them, the response was the substance of the rulings was under review for the purpose of liberalizing the ruling.

The Federal Reserve Board, on December 17, 1976, rejected an application by the First Arabian Corporation to retain an investment in Edward Bates & Sons (Holding) Ltd., which owned 52% of Bates North American, a United States broker-dealer subsidiary engaged in the private placement business. The Board ruled:

> It is the public policy of this nation's banking laws, as expressed in the Glass-Steagall ... to separate commercial banking from investment banking; and in the Board's judgment Bates North American's participation in negotiations and its contingent fee arrangements infringe upon the area of investment banking to such an extent that it must be considered engaged in the business of underwriting, selling, or distributing securities...

within the meaning of Regulation Y promulgated under the Bank Holding Company Act.

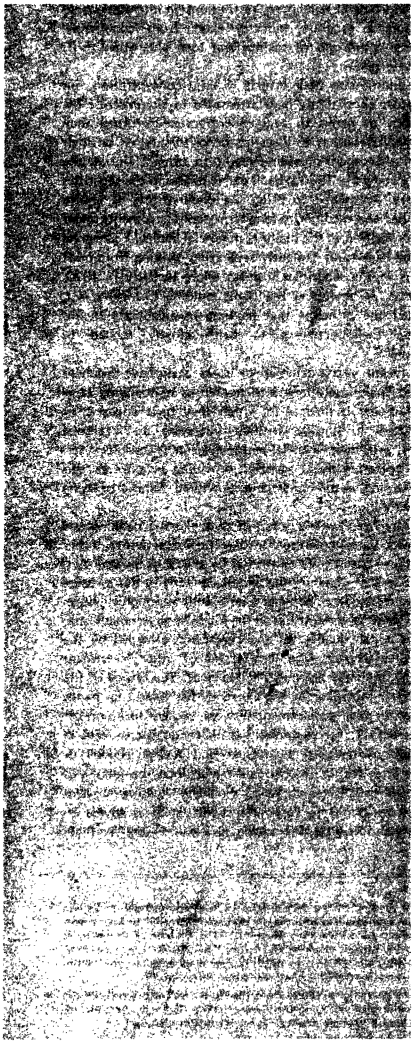
On January 7, 1977, senior officers for three of the largest New York City banks wrote the Board expressing concern over the possible implications of the Board's Order with respect to the First Arabian case and specifically requested that the Board issue a statement to the effect that the First Arabian Order is not intended to determine the legality under the Glass-Steagall Act of the private placement activities of commercial banks".

On January 19, 1977, a joint letter on behalf of the Board was sent to those banks reassuring them that "the Board has not, as a general matter, attempted to limit, by application of the Bank Holding Company Act, the activities that may be engaged in directly by banks that are subsidiaries of bank holding companies." Furthermore, "(i)n the First Arabian case, the Board was not called upon to consider the extent to which the Glass-Steagall Act might prohibit banks from participating in the private placement of securities".

On June 15 the staff of the Board, in response to a request from Chairman Reuss, reached an opposite conclusion. The staff report claimed while it "is not free from doubt" whether the Glass-Steagall Act prohibits commercial banks from assisting private placements, the "stronger case" was that such activities were not prohibited by the Act.

SECURITIES INDUSTRY ASSOCIATION
MEMORANDUM FOR STUDY AND DISCUSSION
ON
BANK SECURITIES ACTIVITIES

August 1976



INTRODUCTION

A strong and vital American banking system is essential to the economic well being of this nation and, indeed, the economic stability of the world. Banks play a central role in international trade and finance and domestically provide the credit essential to the smooth flow of commerce. The importance of the role of banks in this country is underscored by the unique legal and regulatory framework in which they function. Because of this unique position, it is no small wonder that "the American people have repeatedly demonstrated their determination to have a sound system of banking." [1]

Background

The banking system currently is undergoing its most extensive governmental review in over forty years. For example, the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the House Banking, Currency and Housing Committee recently has completed a broad study of the nation's depository institutions[2] and has proposed legislation to reform the regulatory structure of the banking industry.[3]

The Securities Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs also is conducting an extensive study of bank securities services, including brokerage-related services and investment advisory services.[4] The Subcommittee's study will attempt to determine, among other things, whether allowing banks to provide securities services may cause an undue concentration of economic power and whether it may endanger the safety and solvency of banks or investor confidence in capital markets.[5]

In addition to legislative review, the Capital Markets Task Force, an interagency working group which the Department of the Treasury chairs, is conducting a far-ranging study of bank securities services, including brokerage-related, investment advisory and investment banking ser-

---

[1] Burns, Arthur F., "Maintaining the Soundness of Our Banking System," speech delivered at the 1974 American Bankers Association Convention, Honolulu, Hawaii (Oct. 21, 1974) p. 1.

[2] *Hearings on Financial Institutions and the Nations Economy (FINE) Study Discussion Principles* before the Subcomm. on Financial Institutions Supervision, Regulation and Insurance of the House Comm. on Banking, Currency aud Housing, 94th Cong., 1st & 2nd Sess. (1975-76).

[3] "Federal Reserve Act of 1976" (H.R. 12934), "Financial Reform Act of 1976" (H.R. 13077), and "International Banking Act of 1976" (H.R. 13211). (The House has passed, in place of H.R. 13211, H.R. 13876; further action on the other two bills is not anticipated.)

[4] Subcomm. on Securities of the Senate Committee on Banking, Housing and Urban Affairs, *The Securaties Activities of Commercial Banks, Study Outline* (Comm. Print) 94th Cong., 1st Sess. (1975).

[5] Unfortunately, the study does not intend to examine the serious problems raised by investment banking services provided by banks.

vices, to determine if the availability of securities services from banks might have an adverse effect on the nation's capital markets.[6] In 1974, the Securities and Exchange Commission (SEC) conducted an extensive inquiry into bank securities services to determine if adequate protection is being afforded investors patronizing those services.[7] The SEC is now undertaking a Congressionally-mandated study to determine whether it is appropriate to continue to exempt banks from many of the provisions of the securities laws.[8] In addition to the adequacy of investor protection, the SEC has also expressed concern about the disparity of regulatory burdens among participants in the securities industry as a matter of competitive fairness.[9]

This extensive governmental consideration of the appropriateness of bank-sponsored securities services has initiated a widespread public debate. We believe it is essential that those who will play a role in resolving this issue be aware of the securities industry's point of view. This paper is intended to present the industry's perspective in a manner that will contribute to intelligent and informed debate.

Summary

It has long been the public policy of the United States to separate the business of commercial banking from other areas of commerce.[10] This theme has predominated bank reform legislation from the Banking Act of 1933 (the Glass-Steagall Act) through the 1970 amendments to the Bank Holding Company Act and is visible in legislation currently pending in Congress.

Their dominant position as the principal suppliers of credit to the private sector of the economy makes bankers a force to be reckoned with, with substantial influence not only on the economic and financial community but on our social and political institutions as well. Indeed, concern over excessive concentrations of power in the banking industry is manifest in many features of the present structure of our banking system, which includes a dual system of state and federal regulation, restrictions on interstate banking and a separate industry—apart from commercial banking—comprised of savings and loan and other thrift institutions.

In addition to their efforts to limit concentration, our legislators consistently have attempted to circumscribe the tendency of banks to become entrepreneurs rather than intermediaries—that is, investing depositors' funds on their own rather than providing credit to others. During the 1920's and early 1930's, bank participation in the securities industry threatened to bring the underwriting of equity securities and medium to long term debt instruments under the domination of the major commercial banks.[11] Congress enacted legislation explicitly separating banking from most aspects of the securities business. More recently in 1970, Congress, in amending the Bank Holding Company Act, codified the principle that banking organizations should confine their activities to fields closely related to banking.[12]

In recent years, commercial banks again have begun to expand their operations into numerous nonbanking businesses. Some businesses in which they have engaged, or attempted to engage, include operating an insurance agency, providing financial and management consulting services, operating travel agencies, providing armored car service, leasing automobiles and providing data processing services.[13]

It has been widely assumed that existing banking law prohibits bank expansion into securities activities, other than those specifically permitted by the Glass-Steagall Act. In the area of underwriting and dealer activity this assumption generally has not been questioned, although there remains some uncertainty as to the kinds of government obligations which qualify for the exemption afforded by the Glass-Steagall Act. The legal status of other investment banking activities, however, is less clear. The Office of the Deputy Comptroller of the Currency has ruled that banks may offer private placement services, subject to a number of conditions: for example, a bank cannot participate in negotiations between the issuer and the purchasers or charge a fee for its services contingent upon the success of the placement. The status of financial advisory services offered by banks to corporate clients, such as advice on mergers and long term financing, also is in doubt. The prac-

[6] Department of the Treasury, *Public Policy Aspects of Bank Securities Activities – An Issues Paper*, November 1975 (hereinafter *"Treasury Issues Paper"*).

[7] Securities and Exchange Commission inquiry concerning bank-sponsored investment services, Securities Act of 1933 Release No. 5491, Securities Exchange Act of 1934 Release No. 10761, Investment Company Act of 1940 Release No. 8336 and Investment Advisers Act of 1940 Release No. 409 (April 30, 1974).

[8] Securities and Exchange Commission study of persons excluded from definition of "broker" and "dealer" pursuant to the directive of Section 11A(e) of Securities Exchange Act of 1934, as amended.

[9] *See*, Testimony of Securities and Exchange Commission Chairman Roderick M. Hills, *Securities Activities of Commercial Banks, Hearings before the Securities Subcomm. of the Senate Comm. on Banking, Housing and Urban Affairs*, 94th Cong., 1st Sess. (1975) pp. 140-141.

[10] As early as 1864 the National Bank Act limited the power of banks chartered by the federal government to engage in activities other than traditional banking functions. National Bank Act, Act June 3, 1864, c. 106.

[11] "By the end of the decade [the 1920's] commercial banks and their affiliates had become the dominant force in the investment banking field." Perkins, Edwin J., "The Divorce of Commercial and Investment Banking: A History," 88 *The Banking Law Journal* 483, 495 (1971). In 1930, commercial banks and their affiliates underwrote 61% of all new bond issues. *Id.*

[12] Some pertinent excerpts from the legislative history of both the Glass-Steagall Act and the Bank Holding Company Act, including the 1970 amendments, are set forth in Appendix I.

[13] See note 135 below.

tice of syndicating long term bank loans is another area where the legal implications of Glass-Steagall have yet to be definitively resolved.

More recently, banks have sought to offer certain types of brokerage services, such as monthly automatic investment plans and dividend reinvestment plans. The legality of the former has been judicially challenged and upheld by a United States District Court, a decision which currently is being appealed. At least one major commercial bank has reported plans to offer a standard brokerage service to the general public, and so far no regulatory authority has moved to challenge this undertaking. It seems fair to conclude that the status of brokerage-related activities under present law is highly uncertain.

The courts and, to some extent, the bank regulatory agencies have sought to place certain restrictions on bank expansionism. But the issues raised by bank participation in these activities are too important to be resolved in this manner, especially since the process would involve application of legislative proscriptions over 40 years old to facts clearly not then contemplated by Congress. It is a phenomenon which raises critical public policy issues deserving of careful reevaluation by Congress. Such a reevaluation requires examination of the principles and policies underlying the Glass-Steagall Act and other major banking legislation to determine the need for updating their provisions in light of contemporary activities of banks and bank holding companies.

There are a number of important policy considerations which should be weighed in the course of any Congressional review. A good starting point would be a definition of what Congress now believes are realistic and necessary goals to be attained by national policy respecting the banking and securities industries. We believe that an appropriate list of such goals would be: (a) to promote maximum efficiency in the capital markets, (b) to create an environment in which financial institutions have both the incentive and ability to meet the rapidly changing demands of our economy, (c) to create a climate in which public trust in intermediating institutions is high, (d) to encourage widespread direct public ownership of American industry, (e) to promote fair competition not only within markets but between markets for substitute products, (f) to limit the economic and political power of any one sector, and (g) to protect investors and depositors against improper practices. These objectives may conflict at times, and careful reconciliation often is necessary to strike a reasonable balance. The activities of banks must be regulated with a view toward promoting these goals.

Because of their importance as financial intermediaries, banks have been accorded a variety of privileges designed to reduce their costs of intermediation. The intended effect of reducing these costs is to make credit available to the economy at low cost. Included among such privileges are favorable tax treatment, restrictions on entry into the banking business and the ability to obtain funds readily at low cost from depositors, from other banks in the federal funds market and from the Federal Reserve's discount window. Because of these and other advantages, banks possess an enormous edge when they compete with other types of enterprises in nonbanking businesses.

The critical point is that each of these advantages or privileges is paid for by taxpayers and bank depositors and is provided to banks for the benefit of those in need of credit. They are not for the purpose of enhancing the ability of banks to engage in nonbanking activities; in fact, it would constitute a clear departure from their purpose if banks were permitted to employ them in such activities. Equally as important, it would be highly unfair to expect nonbanking entities to compete with banks in businesses other than banking without the benefit of such privileges.

Another concern which cannot be overlooked in any reevaluation of permissible bank activities is an appraisal of the economic power which the major commercial banks presently possess and continue to gather. Commercial banks already are such a significant force in the economy, and so far overshadow all other intermediary institutions, that any serious study of the nation's present and prospective financial structure cannot ignore their growing influence. Commercial banks control in the aggregate over $1,300 billion in assets and provide well over half of all external corporate financing through bank loans.

In this regard, a good deal of public and Congressional concern stems from the fear that banks may become so dominant that, for practical purposes, no alternative means of financing will remain available to provide business capital—a situation not unlike that which currently prevails in Europe where commercial banks control virtually every source of credit. Failure to take account of this possibility could have serious consequences not only for our economy but for our political system as well.

There are several other factors which should receive consideration in the review of banking law here recommended. They include scrutiny of the conflicts of interest with which bankers are faced when they provide securities or other nonbanking services, the potential impact on the stability of the banking system of bank expansion into nonbanking activities and the adequacy of investor protection when banks offer brokerage and other securities services.

It is our belief such a review will prompt Congress to conclude that reform of the banking laws is required to restrict banks from continuing on their present course. Such reform should effect a tightening of the existing provisions of the Glass-Steagall and Bank Holding Company Acts which seek to restrict banks to banking-related activities. It also should ensure that banks are not permitted to underwrite revenue bonds. Moreover, any amendments should effect whatever changes are necessary to ensure that bank regulators will not be tempted to erode such statutory limitations.

Legislative reform of this kind should be accompanied by changes in the laws applicable to activities carried on in the United States by banking organizations affiliated with foreign banks. The policy objective should be to regulate such organizations in a manner comparable to regulation of domestic banks, particularly with respect to limitations on nonbanking activities.

In the material which follows, we shall undertake to explore in detail the nature and implications of increasing bank involvement in other areas and particularly in the securities business. This task has been rendered considerably more complex by the absence of reporting requirements and the unavailability, for obvious competitive reasons, of much data relating the specific activities engaged in by individual banks. We also have experienced some difficulty in learning the precise nature of the positions with respect to such activities taken by certain bank regulatory agencies which do not make public in the normal course replies to requests for interpretive advice or rulings.

SECURITIES ACTIVITIES OF BANKS

The role played by commercial banks in various aspects of the securities business has become extensive in recent years, undoubtedly beyond anything dreamed of by Congress when the Glass-Steagall Act was adopted. Although lack of comprehensive information makes cataloguing a difficult task, the following subsections contain a brief description of their principal activities in this area.

Investment Advisory Services

Apart from their own assets, banks are responsible for the management of more funds than any other type of financial institution.[14] In their capacity as fiduciaries, banks manage the assets of pension and other employee benefit plans and of trusts and estates of individuals. In their capacity as agent, they manage the portfolios of a variety of individual and corporate customers. In addition, banks serve as investment advisers to both open-end and closed-end investment companies and also act as investment advisers to REITs (which, in many cases, they sponsor).

Brokerage Related Services

In recent years, many banks have begun to offer their customers several brokerage related services. One of the more common of these is the automatic investment service (AIS). Through AIS plans, banks offer customers the opportunity to have a specified amount automatically deducted each month from their checking accounts and invested by the banks in the common stock of one or more issuers included on a list supplied by the bank. The list typically includes the twenty-five largest corporations in the Standard and Poor's 425 Industrial Index, based on the market value of the corporation's outstanding common stock. The bank pools the monthly deductions from the accounts of the participating customers and orders a broker to execute transactions for the pooled accounts. Each AIS customer receives a monthly statement indicating, among other things, the number of shares purchased and the purchase price.

Some banks also offer dividend reinvestment plans under which investors may have the dividends they receive from a participating corporation automatically reinvested in the securities of that corporation. Through these plans, shareholders of a participating corporation may request that their dividends be paid directly to a bank, which pools the dividends received and purchases additional shares of the corporation's stock in the open market.

Besides pooling funds and acting as a conduit between brokers and customers, some banks perform a more traditional type of brokerage by executing agency transactions for their trust and other managed accounts, as well as for banking customers, either through a registered broker-dealer, in the case of exchange transactions, or directly in the over-the-counter market.

More recently, Chemical Bank of New York has announced that it plans to offer brokerage services to customers on an agency basis, regardless of whether a banking relationship with the customer exists.[15] The bank will charge a fee to participate in the service and a flat fee per transaction. A major clearing firm reportedly will execute these transactions for Chemical. A spokesman for the bank indicated that its marketing plans were still being developed but would not deny that the service might be promoted through bank mailings to checking and savings account customers.[16] The possibility that a bank affiliate might apply for stock exchange membership remains open.

In the over-the-counter market, particularly the "third market" where listed securities are traded, banks have a long history of dealing directly with market makers as agent for their customers. To the extent they do so, they appear to be performing a traditional broker-dealer function.

Investment Banking Services

Banks are permitted to underwrite and distribute publicly debt instruments which constitute general obligations of U.S. government units, although they reputedly purchase more of their syndicate participation for their own accounts than they distribute.[17] In recent years, the definition of a general obligation bond has been broadened by the Comptroller of the Currency so as to include a number of instruments more traditionally thought of as revenue bonds. Apart from underwriting, the investment banking activities of commercial banks generally take two forms, the rendering of financial advice to corporations and the finding or furnishing (or both) of funds for the long-term capital needs of corporations.

Financial counseling may be provided for a fee either on a long term basis or for specific projects (e.g., the financing of a new plant) and generally comprehends the customer's total need for financing, ranging from short term borrowings to permanent capital.[18] Where funds are to be obtained other than through the bank itself, the bank frequently will assist its customer in preparing the necessary documents for a private placement[19] or selecting and nego-

[14] The Treasury Department has estimated that commercial banks manage approximately $400 billion in trust assets alone. *Treasury Issues Paper* at 7.

[15] The Chemical Bank announced that it would offer brokerage services and place the orders through registered broker-dealers. *Securities Week*, March 15, 1976.

[16] *Securities Week*, March 29, 1976, p. 7.

[17] Herman, Edward S., *Conflicts of Interest: Commercial Bank Trust Departments*, Twentieth Century Fund, 1975, p. 12.

[18] In two private interpretative letters, the Comptroller authorized the provision of financial counseling services by national banks. (See Appendices IIA and IIB.)

[19] In those same letters, the Comptroller also authorized limited bank involvement in private placement activities. See discussion below under "Legal Status of Bank Securities Activities—Investment Banking."

93-031 O - 77 - 15

tiating with an underwriter in the case of a public offering. Banks also furnish financial advice in connection with corporate reorganizations, including mergers and acquisitions, and sometimes perform appraisal services in connection with such transactions.

Banks also serve directly as a source of long term funds, either through their own lending facilities or by arranging private placements of securities with other lenders. At the time the Glass-Steagall Act was enacted, bank lending typically was short term in character, ranging from demand to 90-day loans. Since then, banks have gradually increased the maturity of their loans, so that term loans (those exceeding one year in maturity) now constitute more than 40% of industrial and commercial loans of major commercial banks,[20] and borrowings with much longer maturities (exceeding five years) constitute a significant portion of such loans.[21] Frequently, these loans are made through syndicates of banks, which contain from a handful to a substantial number of domestic, and sometimes foreign, banks. Syndicated bank loans are effected for domestic and foreign borrowers and are extended both by U.S. banks and their overseas affiliates. (See Appendix III.)

In addition to providing long term funds themselves, banks have become quite active in arranging, for a fee, private placements of securities of all types, from long term bonds to equities, with a variety of institutional lenders. Although some of the commercial banks most active in the private placement of securities—e.g., Morgan Guaranty, Crocker National and Manufacturers Hanover—do not report the extent of those activities, during 1975, those which did not report were involved in over $500 million of private placements.[22] In some instances, banks participate in private placements they have arranged by purchasing for portfolios under their management a portion of the securities to be sold,[23] and on occasion a bank will assemble for a customer a financing package consisting of a medium term loan from the bank itself, together with a private placement to provide the ultimate long term financing.

Since the legal restrictions of the Glass-Steagall Act do not apply to the foreign securities activities of United States banks,[24] those banks have been engaging in an ever-increasing range of investment banking activities overseas.[25] Through foreign branches, Edge Act corporations and investments in foreign banks, United States banks participate in large syndicated bank loans to foreign borrowers[26] and Eurobond underwriting syndicates,[27] as well as offering financial counseling services.

For over thirty years, U.S. commercial banks had been largely content with confining themselves to accepting deposits and lending money, but beginning in the 1960's commercial banking underwent a radical change.[28] The large money-center banks aggressively sought funds through new deposit instruments, such as certificates of deposit, and began to extend the term of their loans. Then, with the advent of the one bank holding company concept as a catalyst, these banks expanded into new fields, such as consumer finance, foreign merchant banking and mortgage origination, in search of outlets for those funds.

If recent patterns of activity and development by the major commercial banks continue, it appears likely that these banks will attempt to extend their activities in the securities industry during the next decade. Brokerage and advisory services in particular—which require principally personnel and office space—are especially attractive to many of the large banks because they can afford the opportunity to offer a "full-line" of financial services to gain an edge in the intense competition for both depositors and commercial customers.

---

[20] *Federal Reserve Bulletin*, A-23, February 1976.

[21] According to the *Treasury Issues Paper*, on April 30, 1975, 140 national banks having deposits in excess of $250 million reported that 10.75 percent of their industrial and commercial loans had maturities of greater than five years. *Treasury Issues Paper* at 10.

[22] As reported by *Investment Dealers' Digest*, the following banks were engaged in private placement activities during 1975:

Advisor	Number of Issues	Amount (000)
Citibank N.A.	4	$231,590
First National Bank of Chicago	19	138,947
Northern Trust Company	6	81,000
Chase Manhattan Bank	3	38,476
Manufacturers National Bank of Detroit	1	5,000
Hibernia National Bank — New Orleans	2	4,700
Marquette National Bank — Minneapolis	1	2,045
Total	36	$501,758

Investment Dealers' Digest, March 12, 1976.

Business Week reports that although they do not reveal their dealings Morgan Guaranty Trust Company, Crocker National Bank and Manufacturers Hanover Trust Company are active in the private placement field. Morgan is characterized as "[p]robably the leader in bank practice placements." *Business Week*, April 19, 1976, p. 64.

[23] *Conflicts of Interest: Commercial Bank Trust Departments*, pp. 47-48.

[24] These restrictions are discussed more fully below under "Legal Status of Bank Securities Activities—General."

[25] *See*, Welles, Chris, *The Last Days of the Club*, New York, E. P. Dutton & Co., Inc. (1975), p. 423; and "The Lessons Banks Learned from Overseas Misadventures," *Business Week* April 19, 1976, p. 104.

[26] See advertisements in Appendix III.

[27] Eurobonds are securities publicly offered by an international underwriting syndicate in more than one country. Of the 173 Eurobond offerings in 1975, it was reported that Manufacturers Hanover Ltd., an affiliate of Manufacturers Hanover Trust Company, participated in 159, Citibank's foreign affiliate in 128, Bank of America's in 99, Bankers Trusts's in 48 and First Chicago's in 36. *Business Week* at 104.

[28] *See generally*, "Merchant Banking, Is the U.S. Ready For It?" *Business Week*, April 19, 1976, p. 54.

The combination of the competitive advantages enjoyed by banks[29] with their natural interest in the securities industry suggests that participation in the industry by the major banks is likely to increase in the absence of legislative or regulatory restrictions. These banks can surely be expected to employ their advantages with the same degree of imagination they exhibited in utilizing the one bank holding company mechanism to diversify despite the restrictions on that concept imposed by the 1970 amendments to the Bank Holding Company Act.[30]

---

[29] These are discussed below under "Policy Reasons for Restricting Bank Securities Activities—Economic Advantages Possessed by Banks."

[30] "Instead of serving as a deadly barrier between banking and other businesses, the 1970 'one-bank holding company' law is coming to look more like the gateway to a promising new land of profits and power. By setting up holding companies, many banks now find it possible to move into lucrative new ventures ranging from the operation of insurance agencies to computerized payroll processing." (Janssen, Richard and Foldessy, Edward, "Holding-Firm Law Designed to Limit Banks Instead Opens New Finance-Service Vistas," *WSJ*, January 7, 1972.) "Thanks to the 1970 amendments to the Bank Holding Company Act of 1956, commercial lending institutions gained both incentive and authorization to widen their corporate horizons." (Anreder, Steven S., "Beautiful Balloon? Bank Holding Companies Embark on Frantic Expansion," *Barron's*, April 29, 1974, p. 3.)

LEGAL STATUS OF BANK SECURITIES ACTIVITIES

General

The Glass-Steagall Act was enacted in 1933 in reaction to Congressional findings that there were many abuses by banks in the securities industry. During the decade following World War I, banks expanded into the securities industry through the formation of securities affiliates. Not only did these affiliates fuel the speculation of the late 1920's, but they also diverted valuable financial and managerial resources from the parent banks.[31] Furthermore, securities underwritten by bank affiliates frequently were purchased by the affiliated banks themselves, often for their trust accounts, and sometimes were "unloaded" on correspondent banks.[32] These purchases weakened the financial stability of the banks themselves.

Since the bank securities affiliates were associated with their parent banks in the public's mind, their financial plight in the wake of the stock market crash of 1929 seriously undermined public confidence in banks and the banking system. The failure of the Bank of the United States in 1930 was widely attributed to that bank's activities with respect to its numerous securities affiliates.[33]

The powers of national banks[34] are enumerated in Section 16 of the Glass-Steagall Act. Such banks also may exercise all incidental powers necessary to carry on the business of banking;[35] however, dealing in securities by national banks is expressly limited to

> purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the [bank] shall not underwrite any issue of securities or stock.[36]

Moreover, anyone "engaged in the business of issuing, underwriting, selling, or distributing" . . . securities is prohibited by Section 21 of the Act from engaging in "the business of receiving deposits subject to check or to repayment upon presentation of a passbook, certificate of deposit, or other evidence of debt, or upon request of the depositor . . . ."[37] In addition, by virtue of the Act, all member banks[38] are prohibited from being affiliated with securities firms,[39] and no individual who is an officer, director, employee or partner of a securities firm may be an officer, director or employee of a national bank.[40] To complete the statutory pattern, bank holding companies are limited to engaging in banking and activities closely related to banking as defined in Section 4(c)(8) of the Bank Holding Company Act; the Federal Reserve Board (the Fed) has read into the Bank Holding Act the provisions of the Glass-Steagall Act (the Act) prohibiting banks from providing securities services.[41]

It is clear that one of the Act's purposes was to prohibit commercial banks from entering the investment banking business.[42] Congress was familiar with the practice of many banks in establishing securities affiliates that had engaged in the business of floating bond issues and, on occasion, underwriting stock issues, and determined that bank involvement with the speculative securities prevalent at the time damaged not only the financial stability of the banks, but also of the nation. It was feared that the responsibility of banks to make disinterested credit decisions might be impaired by pressures resulting from bank affiliation with securities firms. In addition, Congress was clearly concerned about the conflicts of interest stemming from such affiliation. Finally, it is apparent Congress feared that loss of depositors' confidence in the banking institutions, which could be heightened as a result of their securities involvement, would have a serious detrimental effect on the national economy.

In *ICI* v. *Camp*,[43] an association of open-end investment companies and several individual companies challenged both a regulation of the Comptroller of the Currency, which authorized banks to operate collective investment funds, and the Comptroller's approval of a First National City Bank collective investment fund. Under First National's plan, the bank customer tendered between $10,000 and $500,000 to the bank, together with an authorization naming the bank the customer's managing agent. The customer was then issued written evidence of his participation, which was freely redeemable and transferable to anyone who had executed the bank's managing agency agreement. The fund, which was registered as an investment company under the Investment Company Act of 1940, was managed by the

---

[31] The possibility of spectacular profits from securities affiliates caused the principal officers of many banks to establish such affiliates. Burns, Helen, *The American Banking Community and New Deal Banking Reforms: 1933-1935* (1968), p. 64.

[32] *See*, "Landmark Law that Boxes In the Banks," *Business Week*, April 19, 1976, p. 56.

[33] *Investment Company Institute (ICI)* v. *Camp*, 401 U.S. 617, 629 (1971).

[34] Banks may be subject to regulation by a variety of regulators, both federal and state. Since most of the banks active in offering securities services are either national banks or subsidiaries of bank holding companies, this section will focus on federal banking regulation.

[35] 12 U.S.C. §24, Seventh.

[36] *Id.*

[37] 12 U.S.C. §378(a).

[38] Every national bank is required to be a member of the Federal Reserve System. 12 U.S.C. §222.

[39] 12 U.S.C. §377.

> [N]o member bank shall be affiliated in any manner . . . with any corporation, association, business trust, or other similar organization engaged principally in the issue, flotation, underwriting, public sale, or distribution at wholesale or retail or through syndicate participation of stocks, bonds, debentures, notes, or other securities.

[40] 12 U.S.C. §78.

[41] *See*, 12 C.F.R. §225.125(b).

[42] See Appendix I, pp. 1-3.

[43] 401 U.S. 617.

bank as investment advisor.[44]

The Court found that the bank's activities were substantially equivalent to operation of a mutual fund and that, on their face, Sections 16 and 21 of the Act prohibited this activity by national banks.[45] Nevertheless, it proceeded to explore thoroughly the legislative intent of the Act. The Court found that Congress wanted to keep commercial banks out of the investment banking business

> largely because it believed that the promotional incentives of investment banking and the investment banker's pecuniary stake in the success of particular investment opportunities was destructive of prudent and disinterested commercial banking and of public confidence in the commercial banking system.[46]

In passing the Act, Congress was motivated by more than the obvious danger that banks would invest their assets in imprudent investments.[47] Congress felt it was imperative to eliminate the temptations banks would face upon entering into investment banking, which could impair their ability to function as an impartial source of credit. A bank, for example, might well fear that it would be discredited in the public's view if its securities affiliate did poorly. Accordingly, it might be tempted to shore up its affiliate's finances in several ways: by making unsound loans or providing other aid to the affiliate; by lending money or extending credit to those companies in which the affiliate had invested; or by lending money to a third person to finance its purchase of the affiliate's investments. Furthermore, the Court perceived a strong concern on the part of Congress over the "plain conflict between the promotional interest of the investment banker and the obligation of the commercial banker to render disinterested investment advice."[48] And, perhaps most importantly, the loss of goodwill resulting from customers' suffering losses on investments purchased in reliance on the bank's name would result in a loss of the bank's reputation, which would impair national confidence in the entire banking industry and, ultimately, the national economy.

Thus, the Supreme Court recognized the serious public policy issues which arise not only when banks enter the business of investment banking but whenever banks determine to enter fields outside the business of commercial banking. The principles enunciated by the Court in *Camp* are a prerequisite to proper analysis of the legality of various bank securities services.

[44] 401 U.S. at 622-23.
[45] 401 U.S. at 625.
[46] 401 U.S. 634.
[47] In fact, the securities affiliates had often operated without direct access to the bank's assets.
[48] 401 U.S. at 633.

Investment Banking

Although it is clear that the Act at least forbids bank participation in the underwriting of non-exempt securities,[49] the legality of bank involvement in other investment banking services is uncertain. Indeed, certain investment banking services have been found by the Comptroller of the Currency to be incidental to banking and therefore permitted to a national bank.

For example, the Office of the Deputy Comptroller of the Currency has issued two letters which take the view that banks may, with certain limitations, engage in private placement activities. (See Appendices IIA and IIB.) In the view of the Deputy Comptroller, a bank can properly provide assistance to a customer in determining long term financial objectives. Incidental to this function, therefore, a bank may convey to this customer names of potential participants in a private placement and may even make preliminary inquiries of investors to ascertain interest in the issue. The bank cannot, however, participate in the actual negotiations between the customer and the purchasers, for acting as a middleman is the "heart of the investment banking business." (See Appendix IIB.) Moreover, since the Office of the Deputy Comptroller recognizes that a bank clearly cannot participate in a "best efforts" underwriting, it may not charge a fee for its services contingent upon a successful private placement, since "the levying of such a fee is a strong incentive for the bank to locate a purchaser with whom a deal can be made."

A persuasive argument can be made, however, that banks may not provide their customers with private placement services. As discussed above,[50] both Sections 16 and 21 of the Act prohibit banks from underwriting any issue of non-exempt securities or stock. Since arranging private placements of securities appears substantially similar to "best efforts" underwriting, and in a sense results in a "distribution" of those securities, it would seem that a bank would transgress the prohibitions of those two sections by providing private placement services.

Moreover, the preceding analysis of the Act strongly suggests that Congress intended to prohibit bank participation in private placement activities. One of the primary functions of investment banking, after all, is the distribution of securities, whether by public offering or by private placement; and the dangers Congress intended to prevent by divorcing investment banking and commercial banking—including imprudent extensions of credit, diversion of bank personnel from commercial banking, conflicts of interest and undermining of public confidence in banks—are the same dangers that arise when banks engage in private place-

[49] The decision in *ICI* v. *Camp* rested on the Court's finding that the offering of commingled agency account services by a bank constituted an illegal underwriting.
[50] See text accompanying notes 35-37.

ment activities. For example, a bank may find itself pressured by those who participated in a private placement arranged by the bank to make imprudent loans to the issuer to assuage the participants' dissatisfaction with their investment. Serious conflicts of interest also may arise when a bank attempts to place privately secruities with accounts managed by its trust department.[51]

The limitations on bank involvement contained in the Deputy Comptroller's letters—no direct negotiation, no contingent fee—apparently stem from his recognition that such direct participation involves the bank in the promotional aspects of securities marketing which the Act expressly banned. The promotional problems, however, may arise even within his limits of permissible activities. Since a bank has a clear interest in the success of a placement, it is difficult to understand how realistically it may make even "preliminary inquiries" of potential investors or participate to an "insubstantial" extent in negotiations without at the same time marketing the securities. The factors which underlie the Deputy Comptroller's objection to a contingent fee exist whenever a bank participates in a private placement, since the size of the bank's future placement fees—from that client and other prospective clients—relates directly to its reputation for successful placements. Thus, the concerns expressed in the Deputy Comptroller's letters provide grounds for concluding that banks should not, to any extent, engage in private placement activities.

Other types of financial consulting by banks, apart from private placement activities, similarly raise questions of legality. Although providing financial advisory services in connection with extending short term loans would appear properly to be incidental to the business of banking, it is by no means clear that other financial advisory services customarily provided by commercial banks, such as advice on mergers and long term financings, are properly within a bank's incidental powers. For example, the Federal Reserve Board (the Fed) has ruled that bank holding companies may not provide management consulting services—including advice or analysis as to a firm's planning operations, such as corporate acquisitions and mergers, and determination of long term and short term goals—because it does not regard such services as being "closely related to banking" under Section 4(c)(8) of the Bank Holding Company Act.[52] Although the Fed's enumeration of non-permissible management consulting services[53] does not expressly encompass all financial advisory services, the rationale of its ruling supports the proposition that national banks may not properly engage in such services (except those incident to the extension of short term credit).

Finally, although extending long term loans in iteself does not seem to exceed the banking powers of national banks, under certain circumstances this practice could be subject to question. As noted above, Section 21 of the Act prohibits a bank from "underwriting, selling or distributing, at wholesale or retail, or through syndicate participation, stocks, bonds, debentures, notes, or other securities".[54] Presumably, an ordinary bank loan would not constitute a "security" within the meaning of this section; however, the distinction between a loan and a security depends on the characteristics of the instrument creating the obligation and, more importantly, the circumstances surrounding its sale.

A recent Ninth Circuit case has explored this distinction in the context of when a bank loan may be a security for purposes of the Securities Exchange Act of 1934.[55] Under the rationale of the case, this question turns on whether repayment of the loan depends on the entrepreneurial or managerial efforts of another person; if it does, a security is likely to be involved. Among the factors considered relevant to this determination are the length of the loan, whether the obligation is issued to a single investor or a group of investors, the size of the debt relative to the business and the extent of the obligation's collateralization.

It would appear that some syndicated long term bank loans (see Appendix III) might constitute securities under such a test. Accordingly, the syndication process itself could be deemed an illegal distribution of securities under Section 21.

Furthermore, although generally the provisions in long term bank loan agreements are appropriate for protecting the bank's investment, in some cases those provisions may give banks such a degree of influence over the borrower that the loan and the agreement have attributes similar to a prohibited equity investment.[56]

Brokerage Related Services

The legal status of one form of brokerage service offered by banks is currently the subject of litigation, the New York Stock Exchange (NYSE) and the ICI have appealed the District Court's decision granting the Comptroller's motion for summary judgment in their case challenging the Comptroller's interpretative letter permitting banks to offer AIS's.[57] That interpretation[58] reviewed the provision of

[51] See note 23 above.

[52] 12 C.F.R. §225.125(f).

[53] 12 C.F.R. §225.4(a)(5) n. 3. This enumeration is not deemed to be exclusive.

[54] 12 U.S.C. §378 (a)(1).

[55] *Great Western Bank & Trust* v. *Kotz*, 532 F.2d 1252, (9th Cir. 1976).

[56] National banks are prohibited from purchasing for their own account equity securities. 12 U.S.C. §24, Seventh. Similarly, bank holding companies may not purchase stock of a company which is not a bank or engaged in a business closely related to banking. 12 U.S.C. §1843(a).

[57] *New York Stock Exchange, Inc.* v. *Smith*, 404 F. Supp. 1091 (D.D.C. 1975).

[58] Comptroller of the Currency, letter dated June 10, 1974.

Section 24 of Title 12 which states that

> [t]he business of dealing in securities and stock by the [bank] shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers . . .[59]

and concluded that the plain meaning of the words permits banks to purchase and sell stock as agent for customers, precisely the activity involved in AIS's. It further determined that the creation and management of an AIS by a bank did not involve the business of underwriting, selling or distributing securities in contravention of Section 378 of Title 12.

The NYSE and ICI, on the other hand, maintained that the statutory language permits agency transactions, but only when done as an accommodation for the customer and at or below the bank's costs.[60] Moreover, they argued, the Act did not intend for banks to promote, advertise and solicit participation in such services nor to use such services to attract new banking customers.

The District Court's decision was based largely on the doctrine that courts should give great weight to an agency's interpretation of a statute for which the agency has administrative responsibility.[61] This doctrine has not rescued other interpretations promulgated by the Comptroller.[62] Furthermore, the fact that the challenged interpretation marks a reversal of the Comptroller's earlier view[63] casts further doubt on the current interpretation. While the legislative history is ambiguous on this point, the intent of the Act, as articulated by the Supreme Court in *ICI* v. *Camp*,[64] suggests that the very risks the Act sought to eliminate—loss of public confidence in the banks, conflicts of interest and biased credit judgments—arise when the bank has a salesman's stake in its investment services through offering an AIS plan.[65]

Regardless of the outcome of the case however, the critical question is not the legality of AIS or dividend reinvestment plans; it is the legality of the full-scale brokerage services that at least one major commercial bank has disclosed plans to offer.[66] Through these services, banks would seek to reach more customers than they do with AIS plans and such services would receive a full-scale promotional and advertising campaign. Such services clearly would involve many of the problems the Act sought to remove.

Investment Advisory Services

Investment advisory services seem to be properly incidental to the trust activities of a bank, and no legal basis for challenging such activities appears to exist so long as they are performed by the bank's trust department independent of its commercial department.

---

59 12 U.S.C. §24, Seventh.

60 NYSE's and ICI's *Memorandum . . . in Support of Plaintiff's Cross Motion for Summary Judgment* (hereinafter *"NYSE and ICI Memo"*) at 27, *NYSE* v. *Smith.*

61 *NYSE* v. *Smith*, *supra*, citing *ICI* v. *Camp, supra*, and *Udall* v. *Tallman*, 380 U.S. 1, 16 (1965).

62 During the past decade numerous interpretative rulings promulgated by the Comptroller have been overturned by the courts: *Georgia Ass'n. of Independent Ins. Agents, Inc.* v. *Saxon*, 268 F. Supp. 236 (N.D. Ga. 1967), *aff'd* 399 F.2d 497 (1968) (Insurance agency); *Baker, Watts & Co.* v. *Saxon,* 261 F. Supp. 247 (D.D.C. 1966), *aff'd* 392 F.2d 497 (1968) (underwriting municipal revenue bonds); *First National Bank* v. *Dickinson,* 396 U.S. 122 (1969) (armored car services); *Investment Company Institute* v. *Camp,* 401 U.S. 617 (1971) (mutual fund); *Arnold Tours, Inc.* v. *Camp* 472 F.2d 427 (1st Cir. 1972) (travel agency); *National Retailers Corp. of Arizona* v. *Valley National Bank and Smith,* Doc. No. 71-410 PHX-WEC (D. Ariz. 1976) (data processing).

63 Originally, the Comptroller interpreted this provision to prohibit banks from purchasing or selling securities for a customer's account except as an accommodation to the customer. (*Bulletin of the Comptroller of the Currency,* No. 2, Oct. 26, 1935 at 2-3.)

64 This legislative intent argument is more fully set out in the *NYSE and ICI Memo* at 12-25.

65 The same considerations would appear to apply with equal force to dividend reinvestment plans and the limited direct brokerage in which banks are currently engaged.

66 See note 15 above.

POLICY REASONS FOR RESTRICTING BANK SECURITIES ACTIVITIES

This section will explore some of the fundamental policy issues raised by bank participation in securities activities. To develop these issues in the proper context, we shall begin with a discussion of some of the objectives for national policy respecting the banking and securities industries.

Public Policy Objectives

As articulated in the Introduction to this paper, we believe an appropriate list of major policy objectives would include the following: (a) to promote maximum efficiency in the capital markets,[67] (b) to create an environment in which financial institutions have both the incentive and ability to meet the rapidly changing demands of our economy, (c) to create a climate in which public trust in intermediating institutions is high,[68] (d) to encourage widespread direct public ownership of American industry, [69] (e) to promote fair competition not only within markets but between markets for substitute products, [70] (f) to limit the economic and political power of any one sector,[71] and (g) to protect investors and depositors against improper practices.[72] The first four goals relate to the need to maximize our capital-raising ability in order to satisfy the nation's immense capital needs:[73] goals (a) and (b) are concerned with institutional efficiency and flexibility; goal (c) relates to the highly developed sense of public confidence in our financial intermediaries which is a necessary precondition to use of such intermediaries for savings and investment; and goal (d) refers to the direct equity ownership which gives the public a stake in the free enterprise system. Achievement of these goals, it is urged, would produce the conditions necessary for sustained economic growth and a high level of employment. Goals (e), (f) and (g) also are vital because of our national commitment to commercial fair play and our democratic tendency to avoid massive aggregations of power in any individual, corporation, institution or industry.

These goals frequently may be in conflict, and reconciliation often is necessary; nevertheless, a workable compromise among them should be attainable. For example, a reasonable balance between promoting economic efficiency and limiting concentration can be struck by limiting the areas of direct competition between different types of institutions while encouraging these institutions to offer close substitutes for each other's products, subject to certain constraints, and providing for easier entry by other types of competitors into each of the restricted markets. Similarly, investor protection through full and fair disclosure need not be inconsistent with public confidence in intermediaries. Some would argue, in fact, that disclosure eventually improves corporate behavior and thus enhances public confidence.

The remaining subsections discuss the desirability of separating the banking and securities industries to maximize attainment of the above policy objectives.

Role of Banks and Securities Firms in Capital Markets

Much of the banking legislation of this century has been a response to the perceived need to foster and maintain the stability and soundness of the banking system. The Federal Reserve Act of 1913 was enacted in response to the banking panic of 1907, and the Glass-Steagall Act was enacted to deal with the role of banks in the credit excesses of the 1920's that contributed to the collapse of the nation's economy and numerous bank failures in the 1930's.[74] The Bank Holding Company Act of 1956, as amended in 1970, reflected Congressional concern that banks through one bank holding companies, would diversify into businesses which could jeopardize their financial stability.[75]

---

[67] This objective is discussed more fully below under "Role of Banks and Securities Firms in Capital Markets."

[68] *Public Policy for American Capital Markets*, prepared by James H. Lorie for submission to the Secretary and the Deputy Secretary of the Treasury, February 7, 1974 at 4-5.

[69] *Id.*

[70] The preamble to the Bank Holding Company Act of 1956 states as its purpose the prevention "of undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices."

[71] *Id.*

[72] The preamble to the Securities Exchange Act of 1934 states in part:

> For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, . . . to insure the maintenance of fair and honest markets in such transactions.

[73] *Business Week* estimates that during the decade 1975-84 $4.5 trillion in capital investment will be needed by the economy, nearly three times the $1.6 trillion consumed in the 1965-74 decade. *Business Week*, September 22, 1975, p. 43.

[74] The Senate committee which reported the bill that became the Federal Reserve Act of 1913 stated that:

> The chief purposes of the banking and currency bill is to give stability to the commerce and industry of the United States, prevent financial panics or financial stringencies; make available effective commercial credit for individuals engaged in manufacturing, in commerce, in finance, and in business to the extent of their just desserts; put an end to the pyramiding of the bank reserves of the country and the use of such reserves for gambling purposes on the stock exchange.

S. Rep. No. 131, pt. 2, 63rd Cong., 1st Sess. 7 (1913).

The preamble to the conference report which accompanied the bill that was enacted as the Banking Act of 1933 (the Glass-Steagall Act) stated that the bill's purpose was:

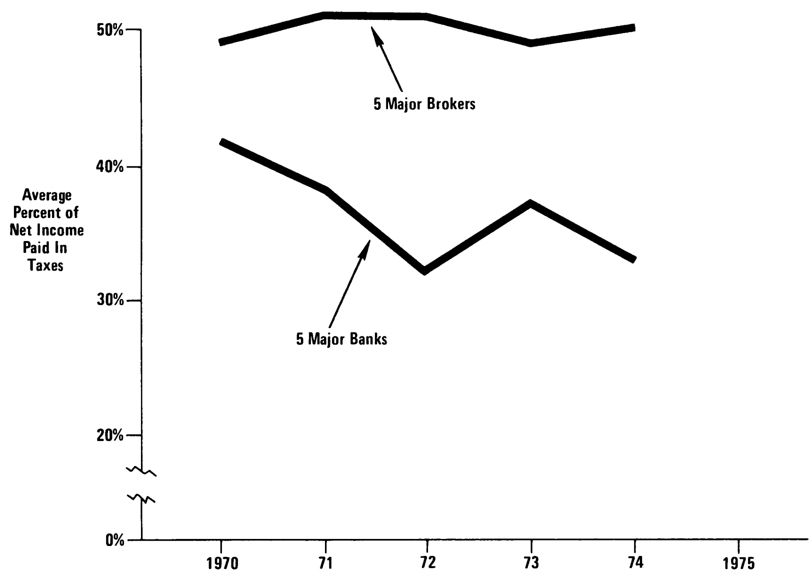
> to provide for the safer and more effective use of the assets of banks. . . .

H.R. Rep. No. 254, 73rd Cong., 1st Sess. 1 (1933).

[75] The report of the Conference Committee that reported the Bank Holding Company Act Amendments of 1970 noted the "mixing [of] banking and nonbanking in complete contravention of the

TABLE 1

Effective Tax Rate is Lower for Banks Than Brokers



Source: Speech by Alan F. Blanchard, former Executive Director of the Securities and Exchange Commission, before the Carter Golembe Associates Executive Seminar, October 16, 1975 (hereinafter "Blanchard Speech") p. 22A.

The role of the securities industry in our capital markets is equally vital to the economy.[76] The underwriting network makes new capital available to government and industry, and the secondary markets operate to provide a highly efficient mechanism for valuing and transferring ownership of securities. Indeed, one of the principal purposes of the Securities Acts Amendments of 1975 was to promote the efficiency of the securities markets.[77]

purpose of both Federal banking laws going back to the 1930's and the Bank Holding Company Act of 1956" and quoted with approval the following statement of the President:

> Left unchecked, the trend toward the combining of banking and business could lead to the formation of a relatively small number of power centers dominating the American economy. This must not be permitted to happen; it would be bad for banking, bad for business, and bad for borrowers and consumers.

H.R. Rep. No. 1747, 91st Cong., 2nd Sess. 11 (1970).

[76] *Public Policy for American Capital Markets*, at 1.

[77] The Report of the Joint Conference Committee on the Securities Acts Amendments stated:

> The securities markets of the United States are indispensable to the growth and health of this country's and the world's economy. In order to raise the enormous sums of investment capital that will be needed in the years ahead and to assure that that capital is properly allocated among competing uses, these markets must continue to operate fairly and efficiently. The increasing tempo and magnitude of the changes that are occurring in our domestic and international economy make it clear that the securities markets are due to be tested as never before. Unless these markets adapt and respond to the demands placed upon them, there is a danger that America will lose ground as an international financial center and that the economic, financial and commercial interests of the Nation will suffer.

H.R. Rep. No. 229, 94th Cong., 1st Sess. 91 (1975).

Economic Advantages Possessed by Banks

Financial intermediation by banks involves the accumulation of savings as deposits and the lending of those funds to those with capital needs. This transfer process is a primary economic function of financial intermediaries. There are essentially two cost elements in the intermediation of funds: (1) the rate of return required to induce holders of idle funds to deposit them, and (2) the costs of the intermediation process. The privileges that banks enjoy are intended to lower those costs so that those who need funds may obtain them relatively inexpensively.

For example, federal deposit insurance serves to lower the rates of return required to attract depositors by making bank deposits up to prescribed levels virtually "risk free".[78] Such rates of return also may be kept artificially low through governmental action when legal interest ceilings or prohibitions on deposits are set at levels below the rate that market forces would otherwise dictate.

Moreover, the direct costs of intermediation are reduced through the favorable tax treatment accorded banks for interest expenses[79] and loss reserves,[80] which increases their after tax income. (See Table 1 for a comparison of tax rates applicable to banks and brokers.) In 1975, five of the ten largest bank holding companies had a negative federal income tax liability on their worldwide income,[81] and no one of the ten had a tax liability to all governments in excess of 35% of its worldwide income,[82] although the statutory corporate income tax rate in the United States is 48%.

In addition, banks have ready access to short term capital at low cost through access to the federal funds market and the Fed's discount window.[83] The cost to banks of long term capital also is lower because of reduced risks associated with investment in the banking business. Such reductions in risk result in part from federal and state restrictions on entry into banking and the readiness of the Fed to provide low cost credit through the discount window to meet banks' temporary liquidity problems.

Economists would classify these special advantages and privileges—deposit insurance, access to the discount window and the federal funds markets, limitations on entry, interest rate ceilings and tax breaks—as "subsidies", the purpose of which is to lower the cost of intermediation of funds and thus to lower the cost of funds to borrowers. These privileges are paid for directly or indirectly by the public.

For example, limited entry into the banking business reduces the competition for deposits, thereby decreasing the rates earned by depositors, as against those that would prevail were there free entry. Similarly, interest rate ceilings in respect of time deposits and interest prohibitions in respect of demand deposits eliminate price competition for deposits when they operate to prevent commercial banks from having to pay what would be the market rate of interest on such deposits. These differences in interest rates constitute income transfers in favor of such banks.

Other advantages are paid for by taxpayers indirectly when banks are permitted to reduce their tax liabilities by deducting interest paid on funds borrowed to hold tax-exempt securities, a privilege not generally available to nonbank financial institutions.

These privileges are provided to banks in the expectation they will be passed on to borrowers of funds, thus reducing borrowing costs, making credit more freely available in the economy and stimulating economic growth. It would constitute a clear departure from the purpose of the privileges for banks to employ them in nonbanking activities.

Moreover, it would be patently unfair if nonbanking entities were forced to compete with banks without the benefit of such privileges. To illustrate this point, one need only compare the cost of borrowed funds to banks with the cost to broker-dealers. Broker-dealers depend on bank loans to provide "margin" for their customers and to carry securities during an underwriting; as of June 30, 1975 they owed the large banks of New York City alone nearly $4 billion.[84] Under these circumstances, it is difficult to understand how broker-dealers could successfully compete with banks, since their effective interest cost on borrowed funds is one to two percentage points higher than the cost to banks (which translates into an effective cost of funds of as much as 25% greater than the cost to banks).[85] It would be "like a dress shop that buys its goods wholesale competing against another dress shop that must buy stock retail."[86]

An even more telling example is provided by the experience of the mortgage banking industry, in which many bank holding companies made acquisitions in the early

[78] The FDIC insures up to $40,000 of each account. 12 U.S.C. §1813 (m).

[79] Banks are permitted to deduct interest expenses incurred to hold tax-exempt municipal bonds. Rev. Rul. 61-222, 1961–2 C.B. 58.

[80] Although this provision is being gradually phased out, banks are permitted to reserve against future loan losses and to deduct such reserve from gross income. Section 585 of the Internal Revenue Code.

[81] Chase Manhattan Corp.'s negative federal income tax liability constituted 31.7% of its worldwide income; Bankers Trust's was 4.5%; Chemical New York Inc.'s 10.5%, Citicorp's 3.3%; and Manufacturers Hanover Inc.'s 7.1%. Tax Notes, Vol. IV, Issue 17, April 26, 1976, p. 31.

[82] The worldwide tax liability of each of the ten as a percentage of worldwide income was: Bank of America, 31.3%; Bankers Trust, 15.1%; Chase, 10.3%; Chemical, 2.6%; Citicorp, 29.8%; Continental Illinois, 28.7%; Manufacturers, 9.9%; J.P. Morgan, 31.7%; Security Pacific, 9.6%; and Wells Fargo, 15%. *Id.*

[83] At a time when the prime rate, the rate charged a bank's best commercial risks, was at 6-3/4%, the federal funds rate was approximately 4-5/8% and the discount rate was 5-1/2%. *WSJ*, April 20, 1976, p. 37; *Federal Reserve Bulletin*, April, 1976, p. A6.

[84] *Federal Reserve Bulletin*, February 1976, p. A16.

[85] For example, broker call money carried an interest rate of approximately 6% at a time when banks were paying only 4.8% on one month certificates of deposit. *WSJ*, April 20, 1976, p. 37.

[86] *The Last Days of the Club*, p. 391.

TABLE 2

Regulatory Burdens to Which Members of the Securities Industry Are Subject

Brokerage Related and Investment Banking Services

1. Registration and licensing.
   - A. Registration with SEC as broker-dealer under Section 15 of the Securities Exchange Act of 1934.
     1. Filing of application.
     2. Periodic financial statement filings.
     3. Periodic fees.
   - B. Membership in National Association of Securities Dealers, Inc. ("NASD").
     1. Requirements for maintaining books and records.
     2. Minimum capital requirements.
     3. Membership fees and charges.
     4. Compliance with "suitability" rules and other extensive Rules of Fair Practices.
   - C. Membership on national securities exchanges.
     1. Requirements for maintaining books and records.
     2. Periodic financial reporting.
     3. Minimum capital requirements.
     4. Membership fees and charges.
   - D. Licensing of securities salespersons with NASD and exchanges.
     1. Training.
     2. Examination.
     3. Bonding of employees.
2. Continuing regulatory obligations under Securities Exchange Act and rules of self-regulatory bodies.
   - A. Minimum capital requirements (usually must be calculated daily).
   - B. Rules regarding suitability of securities for an investor.
   - C. Rules governing the appropriateness of advertising materials and requiring pre-clearance.
   - D. Requirement of furnishing detailed conformation of purchases and sales and periodic statements of accounts.
   - E. Contribution to Securities Investor Protection Corporation.
   - F. Rules requiring full disclosure of information regarding securities sold to customers.
   - G. General rules regarding the duty owed by brokers to their customers under the so-called "shingle" theory, which seeks to hold brokers to high professional standards.
   - H. Duty of broker-dealer principals to supervise employees.

Investment Advisory Services

1. Registration and licensing.
   - A. Registration with SEC as investment adviser under Section 203 of Investment Advisers Act of 1940.
     1. Application.
     2. Filing fee.
     3. Books and records requirements.
2. Continuing regulatory obligations under Investment Advisers Act.
   - A. Rules governing the appropriateness of advertisements and requiring pre-clearance.
   - B. Rules governing advisory contracts with customers.
   - C. Rules governing methods of calculating fees.
   - D. Rules requiring disclosure of capacity and prior consent when acting as principal with investor.

1970's. That industry is similar to the investment banking industry in that mortgage bankers "underwrite" or inventory mortgages while looking for institutional purchasers. In performing this function, independent mortgage bankers suffer a distinct disadvantage in competing with mortgage banking firms affiliated with banks. A large expense is the interest cost of holding mortgages in inventory, but bank-affiliated firms can finance their inventories with loans from their affiliated banks. One of the anti-competitive impacts cited as having prompted the Fed to disapprove Citicorp's retention of Advance Mortgage Corporation was the 1100% increase over two years in its extension of credit to Advance.[87] Securities firms are placed at a similar disadvantage in competing with banks in underwriting general obligation bonds.

Many other nonbanking enterprises owned by bank holding companies are financed by interest free funds from the holding company. Often in such cases the nonbanking activity would produce little or no profit if it were charged for its funds at market rates.[88] For example, had Citicorp charged its nonbanking subsidiaries at least the cost to it of the funds it made available to those subsidiaries, they would have shown a net loss for 1975 instead of a $17 million profit.[89]

Common sense suggests, and economic theory confirms, that "competition" of this sort does not produce the social benefits normally expected to flow from competitive forces.[90]

In the securities industry, banks have additional cost advantages over securities firms which make direct competition particularly unfair. Banks, for example, are not subject to the strict regulation of their securities activities which add significantly to operating costs for members of the securities industry. (An outline of the regulatory burdens to which members of the securities industry are subject is set forth in Table 2.)

Furthermore, banks have a ready and willing market of customers for thei. securities services: every day millions of customers stream across the threshold of the nation's banks

[87] "This financial support following the subject acquisition permitted Advance, in no small part, to improve its position significantly within the mortgage banking industry." *Federal Reserve Bulletin*, January, 1974, p. 53.

[88] *WSJ*, April 20, 1976, p. 1.

[89] Citicorp made available to its nonbanking subsidiaries over $600 million interest free. Form 10-K filed by Citicorp with the Securities and Exchange Commission on March 30, 1976, p. 13.

[90] The major benefit of competition in an industry is the efficient allocation of scarce resources in that industry. However, such beneficial competition only occurs in the absence of structural defects in the organization of an industry. Among the defects commonly recognized by economists is the enjoyment of absolute cost advantages by certain members of an industry. The interest cost advantage enjoyed by banks suggests that efficient competition would not occur were banks to participate in the securities industry. *See*, Bain, Joe S., *Industrial Organization*, 2nd Ed., New York, John Wiley & Sons, Inc. (1968) pp. 260-63, 464-66.

to patronize banking services and regularly receive bank mailings in the form of statements and bills. Because of their banking relationship with these customers, which includes intimate knowledge of their financial position, banks are uniquely able to cull their customer lists for likely prospects. In addition, the ability of banks to extend personal loans to corporate officers enables them to provide another strong inducement to patronage of their services.

Without suggesting that banks would engage in illegal tie-ins, it also seems apparent that potential borrowers may patronize various securities services offered by their bank in the belief that their patronage of those services enhances their creditworthiness with the bank. Particularly when short term credit becomes a relatively scarce and valuable commodity, customers may feel obliged to be "good customers" of their bank in all respects. The Conference Committee that reported the Bank Holding Company Act Amendments of 1970 specifically noted the possibility of this occurring:

> Such tie-ins may result from actual coercion by a seller or from a customer's realization that he stands a better chance of securing a scarce and important commodity (such as credit) by 'volunteering' to accept other products or services rather than seeking them in the competitive market place. In either case, competition is adversely affected, as customers no longer purchase a product or service on its own economic merit.[91]

This potential for voluntary tie-ins has aroused concern among those responsible for protecting healthy competition in the economy because its anticompetitive impact cannot be cured by regulation or resort to the antitrust laws. As suggested by Richard W. McLaren, then Assistant Attorney General in charge of the Antitrust Division, in his testimony before the Senate Committee considering one bank holding company legislation in 1970, the only solution to this structural defect in the marketplace is a separation of banking from nonbanking enterprises:

> Bank expansion in other areas permits the carry-over of economic power into such endeavors. There is, of course, the obvious danger of overt reciprocity or tying arrangements, as well as general favoritism of bank affiliates, particularly in times of tight money. Also, and perhaps more important in terms of the need for present legislation, there are dangers which are of a more structural nature—adverse competitive effects that would tend to develop naturally without actual overt use of the economic power carried over from the banking sphere.
>
> I refer to a voluntary form of reciprocity or tie-in effect, where a potential borrower may independently decide that, just because he might possibly be under watch, it is in his best interest to patronize bank-affiliated enterprises in the hope of improving his chances of obtaining credit from the bank on favorable terms, or indeed at all.
>
> This can be illustrated by an example. A potential loan applicant might voluntarily place his casualty insurance business with a bank-affiliated insuror in hopes of improving his chances for a mortgage loan on the insured property on favorable terms. This would have the same effect as a coercive tie-in. Competition in the tied product, insurance, would be lessened to the extent that customers no longer purchased it entirely on its own economic merit. One such merger might well trigger others and as a pattern of such bank-insurance affiliations developed, market foreclosure in the tied field would become more and more serious.
>
> Such voluntary tying or tying effect, as we called it in a recent case, is the product of market structure —not misconduct.
>
> This structural problem is intensified because present antitrust remedies appear inadequate to deal directly with it. There simply is no illegal practice or conduct for a court to enjoin. Hence, we must concentrate on avoiding a structure which gives rise to such effects.[92]

Because of the unique advantages granted to banks to facilitate their intermediation services and because of their other cost advantages vis-a-vis members of the securities industry, fair competition in providing securities services between major commercial banks and members of the securities industry may not be possible. Nonetheless, commercial bankers and investment bankers can continue to compete indirectly on an equitable basis by offering users of capital two alternative types of financing. For most types of loans offered by commercial banks, investment bankers will strive to remain competitive by devising a comparable security that can be sold in the private or public capital markets. Thus, investment bankers provide the alternative of commercial paper to the banks' short term loans. They also place medium term public debt (5-7 years) to compete with bank loans of comparable maturity. Competition of this type produces innovation and efficiency while providing businessmen with a meaningful choice of capital sources.

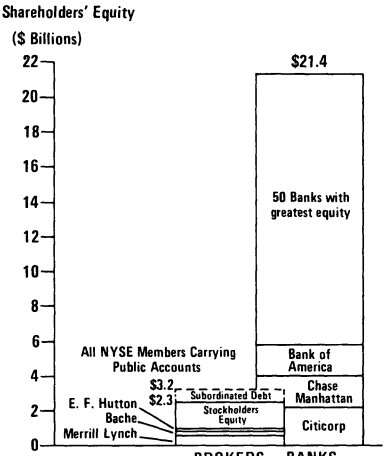
---

[91] H.R. Rep. No. 1747, 91st Cong., 2nd Sess. 18 (1970).

[92] *One Bank Holding Company Legislation of 1970, Hearings Before the Senate Comm. on Banking and Currency*, 91st Cong. 2nd Sess. at 239-40 (1970). *See also*, Mr. McLaren's remarks before the House Committee: ***The Bank Holding Company Act Amendments, Hearings Before the House Comm. on Banking and Currency***, 91st Cong. 1st Sess. at 91-92 (1969).

TABLE 3

Comparison of Size of Members of Securities Industry and Banks



Source: Blanchard

Concentration of Economic Power in the Major Commercial Banks

If the incursion of the major commercial banks into the securities industry goes unchecked, it is likely that they will come to dominate several aspects of that industry. In addition to the economic advantages cited in the preceding section, the sheer size of these banks in relation to the securities industry suggests that the securities industry would be unable to compete successfully against the wealth of resources available to the money-center bankers. The magnitude of the major banks in relation to the securities industry is illustrated by the fact that the shareholders' equity of Citicorp. Inc., the parent holding company of Citibank, N.A., was $2.074 billion at the end of 1974, almost as large as the $2.346 billion which was the aggregate shareholders' equity and proprietors' capital at that time of all members of the New York Stock Exchange. (See Table 3.)

The possibility of bank dominance of the securities industry is particularly worrisome because these banks already represent the major intermediary institutions in the U.S. economy through their commercial and trust departments. There are six principal kinds of institutions in the economy that act as financial intermediaries: (1) insurance companies; (2) thrift institutions; (3) commercial banks; (4) trust companies (or trust departments of commercial banks); (5) mutual funds; and (6) broker-dealers. Various other kinds of intermediaries exist in the economy, such as finance companies, commercial factors and mortgage banks, but generally these are not major sources of intermediated funds for business.

Major banks dominate the nation's trust business. The trust departments of commercial banks manage over $400 billion in assets, composed of personal trusts and estates and employee benefit and pension plans.[93] In addition to these enormous trust assets, commercial banks have available for lending or other investment approximately $900 billion of their own funds.[94] Thus, commercial banks control over $1,300 billion of assets.[95] This concentration of control over financial assets is thy more noteworthy because nearly two-thirds of banks' trust assets are controlled by 60 banks, constituting only 1.5% of the number of insured commercial banks with trust departments.[96] These same large banks constituted less than .5% of all insured commercial banks but controlled over 55% of commerical bank deposits.[97] These figures suggest that an overwhelming amount of economic power is concentrated among the very few largest banks.

Banks also have become major competitors in the finance company business, commercial factoring and mortgage banking. For example, as of June 30, 1970, only one of the top ten mortgage banking firms was affiliated with a bank;[98] as of December 31, 1975, seven were so affiliated.[99] Only six of the top fifty mortgage bankers were associated with banks in 1970,[100] but in 1975, 26 were.[101] If banks were to use their competitive advantages to dominate the securities industry as well, virtually every major source of business capital—save insurance companies and mutual funds—would be controlled by a relatively limited number of large commercial banks, a situation which currently prevails in Europe.

---

93 *Treasury Issues Paper* at 7.

94 *Summary of Deposits in All Commercial and Mutual Savings Banks*, FDIC (1974). Insurance companies, the second largest type of asset management institution, manage only an estimated $300 billion in assets.

95 If legislation similar to the Financial Institutions Act of 1975 (S. 1267)—repealing both interest rate ceilings on time deposits and restrictions on paying interest on demand deposits—were to become law, commercial banks might be able to absorb some of the deposits held by thrift institutions.

96 As of December, 1974. FDIC, *Trust Assets of Insured Commercial Banks* — 1974 (1975) p. 14.

97 As of June 30, 1974. Compiled from "Annual Survey of Bank Performance", *Business Week*, September 24, 1974, pp. 60-63 and *Federal Reserve Bulletin*, June 1975, p. A14.

98 In order of dollar volume of permanent real estate mortgages services. *American Banker*, October 27, 1970, p. 20.

99 *American Banker*, April 26, 1976, p. 10.

100 *American Banker*, October 27, 1970, p. 27.

101 *American Banker*, April 26, 1976, p. 10.

It is widely recognized that the inflexibility of the European credit markets—for example, their limited ability to offer long term credits with fixed maturities—is a product of the lack of sufficient public market alternatives to the credit facilities of the commercial banks. The public markets in the U.S., which are supported by the confidence that comes from independent credit rating agencies and detailed financial disclosure, impose a discipline on borrowers.[102] The system quickly reveals financial weakness; and the markets thus act as a system of checks and balances, as well as an important safety valve which reinforces the strength of the private negotiated markets.[103]

The reason for concern over an undue concentration of financial power in the major commercial banks is that such concentration would involve control of the allocation of business capital in our economy.[104] Under the scenario of such concentration, the large commercial banks would be able to determine which enterprises are to grow and which are not, and investment decisions might tend to concentrate on a particular group of industries at the expense of all others.[105] The market can allocate capital efficiently only when there is a broad base of investment decision-making; overconcentration of descision-making can result in an insufficient allocation of capital to many deserving industries. Furthermore, there is the increased danger that one area of enterprise may receive a substantial concentration of bank investment and then become unprofitable (like the REIT industry); banks might have to face large write-offs or substantially increase their reserves, which could make it more difficult for them to attract capital. For these reasons as

[102] *See*, Kaufman, Henry, partner and member of the Executive Committee of Salomon Brothers, "The American Credit Markets Viewed From an International Perspective," speech delivered before the Lombard Association in London, England on March 9, 1976.

[103] "In the long run, this dual market structure contributes to the efficiency of American financial institutions." *Id.*

[104] The commercial departments of banks are already providing well over half of all external corporate financing through bank loans. (See Table 4). This is partly the result of the increased numbers of long term loans extended by banks.

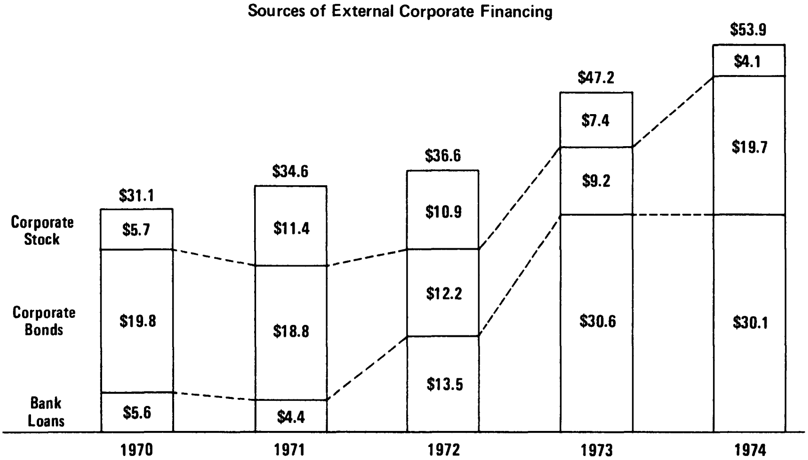
[105] Otto Eckstein, former Chairman of the Council of Economic Advisers, in the fall of 1974, stated the problem as follows:

> More fundamentally, a healthy capital market promotes the competitiveness of the American economy. If the current stock market situation were to persist, there would be increased concentration of the economy. The largest companies tend to be the most credit worthy and have the ability to stand at the head of the line at the lending windows of the large commercial banks. The banks would become powerful as they are in Europe and Japan.

Cited in paper presented by Alan F. Blanchard in a speech before Carter Golembe Associates Executive Seminar. (Oct. 16, 1975).

TABLE 4

Sources of External Corporate Financing



Source: Blanchard speech at 16A.

well, business must have a capital market alternative to the banking system.

Conflicts of Interests

A bank's performance of various securities services may create conflicts of interest adverse to its trust customers and other managed accounts, to its commercial customers and to users of its securities services. Although most trust departments undoubtedly strive to conduct their businesses in full compliance with the high standards imposed by fiduciary law, serious conflicts can lead to unconsciously distorted judgments. In the securities industry conflicts are dealt with by measures ranging from disclosure to outright prohibition;[106] in the banking business, controls are less clearly defined and more readily waived.[107]

A bank's trust department, for example, might be inclined to purchase for its accounts securities which are the subject of a private placement arranged by the bank for a corporate customer or, in the case of municipal bonds, distributed by the bank as underwriter. Furthermore, if a private placement proves a bad investment for the participants, the bank's trust department might seek to obtain for the issuer additional investments or loans from other managed accounts in an attempt to assuage the dissatisfaction of the initial investors.

The allegations in the Microdot-Irving Trust episode earlier this year point out one of the more dramatic examples of potential conflict stemming from a bank's securities services to its commercial customers.[108] There Irving Trust allegedly revealed confidential knowledge of the financial condition of its credit customer, Microdot, in the course of providing advisory services to General Cable (another credit customer) in the latter's attempt to take over Microdot. Although determination of the facts must await adjudication,[109] the incident illustrates that there are many opportunities for a bank, in the course of providing financial advisory services, to make improper use of confidential information obtained from its credit customers.

A bank also may have a conflict between its obligation to give its financial advisory customers objective advice and its own interest as a banker in making loans. For example, when a corporation seeks advice from a bank on raising capital, the bank may be tempted to advise the corporation to take on increased bank borrowings, even though such terms may not be so favorable as those available in the public market.

There are also potential conflicts with respect to bank brokerage customers. A bank, in providing as AIS or dividend reinvestment plan to customers, is in a position to enjoy the use of the pooled funds without interest simply by a delay in placing orders. In some instances, such a delay could result in less favorable execution for such accounts. Similarly, the trust department can take advantage of its knowledge of when an order for a pooled account will be executed in placing orders for its managed accounts.

Investor Protection

Section 3(a)(4) of the Securities Exchange Act of 1934 provides that the term "broker" means "any person engaged in the business of effecting transactions in securities for the account of others, *but does not include a bank*"[110] (emphasis added). This statutory exclusion was based on the Congressional understanding that banks were prohibited from engaging in the business of dealing in securities under the Glass-Steagall Act.[111]

Those who are classified as "brokers" under the Securities Exchange Act of 1934 are required to conform to a comprehensive system of governmental and private regulation developed over the years for the protection of investors. Among the standards and safeguards provided under this system, but inapplicable to banks and thus unavailable to their brokerage customers, are those relating to suitability, prompt execution, disclosure of adverse information and insurance under the Securities Investor Protection Act.

Although it often is argued that banks too are subject to an elaborate regulatory scheme, the principal objective of bank regulation is protection of depositors and trust customers, not investors, whether they be holders of bank securities or customers of the bank's securities department. Moreover, understandable reluctance of regulators to unsettle the often delicate public confidence upon which the banking system depends can result in a different standard of enforcement in respect of bank conduct of securities business. Thus, permitting banks to furnish securities services is inconsistent with the policy objective of safeguarding the interests of investors—a goal upon which investor confidence in the securities markets is built.

---

106 *See*, for example, Securities Exchange Act §§8(c) (written consent required before lending customers' securities), 11(a)(1) (prohibition of executing exchange transactions for managed accounts), and 11(d) (disclosure of capacity in executing transactions); Rules 15c1-4 (disclosure of capacity and commission in excuting over-the-counter transactions), 15c1-5 (disclosure of relationship with issuer), and 15c1-6 (disclosure of interest in distribution).

107 12 C.F.R. §9.12(a).

108 Both the House and the Senate have conducted hearings on this attempted takeover. The House Financial Institutions Supervision, Regulation and Insurance Subcommittee of the Committee on Banking, Currency and Housing held hearings on March 26, 1976. The Senate Banking, Housing and Urban Affairs Committee held hearings on this matter on February 16, 1976.

109 *Microdot Inc.* v. *Irving Trust Company*, Index No. 01123/76 (S. Ct. N.Y. filed January 21, 1976).

110 15 U.S.C. §78c(a)(4).

111 *Hearings on H.R. 7852 and H.R. 8720 Before the House Committee on Interstate and Foreign Commerce*, 73rd Cong., 2d Sess., at 86 (1934).

Stability of the Banking System

The banking system plays an essential role in the capital raising process, and maintenance of its stability is essential to the economy. The history of the 1930's serves as a vivid reminder of our economy's dependence on that confidence and its need for a strong banking system. The stability of the banking system depends on three elements: banks must (1) make prudent and disinterested loans and investments; (2) maintain a relatively stable flow of revenue; and (3) continue to enjoy the confidence of depositors.

The first of these elements is essential to bank solvency; sound loans and other investments result from credit decisions which are the product of an independent banking judgment. Secondly, bank revenues must be maintained at relatively steady and predictable levels[112] if banks are to be able to meet their operating expenses, including the interest they pay for some of the funds they utilize, and to attract long term capital. Stable bank income typically has been provided by the revenues generated from the extension of short term credit to commercial enterprises; to the extent banks engage in nonbanking activities which may produce volatile or unpredictable levels of revenue, their ability to maintain a stable flow of revenues may be jeopardized. Finally, the banking system depends on public confidence–the willingness of individual and corporate depositors to entrust their savings or idle funds to banks. Public confidence stems, in part, from the public's perception of the first two elements; however, it is also affected by nonquantifiable psychological influences. The performance by banks of nonbanking activities must therefore be analyzed against these three critical elements of a sound banking system.

To the extent banks acquire an entrepreneur's stake in a commercial enterprise, conflicts of interest may impair their ability to make prudent and disinterested credit decisions with regard to that enterprise. In addition, if a bank becomes associated with investment vehicles like mutual funds or REITs, it may be tempted to extend favorable credit terms to those businesses which the fund or REIT has invested in.[113] Former Federal Reserve Board Chairman William McChesney Martin, in his 1969 testimony supporting legislation to remove the one bank holding company exemption, observed that:

> If a holding company combines a bank with a typical business firm, there is a strong possibility that the bank's credit will be more readily available to the customers of the affiliated business than to customers of other businesses not so affiliated.[114]

This is because bankers may find that their ability to grant scarce credit to users of their other financial services is an important inducement to potential customers to use those services. Even bank-sponsored plans for small investors, which customarily invest solely in blue-chip equities, may influence a bank to make loans it might not otherwise have made to prevent itself from being associated in the minds of its customers with any decline in such securities.[115]

The common bank practice of extending loans to REITs for which the bank or its affiliate provides investment advisory services and sponsorship offers an illustration of the temptations to which banks may succumb. For example, Manufacturers Hanover was one of 13 banks which were parties to a $106.2 million extension of credit to Citizens Mortgage Investment Trust, which is advised by Citizens Mortgage Corporation, a subsidiary of Manufacturer's holding company parent.[116] Similarly, BT Mortgage Investors, which is managed by BT Advisors, Inc., a subsidiary of Bankers Trust New York Corporation, owed Bankers Trust $55.7 million at June 30, 1975;[117] and Chase Manhattan Mortgage and Realty Trust, which is advised by Chase Manhattan Bank, had a line of credit with that bank in August, 1974.[118] The Hamilton National Bank of Chattanooga was declared insolvent by the Comptroller of the Currency on February 16, 1976. Defaults in many of the nearly $100 million in loans originated by a mortgage banking affiliate of the bank reportedly were responsible for Hamilton's demise.[119]

In addition, a bank's ability to purchase for its own account a substantial portion of an offering of government securities it is underwriting may prejudice its judgment in

---

112 "Banks have found that earnings stability, one hoped-for benefit of the holding company, has been particularly elusive." Foldessy, Edward P., "Holding Firm Concept Turns Sour for Banks as Profits Fall Short," *WSJ*, April 20, 1976, p. 1.

113 For example, Chase Manhattan Bank bought $160.6 million of loans from the Chase Manhattan Mortgage and Realty Trust, for which it serves as an investment adviser, in order to ease the financial burdens of the Trust. *Business Week*, May 31, 1976, p. 30.

114 S. Rep. No. 1084, 91st Cong., 2nd Sess. 3 (1970).

115 The SEC's Institutional Investor Study observed a correlation between bank business relationships (including creditor relationships) with corporations and their portfolio holdings:

> Some institutions, particularly banks, have personnel and business relationships with portfolio companies. These relationships may tend to reinforce any power conferred as a result of stock holdings. They also create potential conflicts of interest and the possibility of misuse of inside information. Although the Study can draw no general conclusions as to whether these adverse consequences actually occur or to what extent they may occur, it appears that there is a strong statistical correlation between bank stock holdings and personnel and business relationships.

Institutional Investor Study Report of the Securities and Exchange Commission, March 10, 1971, Summary Volume at 127.

116 Prospectus of Manufacturers Hanover Corporation, June 19, 1975.

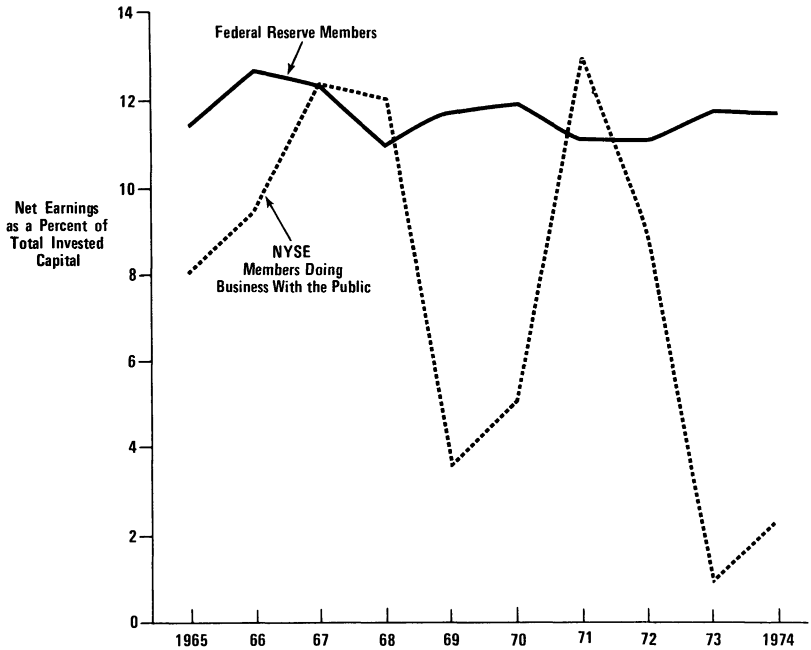
117 Prospectus of Bankers Trust New York Corporation, September 17, 1975.

118 Prospectus of Chase Manhattan Corporation, August 2, 1974.

119 *WSJ*, February 17, 1976. The bank had also made over $30 million in loans to other affiliates.

TABLE 5

Relative Stability of Income



Source: Blanchard speech at 20A.

bidding for such offerings. By the same token a bank may find a home in its own portfolio for securities it has underwritten which it might have declined to buy from an independent source. As a result, a bank may find itself burdened with securities in which it ordinarily would not or should not have invested. Many banks currently are experiencing the adverse effects of their extensive investments in general obligation bonds.[120]

[120] Citicorp has lost over $400 million in market value of the state and municipal securities it was carrying for its own investment at December 31, 1975. Citicorp Annual Report, p. 24.

The term of a loan also must be considered a factor in analyzing the prudence of the loan. As banks find themselves increasingly in competition with investment bankers, their long term loans to corporate borrowers have been expanding and in some cases their own capital positions have become tight. Although banks have, to a limited extent, utilized the capital markets for long term funds, their principal source of funds continues to be demand and other short term deposits. As the average maturity of their loans increases, prudent bank financial practice would dictate that such loans be matched against equally long term

93-031 O - 77 - 16

sources of funds. Failure to do so could lead to disastrous results. The Senate Banking and Currency Committee observed, in 1932, that

> [a] very fruitful cause of bank failures, especially within the past 3 years, has been the fact that the funds of various institutions have been so extensively tied up in long-term investments.[121]

The second key element of bank stability is a steady source of revenues. The dangers of banks becoming dependent on revenues subject to volatile fluctuations in operating results led Congress to adopt the 1970 amendments to the Bank Holding Company Act, which limit the scope of bank holding company operations to activities closely related to the banking business.[122] This same concern motivated Congress in 1933 to restrict the ability of banks to assume the risks inherent in underwriting and investing in corporate securities.[123] Although banks were permitted to underwrite general obligation bonds because there were felt to be few risks involved in such underwriting, even this area of the securities industry has risks for banks: shortly before its demise the Franklin National Bank lost $5.6 million in the value of securities " 'which had been carried in the bank's security trading account,' or bond dealer operations."[124] Similar risks exist in the case of municipal revenue bonds, which are backed only by the revenues of a particular enterprise. Accordingly, it would not appear desirable to permit banks to increase their activities in an industry whose revenues are subject to extreme fluctuations as well as unpredictable risks. The relative stability of income of the two industries is illustrated graphically in Table 5.

The third element of bank stability is depositor confidence, which may be affected adversely if banks become active in promoting a variety of investment vehicles. For example, if banks sponsor mutual funds, REITs or automatic investment services which fail to live up to investor expectation—not an unlikely possibility since such investments hardly can be expected to be risk-free—the image of banks as riskless deposit-accepting institutions may be tarnished in the minds of the public. Moreover, the confidence of corporate borrowers often is as sensitive as that of individuals: the recent spate of bank failures reportedly has prompted many corporate treasurers to narrow their list of acceptable depositary banks.

Any serious loss of public confidence conceivably could lead to withdrawal of bank deposits, consequent diminution of the funds available for credit and the possibility of bank failures.[125] Our economy surely cannot afford the devastating effect of such a shortage of bank credit.

Competitive Considerations

It is impossible to predict with certainty what will occur if banks are permitted to expand their securities activities. Nevertheless, the risks of undue concentration of resources, unfair competition, heightened conflicts of interest, inadequate investor protection and possible damage to confidence in the banking system cannot be taken lightly. Measured against the principal policy objectives set forth above, it seems clear that the economy has little to gain and much to lose from such a gamble.

Even if additional competition in the securities industry were desirable, it should not be provided by banks in view of the above considerations; in fact, however, the brokerage industry already is highly competitive.

The structural characteristics of a competitive industry commonly accepted by economists include: (1) low seller concentration, (2) lack of significant barriers to entry, and (3) low product differentiation.[126] The brokerage industry scores high on all three counts.

First, the brokerage industry's membership is diffuse and relatively non-concentrated. Second, there do not appear to be substantial barriers to entry.[127] Generally, such barriers include the absolute cost advantages discussed above,[128] significant economies of scale and high product differentiation.[129] Although banks enjoy absolute cost advantages over members of the securities industry, there are no apparent cost advantages enjoyed by members of the securities industry over potential entrants. Furthermore, empirical studies suggest that there are no significant economies of scale in the securities industry.[130] Finally, there is relatively little product differentiation in the securities industry; what little product differentiation existed in the industry as a result of the service competition in which brokers engaged during the period of fixed commission rates will undoubtedly wane as price competition continues to flow

---

121 S. Rep. No. 584, 72nd Cong., 1st Sess., at 8 (1932).

122 See text accompanying note 41 above.

123 See text accompanying notes 42-48 above.

124 Foldessy, Edward P., "Franklin New York Puts Deficit at $60 million in First Five Months," *WSJ*, June 21, 1974.

125 Although federal deposit insurance has greatly increased public confidence in the banking system, banks can ill afford to have their images tarnished. For example, the inability of a California bank holding company to refinance $11 million in commercial paper so seriously undermined depositor confidence that heavy withdrawals forced the otherwise healthy subsidiary bank to declare bankruptcy. (Foldessy, Edward P., "Holding Firm Concept Turns Sour for Banks As Profits Fall Short," *WSJ*, April 20, 1976, p. 33.) Similarly, the Fed had to lend nearly $1.8 billion to cover depositor withdrawals when the Franklin National Bank's substantial foreign exchange losses became publicly known. *(The Last Days of the Club*, pp. 393-4).

126 *See, Industrial Organization*, pp. 464-66.

127 During the years 1971 through 1974, an average of 210 securities firms became members of the National Association of Securities Dealers, Inc. each year.

128 See note 90 above.

129 *Industrial Organization*, p. 255.

130 *See* West and Tinic, *The Economics of the Stock Market* (1971), p. 134.

from the May 1, 1975 unfixing of commissions.[131] Moreover, the sharp decline in commission charges since May 1, 1975 and the failure of a number of securities firms in the wake of that decline attest to the intensity of the competition in the brokerage business.

Similarly, bank entry into revenue bond underwriting would add little to the already strong competition among broker-dealers in this area. Not only do revenue bond offerings receive on the average over five bids per issue, but revenue bonds generally receive more bids per offering than do comparable bonds in the bank-dominated general obligation market.[132] The revenue bond underwriting industry also exhibits the structural features necessary for competition discussed above with respect to the brokerage industry.[133]

Indeed, the employment by the major commercial banks of their unique advantages in the securities industry is likely to produce non-productive, and even detrimental, competition in that industry. The risk of increased economic concentration and the possibility of significant damage to the capital raising mechanism argue strongly for separating the two industries legislatively, as Congress attempted to do more than 40 years ago.

---

131 *See,* Mann, H. Michael, "The New York Stock Exchange: A Cartel at the End of Its Reign," Ch. 9 in Phillips, Almarin, ed., *Promoting Competition in Regulated Markets,* Washington, D.C., The Brookings Institution, 1975, pp. 301,311.

132 *See,* Table I, Testimony of Alvin V. Shoemaker, *Hearings on S. 1933, Subcommittee on Securities, Senate Committee on Banking, Housing and Urban Affairs,* Senate 93rd Cong., 2nd Sess. (1974) (hereinafter *Municipal Revenue Bond Hearings).*

133 *See,* Testimony of Professor Simon Whitney, *Municipal Revenue Bond Hearings.*

LEGISLATIVE PROPOSALS FOR CONSIDERATION

The legal analysis contained in this paper demonstrates the uncertainty under present law of the status of many bank activities in the securities area, and it seems equally clear that the various regulators with responsibility for administering the banking laws have done little to clarify the uncertainty. Set forth below for consideration are several legislative proposals which we believe should be evaluated in light of the above discussion.

Broker-Dealer Activities

In every major piece of banking legislation passed in this century, Congress has indicated its desire that commerce and banking be conducted separately.[134] However, many banks and bank holding companies have continued to expand their commercial activities.[135] In many cases, these activities were authorized by banking regulators, only to be later found by the courts to be impermissible.[136] Because of the tendency of bank regulators to permit banks to extend their competitive advantages into fields outside of banking, it is proposed that Congress declare unambiguously its intent to keep the business of banking separate from other commercial activities.

In particular, it is proposed that banks be prohibited from engaging in broker-dealer activities. We have discussed earlier how the offering by banks of private placement services and AIS and other brokerage-related services may have a deleterious effect on the economy.[137] Under the proposed legislation, in order to remove this possibility, banks would be prohibited from soliciting orders to purchase or sell securities other than those securities now explicitly exempt from the restrictions of the Glass-Steagall Act.

Bank brokerage services would thus be limited to those where the bank provides the service solely at an existing customer's request as an accommodation—the result intended by the Act. Banks would also be prohibited, for all intents and purposes, from engaging in private placement, as well as merger and acquisition, activities.

Clarification of Glass-Steagall Prohibition on Bank Underwriting Municipal Revenue Bonds

Under the Act, banks are permitted to underwrite only general obligation bonds—those backed by the general taxing power of the issuing or guaranteeing jurisdiction—but not revenue bonds. In recent years there have been proposals that the Act be amended to exempt revenue bonds from its strictures. Those opposing such an amendment have observed that the same risks perceived by the Act's draftsmen in bank underwriting of corporate securities (and the temptation for banks to place such securities in portfolios under their management) exist in the case of revenue bonds, whose principal and interest are not backed by the general taxing power of the issuer or guarantor and thus must depend on the fortunes of a particular enterprise.

Recent events bear out the danger of expanding the Act's exemptions to permit banks to underwrite revenue bonds. The decline in the municipal securities market has resulted not only in a paper decline in the assets of many banks but also has affected the public's confidence in numerous banks with sizeable investments in municipal securities. The Federal Reserve Board, which had espoused the underwriting of revenue bonds by banks, recently changed its mind and, recognizing the potentially deleterious effects, expressed reservations about permitting banks to underwrite revenue bonds.[138] Moreover, as discussed above,[139] the entry of banks into the revenue bond underwriting business would not provide any beneficial increase in competition in that industry.

In addition, the Comptroller has interpreted the Act's exemption for general obligation bonds to include certain types of debt instruments having the characteristics of revenue bonds.[140]

It is proposed that the Act be amended to preserve and clarify the distinction Congress intended to draw between revenue bonds and general obligation bonds.

---

[134] *Federal Reserve Act of 1913,* Dec. 23, 1913, c. 6, 38 Stat. 251; *Banking Act of 1933,* June 16, 1933, c. 89, 48 Stat. 162; *Bank Holding Company Act of 1956,* Pub. L. 89-485, 80 Stat. 236; *Bank Holding Company Act Amendments of 1970,* Pub. L. 91-607, 84 Stat. 1760.

[135] According to Senator Proxmire's statement introducing the "Competition in Banking Act of 1975" (S. 2721) (*Cong. Rec.,* Dec. 1, 1975, S20790, *et seq.*) and based on court cases and private rulings by the Comptroller of the Currency, it appears that banks have engaged, or attempted to engage, in the following nonbanking activities: (1) operating an insurance agency; (2) underwriting securites other than those exempt under section 24 of Title 12; (3) privately placing non-exempt securities; (4) providing financial counseling services; (5) providing investment advisory services to closed-end investment companies; (6) operating mutual funds; (7) providing securities brokerage services; (8) operating travel agencies; (9) providing armored car services; (10) providing data processing services; and (11) leasing automobiles.

[136] *See* note 62 above.

[137] *See* generally, "Policy Reasons for Restricting Bank Securities Activities" above.

[138] Testimony of Jeffrey M. Bucher, member, Board of Governors of the Federal Reserve System, *Securities Activities of Commercial Banks, Hearings before the Securities Subcomm. of the Senate Comm. on Banking, Housing, and Urban Affairs* 94th Cong. 1st Sess. at 8 (1975).

[139] See text, accompanying notes 132-133 above.

[140] *See, Baker, Watts & Co.* v. *Saxon,* note 62 above.

Implementation of a Clear and Definitive National Policy as to What Is and Is Not Permissible Bank Activity

Experience has shown that where banks are able to choose among several regulators, each of which interprets and enforces the standard of permissible bank activities in a different manner, the possibility will exist that banks can gain more flexibility to expand their activities by switching characters;[141] in fact, they may find themselves at a competitive disadvantage if they do not. Non-uniformity of standards on a question of such importance contains the potential to frustrate the attainment of national policy objectives in the banking industry.[142] Although it is not our intention to offer suggestions on the subject of bank regulation, one can make the general observation that to preclude this problem, standards of permissible activity must be formulated and applied in a uniform manner, perhaps by delegating interpretive and enforcement authority to a single bank regulator or to a joint body comprised of representatives from each bank regulator.

---

141 *See,* Bray, Thomas J., "Did the Bank Switch Rather Than Fight the Fed Examiners?" *WSJ,* April 26, 1976, p. 1, for a discussion of First Pennsylvania Bank's change from a state to a federal charter, allegedly to take advantage of the Comptroller's more relaxed regulation.

See also Hackley, Howard H., "Our Baffling Banking System," 52 *Va. L. Rev.* 565 (1966) for a discussion of 21 instances of disputes in the early 1960's between the Comptroller of the Currency, the Federal Reserve Board, and the Federal Deposit Insurance Corporation.

142 *See,* Burns, Arthur F., "Maintaining the Soundness of Our Banking System," address delivered to the 1974 American Bankers Association Convention, Honolulu, Hawaii, October 21, 1974.

CONCLUSION

The Securities Industry Association hopes that the issues addressed above will continue to be the subject of widespread discussion, in Congress, elsewhere in government and among members of the public. We believe these issues must be faced squarely and debated openly; in our view it would be a serious error to permit them to be resolved by default or through the momentum of events. We hope this response to the questions that current governmental inquiries have raised will serve to stimulate further discussion.

Appendix I

Legislative History of the Glass-Steagall and Bank Holding Company Acts

A review of the legislative history of the Banking Act of 1933 (the Glass-Steagall Act), the Bank Holding Company Act of 1956 and the Bank Holding Company Act Amendments of 1970 evidences both Congressional recognition that the combination of banking and nonbanking enterprises is inherently dangerous and a consistent Congressional intent to separate banking from other areas of commerce.

I. *The Glass-Steagall Act*

The Glass-Steagall Act (the Act) was a product of Congressional indignation over the role of national banks in fostering the prepanic speculation leading to the national financial crises of the 1920's and 1930's. Congress felt that the Federal Reserve System had been used to facilitate speculative securities operations and excessive amounts of securities loans, in total disregard of the system's purpose.

> The outstanding development in the commercial banking system during the prepanic period was the appearance of excessive security loans, and of overinvestment in securities of all kinds. The effects of this situation in changing the whole character of the banking problem can hardly be overemphasized. National banks were never intended to undertake investment banking business on a large scale, and the whole tenor of legislation and administrative rulings concerning them has been away from recognition of such a growth in the direction of investment banking as legitimate. Nevertheless it has continued; and a very fruitful cause of bank failures, especially within the past three years, has been the fact that the funds of various institutions have been so extensively 'tied up' in long-term investments.[1]

In this regard, Senator Glass, the Senate sponsor of the Act, speaking on the Senate floor, stated that:

> [N]ot only has the Federal reserve banking system been used in an inordinate measure in stockmarket transactions but there appears to have been an extraordinary misconception by the administrators of the act of its real purpose. In large degree the system has been transformed into an investment banking system, whereas the fixed purpose of Congress was to set up a commercial banking system and to preclude speculative operations . . .
>
> Let me tell Senators the meaning, and, in the last analysis, the result of that sort of administration of the law. It means that a member bank may engage in any sort of speculative business it may please, and then, when its reserve in the Federal reserve bank is impaired, it may take its eligible paper for rediscount and use the credit and the currency thus afforded to reestablish its reserve, and not to relend for 'commercial, industrial, or agricultural purposes.'
>
> That is an evasion of the intent, the spirit, and text of the Federal reserve banking act. It never was intended that its facilities should be used for investment purposes, or for speculative purposes, in that roundabout way.[2]

The "gambling fever" of the prepanic years was attributed to the rapid growth in the securities business of banks. Senator Walcott, a member of the Senate Banking and Currency Committee who addressed the Senate on the provisions of the Act relating to bank affiliates, described this process to his colleagues:

> It reached such a volume, there were so many willing purchasers, so much credit for investment purposes was available that there resulted a complete change in our banking system . . . The commercial banking business in consequence of this extraordinary volume of security business declined . . . The net result of it all was that we were in the flood tide of speculation . . . How was all this expansion possible? . . . It took money, currency; it took a very expansive credit, which, of course, brought in the banks. As far back as 1911 the banks were investing heavily in securities, buying and selling securities. Most of the banks had been engaged in underwriting, and still are. The security business became such an important part of the operations of some of the banks, particularly of two or three of our larger banks, that some fear was occasioned that they would get away from the strictly commercial business for which they were organized and put out securities of doubtful value . . . [T]here was a conflict between the business of marketing securities and the business of protecting depositors' money . . . [T]he national banks engaged in the security business were compelled to divorce their security business from their banking operations, and the term 'affiliates' came into being as the result of that divorce.[3]

The establishment of securities affiliates, which, Senator Glass said, made one of the "greatest contributions to the unprecedented disaster which has caused this almost incur-

---

1 S. Rep. No. 77, 73rd Cong., 1st Sess. 8 (1933).

2 75 *Cong. Rec.* 9884 (May 10, 1932).

3 *Id.* at 9904.

able depression,"[4] had become prevalent as banks became aware of the profits to be derived from the distribution of securities,[5] despite the fact that the legality of the enterprise was at best questionable.[6] The report of the Senate Committee chronicles the abuses that crept into the affiliate system.

> The greatest of such dangers is seen in the growth of 'bank affiliates' which devote themselves in many cases to perilous underwriting operations, stock speculation, and maintaining a market for the banks' own stock often largely with the resources of the parent bank.[7]

As Senator Glass described it:

> They sent out their high-pressure salesmen and literally filled the bank portfolios of this country with these investment securities. They actually dealt in the stocks of the parent bank; and one of them notably offended by running the stock of a parent bank above 500 and a few days ago it was down to 42. They were organized to evade the law. That is the very purpose of their existence—to evade the national bank act and to do a business outlawed by the national bank act —and yet they are so interlocked that it is difficult to tell which is which.[8]

The practice of the Bank of the United States in creating affiliates was cited as a "typical case of the excessive abuse of affiliates." Numerous undercapitalized affiliates were created, financed by shoe-string operations, and as suggested by Senator Walcott "of course it was inevitable that this great structure of innumerable affiliates should collapse."[9]

Senator Bulkley, another member of the Senate Committee on Banking and Currency who addressed Congress on the legislation, posed the following question:

> When the national banks, through their affiliates, followed into the investment-banking business . . . the idea of increased profits more and more obsessed our bankers . . . Did not professional pride become diverted from the pride of safe and honest banking service to that of profits, greed, expansion, power and domination?[10]

Much of the problem, it was believed, stemmed from the fact that permissive state bank regulation put pressure on the federal regulators to allow national banks to step beyond the boundaries of sound banking. In the words of Senator Walcott, the net result was

> the disregard of a great many of the fundamentals of the banking business, taking chances with depositors' money, and the incorporation and rapid growth of the affiliate business, giving an outlet to that speculative type of business quite contrary to legitimate commercial banking.[11]

The banks, having set up sales departments to engage in the distribution of securities, now needed to cultivate sales markets in which to sell the securities and required securities to sell. Banks also made loans to facilitate stock purchases. This practice, which fed the securities speculation, was condemned by Senator Walcott:

> It is evident from what has been said that the underlying factor in the whole prepanic situation was excessive use of bank credit . . . . The excessive use of bank credit in making loans for the purpose of stock speculation, or, more generally stated, for the excessive carrying of securities with borrowed money, was generally admitted before the panic of 1929, and almost universally since that time, to have been one of the sources of major difficulty, far exceeding in its scope any total that could be reasonably asked for as a basis for the financing of legitimate investment business.[12]

It became necessary to seek out issuers even though in some instances, it was thought, corporations had little or no need for long-term capital.

> Can any banker, imbued with the consciousness that his bond-sales department is, because of lack of securities for sale, losing money and at the same time losing its morale, be a fair and impartial judge as to the necessity and soundness for a new security issue which he knows he can readily distribute through channels which are expensive to develop but which presently stand ready to absorb the proposed security issue and yield a handsome profit on the transaction.[13]

It was easy, Senator Bulkley stated, to see why the security business was over-developed and why it overloaded the country with unfortunate investments.[14] On the other hand, he said, if

> the business of originating and underwriting investment securities is confined to houses not engaged in deposit banking, then the extent and the desirability of new issues will be subjected to an independent and impartial check.[15]

Moreover, the business of investment banking necessarily involved taking risks. If a securities affiliate suffered a loss, rumors might spread that the bank's financial condition

---

[4] *Id.* at 9887.
[5] *Id.* at 9910 (remarks of Senator Bulkley).
[6] *Id.* at 9911.
[7] S. Rep. No. 77, 10.
[8] 75 *Cong. Rec.* 9887 (May 10, 1932).
[9] *Id.* at 9905.
[10] *Id.* at 9911.

[11] *Id.* at 9906.
[12] *Id.*
[13] *Id.* at 9911 (remarks of Senator Bulkley).
[14] *Id.*
[15] *Id.* at 9912.

would be impaired due to its loans to the affiliates. Rumors of stock price manipulation and other abuses of the distribution system, and the possibility of litigation against the banks, also posed a threat to depositors' confidence. Senator Bulkley considered the special role of the banker:

> The banker ought to be regarded as the financial confidant and mentor of his depositors. . . . Obviously, the banker who has nothing to sell to his depositors is much better qualified to advise disinterestedly and to regard diligently the safety of depositors than the banker who uses the list of depositors in his savings department to distribute circulars concerning the advantages of this, that, or the other investment on which the bank is to receive an originating profit or an underwriting profit or a distribution profit or a trading profit or any combination of such profits.[16]

His conclusion was unequivocal:

> If we want banking service to be strictly banking service, without the expectation of additional profits in selling something to customers, we must keep the banks out of the investment security business.[17]

II. *The Bank Holding Company Act of 1956*

The Bank Holding Company Act of 1956 (the 1956 Act), among other things, was intended to separate banking from other areas of commerce. As stated in the Report of the Senate Committee on Banking and Currency (hereinafter "Senate Committee"), ". . . bank holding companies ought not to manage or control nonbanking assets having no close relationship with banking."[18] As the following excerpts illustrate, such a separation was felt necessary to prevent banks from employing in nonbanking enterprises funds entrusted in them by depositors and to guard against banks taking unfair advantage in competing with nonbanking enterprises.

Concern over the safety of depositors' funds was expressed in several different ways. The then Chairman of the Board of Governors of the Federal Reserve System, William McChesney Martin, Jr., expressed concern over the use of depositors' funds in nonbanking businesses:

> Moreover, the ordinary nonbanking business requires a managerial attitude and involves business risks of a kind entirely different from those involved in the banking business. Banks operate largely on their depositors' funds. These funds should be used by banks to finance business enterprises within the limitations imposed by the banking laws and should not be used directly or indirectly for the purpose of engaging in other businesses which are not subject to the safeguards imposed by the banking laws.[19]

Chairman Martin also stated that the combination of banking and nonbanking enterprises

> involves the lending of depositors' money, whereas other types of business enterprise, not connected with banking, do not involve this element of trusteeship.[20]

The report of the House Banking and Currency Committee put it somewhat differently:

> banks are prohibited from engaging in any other type of enterprise than banking itself . . . because of the danger to the depsitors which might result where the bank finds itself in effect both the borrower and the lender.[21]

Aside from concern that biased and imprudent extensions of credit to nonbanking affiliates of a bank may seriously jeopardize the funds of its depositors, the report of the Senate Committee also warned that such

> a bank holding company might misuse or abuse the resources of a bank it controls in order to gain an advantage in the operation of the nonbanking acitivities it control.[22]

The report of the House Committee provides further illustration of this concern:

> If banks were permitted to own nonbanking businesses they would be compelled in many instances to extend credit to such businesses to the detriment of other competitive businesses in the community and possibly also to a degree which would be unsound from a banking viewpoint. A bank should always be at arms' length with its borrowers and such a position could not be maintained were banks permitted to own nonbanking businesses and make credit available to them.
>
> * * * * * * * * * *
>
> Whenever a holding company thus controls both banks and nonbanking businesses, it is apparent that the holding company's nonbanking businesses may thereby occupy a preferred position over that of their competitors in obtaining bank credit. It is also apparent that in critical times the holding company which operates nonbanking businesses may be subjected to strong temptation to cause the banks which it controls to make loans to its nonbanking affiliates even though such loans may not at that time be entirely justified in the light of current banking standards. In either situation the public interest becomes directly involved.[23]

---

[16] *Id.*

[17] *Id.*

[18] *S. Rep. No. 1095, 84th Cong., 1st Sess. 1 (1955).*

[19] *Hearings on S. 2577 Before a Subcomm. of the Senate Comm. on Banking and Currency,* 84th Cong., 1st Sess., at 75 (1955).

[20] S. Rep. No. 1095, 3.

[21] H.R. Rep. No. 609 on H.R. 6227, 84th Cong., 1st Sess., as reproduced in 101 *Cong. Rec.* 8038, 8042 (June 13, 1955).

[22] S. Rep. No. 1095, 14.

[23] H.R. Rep. No. 609 in 101 *Cong. Rec.* at 8039, 8042.

III. *The Bank Holding Company Act Amendments of 1970*

The Bank Holding Company Act Amendments of 1970 (the Amendments) reflect not only the same Congressional concerns that are revealed in the 1956 Act—that is, the safety of depositors' funds and unfair competition—but also concern over the concentration of economic power in bank holding companies. The primary purpose of the Amendments was to close the 1956 Act's one-bank holding company loophole in order to preserve the basic separation of bank and bank-related activities from other business activities.[24] The testimony at hearings, the floor debates, and the Congressional reports consistently cite the problems of bank insolvency, unfair competition and undue concentration in support of such a separation.

Chairman Martin discussed the potential threats to bank solvency in his testimony before the House Committee considering one bank holding company legislation:

> Considerations of safety and soundness reinforce the policy of separating banking and other businesses. A bank should be insulated from pressures that might lead it to favor customers of affiliated businesses in its credit decisions. Otherwise, the bank might build an unbalanced loan portfolio by discounting an excessive amount of obligations of such customers, or a low-quality portfolio by accepting substandard risks to foster sales to such customers. An essential part of the traditions of bank management has been a scrupulous observance of the need for prudence in handling funds entrusted to the bank by its customers; if management were to become oriented toward the different objectives of other businesses, this tradition could be seriously weakened.[25]

This concern was also mentioned by several participants in the House's floor debates.

> Depositors' funds in a bank doing business with a subsidiary business can be threatened because of the extension of unwise credit to the nonbanking subsidiary. Some of our largest banks in the 1920's were guilty of this type of activity, which caused detriment to depositors, stockholders, and the public at large.[26]

The debates also raised the specter of unfair competition. Representative Patman, Chairman of the House Banking Committee stated as one of the factors requiring closing of the one bank holding company loophole the threat of "[l]oan discrimination of banks in favor of enterprises owned by the holding company and against companies which compete with subsidiaries of the holding company."[27] Richard W. McLaren, then Assistant Attorney General in charge of the Antitrust Division, testified before the Senate Committee considering one bank holding company legislation on this subject:

> The economic power enjoyed by banks is substantially enhanced by the fact that commercial banking markets are local markets for most customers. Competitive alternatives in local markets are few, and entry of new competitors is frequently restricted by legislative provisions or regulatory action. For substantial classes of financial customers in such markets, unable to journey conveniently and economically to distant metropolitan areas, local banks can be the sole suppliers of the services needed.
>
> Bank expansion in other areas permits the carryover of economic power into such endeavors. There is, of course, the obvious danger of overt reciprocity or tying arrangements, as well as general favoritism of bank affiliates, particularly in times of tight money. Also, and perhaps more important in terms of the need for present legislation, there are dangers which are of a more structural nature—adverse competitive effects that would tend to develop naturally without actual overt use of the economic power carried over from the banking sphere.
>
> I refer to a voluntary form of reciprocity or tie-in effect, where a potential borrower may independently decide that, just because he might possibly be under watch, it is in his best interest to patronize bank-affiliated enterprises in the hope of improving his chances of obtaining credit from the bank on favorable terms, or indeed at all.
>
> This can be illustrated by an example. A potential loan applicant might voluntarily place his casualty insurance business with a bank-affiliated insurer in hopes of improving his chances for a mortgage loan on the insured property on favorable terms. This would have the same effect as a coercive tie-in. Competition in the tied product, insurance, would be lessened to the extent that customers no longer purchased it entirely on its own economic merit. One such merger might well trigger others and, as a pattern of such bank-insurance affiliations developed, market foreclosure in the tied field would become more and more serious.
>
> Such voluntary tying or tying effect, as we called it in a recent case, is the product of market structure —not misconduct.
>
> This structural problem is intensified because present antitrust remedies appear inadequate to deal directly with it. There simply is no illegal practice or conduct for a court to enjoin. Hence, we must concentrate on avoiding a structure which gives rise to such effects.[28]

In his testimony at the Senate hearings, Federal Deposit Insurance Corporation Chairman Frank Wille cited both un-

---

[24] H.R. Rep. No. 1747, 91st Cong., 2d Sess. 11-12 (1970); *see,* 115 *Cong. Rec.* 32890, (1969) (remarks of Mr. Smith, member of the House Rules Committee in support of a resolution regarding House debate of one bank holding company legislation).

[25] *Hearings on H.R. 6778 Before the House Comm. on Banking and Currency,* 91st Cong., 1st Sess. at 197 (1969).

[26] 115 *Cong. Rec.* 32891 (1969) (remarks of Rep. Bennet, member of the House Rules Committee). *See also, id.* at 32903 (remarks of Rep. Moorhead, member of the House Banking Committee).

[27] *Id.* at 32893 (remarks of Rep. Patman). *See also, id.* at 38291 (remarks of Rep. Bennet); *id.* at 32903 (remarks of Rep. Moorhead).

[28] *One Bank Holding Company Legislation of 1970, Hearings Be-*

fair competition and concentration of economic resources as reasons for one bank holding company legislation:

> The Federal Deposit Insurance Corporation believes that the activities of one-bank holding companies should be brought promptly under effective regulatory control at the Federal level in order to prevent an unhealthy concentration of the nation's economic resources and to control possible anticompetitive practices in the allocation of credit and financial services within the nation's economy.[29]

The possibility of economic concentration received wide attention in the deliberations leading up to the enactment of the Amendments. In a statement accompanying the administration's version of a bill to regulate one bank holding companies, the President said:

> Left unchecked, the trend toward the combining of banking and business could lead to the formation of a relatively small number of power centers dominating the American economy. This must not be permitted to happen; it would be bad for banking, bad for business, and bad for borrowers and consumers.
>
> The strength of our economic system is rooted in diversity and free competition; the strength of our banking system depends largely on its independence. Banking must not dominate commerce or be dominated by it.[30]

The Conference report accompanying the bill which was enacted into the 1970 Amendments also discussed the dangers of undue concentration:

> The danger of undue concentration of economic resources and power is one of the factors which led to the enactment of this legislation, and constitutes a significant threat to the continued healthy evolution of our free economy. American trade has always operated on the principle that relationships between businessmen, large and small, should be founded on economic merit rather than monopoly power. Our national policies of limited government regulation and interference in trade and commerce, however, do make it possible for undue concentrations of resources and ecomonic power to override fundamental fairness and economic merit when responding to the profit motive. This possibility is enhanced when concentrations of power are centered about money, credit and other financial areas, the common denominators of the economy. The dangers may be more pronounced where resources are more easily capable of being marshalled, or where the course of business is likely to lead to the constant realization of the existence of power by buyers and sellers in the marketplace.[31]

fore the Committee on Banking and Currency, United States Senate (hereinafter, *Senate Hearings);* 91st Cong. 2nd Sess., 1970, pp. 239-40. *See also,* Mr. McLaren's remarks before the House Committee in *The Bank Holding Company Act Amendments, Hearings before the Committee on Banking and Currency, House of Representatives* (hereinafter, *House Hearings),* 91st Cong., 1st Sess. (1969) pp. 91-92

[29] *Senate Hearings,* p. 172.

[30] H.R. Rep. No. 1747, to accompany H.R. 6778 (Conference Report), 91st Cong., 2nd Sess., (1970) pp. 11-12.

[31] *Id.* at 17.

Aside from general discussion on the floor of the House of the dangers of concentration at which the Amendments were aimed,[32] much concern was expressed over the potential threat to the economy of the rumored merger of four of the largest banks in New York and four of the nation's largest insurance companies, including this statement by Chairman Patman during the House debate:

> In addition, serious questions were raised by several witnesses during our hearings on H.R. 6778, including leading economists, concerning the tremendous economic power that would be created by the concentration of giant insurance companies and large banks under a single holding company umbrella. The assets of commercial banks and insurance companies comprise most of the assets available for use by all the institutional investors in the United States. Insurance companies and banks combined control roughly $865 billion, of 77.2 percent of the $1.1 trillion of institutional investors in the American economy. Commercial banks alone control $646 billion, or 57.7 percent of this total. Various news media have indicated possible mergers, through the holding company device, of several of the largest commercial banks and largest insurance companies in the country. One such merger was dropped last winter after the Justice Department brought suit. However, we cannot rely in the long run on such administrative action. We should legislatively prohibit such massive concentrations of economic power. There is no justification for them. By permitting a combination of banks and insurance companies, a tremendous concentration of financial resources would be attained to the detriment of the public interest.[33]

* * * * * * * * * * *

To summarize, one of the primary goals of banking legislation since 1933 has been the separation of banking from other areas of commerce. The Glass-Steagall Act was enacted in reaction to the abuses of banks and their securities affiliates in participating in the speculative fervor of the 1920's which led to the stock market crash in 1929. The Act effectively ended bank participation in the securities industry for many years.

By 1956, the phenomenon of bank holding companies engaged in businesses other than banking was in part responsible for the enactment of the Bank Holding Company Act of 1956. Behind its provisions separating commerce and banking were concerns that a combination of the two would unnecessarily jeopardize the funds of depositors and lead to unfair competition with nonbanking enterprises.

In addition to dealing with the two concerns discussed above, the 1970 Amendments were passed to prevent the undue concentration of resources which was feared might result from the discovery by the nation's largest banks of the one-bank holding company loophole in the 1960's.

[32] 115 *Cong. Rec.* 32893, November 4, 1969 (remarks of Rep. Patman). *See also, id.* at 32891 November 4, 1969 (remarks of Rep. Bennet); *id.* at 32903 (remarks of Rep. Moorhead).

[33] *Id.* at 32897.

Appendix IIA

[Letterhead of The Administrator of National Banks]
November 11, 1974

[Addressee deleted]

Dear

This is in response to your letter of August 14, 1974, and to earlier correspondence dated March 18, 1974 from [name deleted] of [name deleted] to which we replied on April 19.

[Name deleted], a subsidiary of [name deleted], Inc., requests permission to form an operating subsidiary pursuant to Interpretive Ruling 7.7376. The activities of the proposed subsidiary are described as follows:

1—The subsidiary will manage the business affairs of First [name deleted], a small business investment company licensed by the Small Business Administration and wholly owned by the bank. Personnel now employed by [name deleted] will be transferred to the proposed subsidiary, but [name deleted] will continue to have its own board of directors.

2—The subsidiary will provide financial counselling services, including advice and counselling regarding appropriate forms of financing, and will collect fees for such services, except that no fee will be collected from a customer for counselling related to that part of a financing provided by any direct or indirect subsidiary of the holding company.

3—The subsidiary will provide financial analysis and advice to customers in connection with acquisitions, mergers and reorganizations.

4—The subsidiary will not perform legal, accounting, insurance or real estate brokerage services.

Financial counselling has long been an integral part of the business of banking. Not only do individual customers frequently seek bank advice regarding their financial affairs, but business enterprises also need counsel on a wide range of matters relating to the capitalization and financial structure of their operations. Since loan officers, who have traditionally been the source of financial counselling to individuals, may not possess the necessary sophistication to advise corporations on their financial requirements, it is logical that a bank would want to assemble a group of specialists in corporate finance to fill this need. Indeed, many large banks have organized corporate finance departments.

Financial counselling may take a variety of forms. For the moment, [name deleted] intends to provide customers with financial counselling services on a long-term basis pursuant to contracts calling for a specified number of hours of counselling per month at a fixed rate. Customers not under financial counselling contracts will be able to purchase similar advice for specific projects. In both cases, the advice rendered will cover the whole range of financial problems that businesses must deal with from time to time.

The subsidiary's services will also include advising customers regarding appropriate types of financing. These services will include an in-depth review of the customer's current financial condition and future needs, following which the subsidiary will prepare a detailed plan of financing suitable for the customer (which may consist of debt securities, equity securities or a combination thereof) based upon conditions in the financial market and the types of lenders most likely to be interested in providing the suggested financing (e.g., insurance companies, pension plans, SBIC's, trust funds, etc.).

With respect to the preparation of detailed plans of financing for business customers, the bank should understand that its activities in this area could bring the subsidiary close to the borderline between the permissible activity of financial counselling and the business of investment banking. This could occur if the subsidiary undertook to locate a purchaser of a client's securities, or assisted materially in the negotiations between the client and the purchaser, or charged its client a fee contingent upon successful placement of the securities by the bank. Under section 21 of the Glass-Steagall Act, 12 U.S.C. 378, banks may not, with certain exceptions, engage in the business of issuing, underwriting, selling or distributing securities. The possibility of a violation of this statute by the bank's new subsidiary is increased by the fact that at least one officer of the subsidiary was formerly employed by a venture capital firm in New York City. We must caution therefore that the operations of the subsidiary be confined strictly to those set forth above, namely, the rendering of financial advice only. Thus, the bank will not be permitted to participate in any significant way in negotiations between its client and prospective purchasers of equity or debt issues, and may not charge a fee contingent upon the successful placement of securities. The extent to which the bank contacts prospective purchasers is a matter we will leave to bank counsel, but as a general matter we do not believe it would be inconsistent with the Glass-Steagall Act if the bank, after making preliminary inquiries of potential purchasers, furnished its customer with the names of possible investors with whom the customer could then undertake negotations on its own.

Very truly yours,

/s/ J.D. Gwin

John D. Gwin
Deputy Comptroller of the Currency

Appendix IIB

[Letterhead of The Administrator of National Banks]

January 15, 1975

[Addressee deleted]

This is in response to your letter of September 24, 1974, with reference to a proposal from [name deleted].

The Proposal

The bank proposes to organize a new division, [name deleted] Finance Company, to provide financial consulting advice to its corporate customers. This service will initially assist a client in determining his long term financial objectives. Alternative plans of attaining these objectives will then be devised and after a selection is made, the bank, through its new division, will assist in the implementation.

In the event that a client decides to issue debt or equity securities, the bank will, in the case of a public offering, help the client in choosing and dealing with an investment banker. In the case of a private placement, the bank will advise the client of possible sources of capital and assist in preparing a presentation to such sources, including the drafting of an offering memorandum and providing the necessary financial information.

If the client decides on a merger, the new division will advise and assist the client in negotiations with the other party.

Agreements between the new division and its client will provide for:

(a) Payment of fees for services rendered, based upon the time spent or the results accomplished, or both; and

(b) Permit a complete interchange of information between the division and the bank's loan and credit departments with regard to any division client who is or may become a borrower of the bank.

Discussion

Financial counselling has long been an integral part of the business of banking. Not only do individual customers frequently seek bank advice regarding their personal finances, but business enterprises also need counsel on a wide range of matters relating to the capitalization and financial structure of their operations. Since loan officers, who have traditionally been the source of financial counselling to individuals, may not possess the necessary sophistication to advise corporations on their financial requirements, it is logical that a bank would want to assemble a group of specialists in corporate finance to fill this need. Indeed, many large banks have organized corporate finance departments.

Because financial counselling is a general concept, further inquiry is necessary to determine the specific activities that come under this heading. The purpose of this inquiry is to establish which activities are proper for commercial bankers and which are reserved to investment bankers under section 21 of the Glass Steagall Act. Cf., *Investment Company Institute* v. *Camp,* 401 U.S. 617, 629 (1971).

First, we think that Glass Steagall cannot be read as prohibiting commercial bankers from performing all the activities that investment bankers perform. Since both commercial and investment bankers are in the business of furnishing financial advice, there will inevitably be some overlap. In addition, section 21 of Glass Steagall bars commercial banks from only four specific areas: issuing, underwriting, selling or distributing securities. Activities which fall short of these four areas and which are also incidental to a commercial bank's function are therefore open to commercial banks.

For example, we feel that assisting a client in determining his long term financial objectives is not only well within what bankers have done in the past and are expected to do by their corporate customers, but also far short of anything Glass Steagall intended to prohibit. Preparing alternative routes for achieving these objectives and furnishing advice on the execution of a memorandum describing the alternative selected, are natural adjuncts to this kind of financial counselling. None of these activities constitutes issuing, underwriting, selling or distributing securities within the Glass Steagall Act.

On the other hand, underwriting an issue of securities is clearly off-limits to commercial banks. This means that a bank may not extend a firm commitment to purchase an issue with a view to selling the same, nor may a bank promise only its "best efforts" to market an issue. These activities rest at the heart of the business known as investment banking and undoubtedly constitute a proscribed underwriting, selling or distribution of securities.

In the twilight zone lies the degree to which a bank may solicit purchasers for a client's private placement, the extent to which the bank may participate in the negotiations between buyer and seller, and the fee that the bank may charge its client.

With regard to the bank's role in seeking investors to purchase a new issue, we think the bank is free to pass on to its client the names of prospective purchasers who in the bank's judgment may be interested in making an investment. This kind of information comes to a bank every day in the course of its normal business operations. We also would not object if the bank made preliminary inquiries of several investors to determine their interest in the new issue.

This does not mean, however, that the bank can participate in the actual negotiations between its client and the prospective purchaser. Inevitably, a banker who engages in negotiations of this sort ends up acting as middleman trying to bring buyer and seller together. It is precisely this role that lies at the heart of the investment banking business. Caresso, *Investment Banking in America,* ix, xi, 1, 9, 13 (1970). A banker who participates to any substantial degree in the direct negotiations between client and purchaser may well be engaged in underwriting, selling or distributing securities in violation of the Glass Steagall Act.

With respect to fees, we think the bank cannot, consistent with the above mentioned ban on "best efforts" underwriting, charge a fee contingent upon the successful placement of a private offering, since the levying of such a fee is a strong incentive for the bank to locate a purchaser with whom a deal can be made. Therefore, fees will have to be based on time expended or some criterion other than the success of the placement.

Raising capital by issuing securities can be accomplished in myriad ways. See, for example, the various methods listed in *United States* v. *Morgan,* 118 F. Supp. 621, 651 (S.D.N.Y. 1953). Beyond the guidelines set forth above, it is impossible for us to define what the role of the bank should be in each case. The degree to which a bank should become involved in direct negotiations leading to a merger between its client and another party, where new stock will be issued, is another question to which this letter is not addressed. In such situations, bank counsel must guide the bank past the shoals of the Glass Steagall Act. In the meantime, we ask that the bank follow the guidelines set out in this letter when judging the propriety of its activities. We will be happy to discuss with bank counsel any aspect of this letter.

Very truly yours,

/s/ J. T. Watson

Justin T. Watson
Deputy Comptroller of the Currency

Appendix III

Bank Term Loan Syndications

This announcement appears as a matter of record only.

OXIRANE

$232,800,000
Project Financing

Agent and Manager
CHEMICAL BANK

Funds Provided By
CHEMICAL BANK
Bank of America N.T. & S.A. • The Bank of New York
The Bank of Nova Scotia • Security Pacific National Bank
Texas Commerce Bank National Association • Irving Trust Company
Bank of Montreal (California) • European-American Bank and Trust Company
Marine Midland Bank • National Bank of Detroit
Republic National Bank of Dallas • Toronto Dominion Bank of California
Bank of the Southwest • First City National Bank of Houston • California First Bank
The Bank of Tokyo Trust Company • Dresdner Bank AG (Los Angeles Branch)
Wells Fargo Bank N.A. • Houston National Bank

Source: *WSJ*, January 15, 1976, p. 20

This announcement appears as a matter of record.

$67,000,000

Production Payment Financing for

The Pittsburg & Midway Coal Mining Company

a wholly-owned subsidiary of

Gulf Oil Corporation

From coal production.

Arranged by

CONTINENTAL BANK

Funds provided by

Continental Bank
Continental Illinois National
Bank and Trust Company of Chicago

Bank of America NT & SA	Morgan Guaranty Trust Company of New York
Philadelphia National Bank	Pittsburgh National Bank

First National Bank of Denver

Source: *WSJ*, January 7, 1976, p. 21

$350,000,000

Mobil Oil Corporation

5-year production payment

FINANCING MANAGED BY:

Morgan Guaranty Trust Company of New York

FUNDS PROVIDED BY:

Morgan Guaranty Trust Company of New York
First National City Bank

The Chase Manhattan Bank, n.a.

Bank of America nt & sa
Chemical Bank
Manufacturers Hanover Trust Company

Bankers Trust Company

The Bank of New York
The Bank of Nova Scotia - new york agency
Continental Illinois National Bank and Trust Company of Chicago
First City National Bank of Houston
First National Bank in Dallas
The First National Bank of Boston
First Pennsylvania Bank, n.a.
Irving Trust Company
Marine Midland Bank
Mellon Bank, n.a.
National Bank of Detroit
Republic National Bank of Dallas
The Royal Bank of Canada
Security Pacific National Bank
Texas Commerce Bank national association
Toronto Dominion Bank - new york agency
United California Bank
United States Trust Company of New York

Source: *WSJ*, February 26, 1976, p. 22

This announcement appears as a matter of record only.

The Kingdom of Thailand

U.S. $100,000,000

Five Year Term Loan

Provided by

Manufacturers Hanover Trust Company
Bank of America National Trust & Savings Association   Bank of Montreal *Singapore Branch*
Crocker National Bank   Union Bank of Switzerland *London Branch*
The Hongkong and Shanghai Banking Corporation
Standard Chartered Bank Limited
Bangkok Bank Limited   Thai Farmers Bank Limited *London Branch*
Bankers Trust Company   The Bank of Tokyo Trust Company
Chase Asia Ltd.   Chemical Bank   Citibank, N.A.
Commerzbank Aktiengesellschaft   Compagnie Financière de la Deutsche Bank AG
Dresdner (South East Asia) Limited—*Dresdner Bank Group*   The Mitsui Bank of California
Banque Française du Commerce Extérieur

Arranged by

Manufacturers Hanover Limited

March, 1976

Source: *WSJ,* March 26, 1976, p. 18

93-031 O - 77 - 17

This announcement appears as a matter of record only

Bank Sanaye Iran

US $40,000,000

Five-Year Term Loan

Arranged by

Iran Overseas Investment Bank Limited (Iranvest)

Managed and Provided by

Compagnie Financière de la Deutsche Bank AG
Société Générale
The Chase Manhattan Bank, N.A.
Iran Overseas Investment Bank Limited
Wells Fargo Bank N.A.
Crocker National Bank
Rabomerica International Bank NV
International Mexican Bank Limited
-Intermex-

Marine Midland Bank
Bayerische Vereinsbank International SA
Commerzbank AktienGesellschaft
Manufacturers Hanover Trust Company
Bankers Trust Company
Manufacturers Hanover Banque Nordique
Banque Commerciale pour l'Europe du Nord
(Eurobank)

Agent Bank

Iran Overseas Investment Bank Limited (Iranvest)

Source: *WSJ*, March 12, 1976, p. 18

Appendix IV

Excerpt from Loan Agreement Between Downe Communication, Inc. and Bank of New York and First National City Bank

13. *Negative Covenants.* So long as the Company may borrow hereunder and until payment in full of the Notes and the Term Loan Notes and performance of all other obligations of the Company hereunder, without the written consent of the Banks, the Company will not:

(a) *Borrowing.* Create, incur, assume or suffer to exist any liability for borrowed money, or permit any Subsidiary so to do, except (i) indebtedness to the Banks, (ii) indebtedness of the Company or any Subsidiary secured by mortgages, encumbrances or liens permitted by subparagraph 13(b) hereof, (iii) indebtedness for borrowed money existing on December 31, 1971 as set forth on Schedule 9 hereto, and (iv) letters of credit and discounted notes as set forth on Schedule 10 hereto.

(b) *Mortgages and Pledges.* Create, incur, assume or suffer to exist any mortgage, pledge, lien or other encumbrance of any kind (including a charge upon property purchased under conditional sales or other title retention agreements) upon, or any security interest in, any of its property or assets, whether now owned or hereafter acquired, or permit any Subsidiary so to do, except (i) liens for taxes not delinquent or being contested in good faith and by appropriate proceedings, (ii) liens in connection with workmen's compensation, unemployment insurance or other social security obligations, (iii) deposits or pledges to secure bids, tenders, contracts (other than contracts for the payment of money), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the ordinary course of business, (iv) mechanics', workmen's, materialmen's or other like liens arising in the ordinary course of business with respect to obligations which are not due due or which are being contested in good faith, (v) the pledge being made pursuant to the Pledge Agreement, and (vi) those mortgages, pledges, liens and encumbrances set forth on Schedule 7 hereto or any refinancings (up to the same amount) thereof.

(c) *Merger, Acquisition or Sale of Assets.* Enter into any merger or consolidation or acquire all or substantially all the assets of any person, firm, joint venture or corporation, or sell, lease, or otherwise dispose of any of its assets except in the ordinary course of its business, or permit any Subsidiary so to do.

(d) *Loans and Investments.* Make loans or advances to or investments in any person, firm, joint venture or corporation, or permit any Subsidiary so to do, except (i) loans existing on December 31, 1971 as set forth on Schedule 11 hereto, (ii) purchases of direct obligations of the United States of America or any agency thereof, certificates of deposit or acceptances of banks or trust companies having total assets in excess of $1,000,000,000, or commercial paper rated prime by a nationally recognized rating service provided that none of the foregoing shall have maturities in excess of one year at the date of the purchase thereof; (iii) loans or advances to or investments in a presently existing Subsidiary and, to the extent consented to by the Banks, any new Subsidiary; and (iv) investments represented by the securities of other companies being pledged in accordance with the Pledge Agreement.

(e) *Contingent Liabilities.* Assume, guarantee, endorse, contingently agree to purchase or otherwise become liable upon the obligation of any person, firm, joint venture or corporation, or permit any Subsidiary so to do, except (i) by the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business and (ii) those contingent liabilities set forth on Schedule 12 hereto.

(f) *Capital Expenditures.* Make any capital expenditures, or permit any Subsidiary so to do, in any one fiscal year exceeding in the aggregate for the Company and the Subsidiaries $600,000.

(g) *Dividends and Purchase of Stock.* Declare any dividends (other than dividends payable in capital stock of the Company) on any shares of any class of its capital stock, or apply any of its property or assets to the purchase, redemption or other retirement of, or set apart any sum for the payment of any dividends on, or for the purchase, redemption or other retirement of, or make any other distribution by reduction of capital or otherwise in respect of, any shares of any class of capital stock of the Company, or permit any Subsidiary (all of whose outstanding shares are not owned by the Company or another Subsidiary) so to do, or permit any Subsidiary to purchase or acquire, any shares of any class of capital stock of the Company.

(h) *Sale and Leaseback.* Directly or indirectly enter into any arrangement whereby the Company or any Subsidiary shall sell or transfer all or any substantial part of its fixed assets then owned by it and shall thereupon or within one year thereafter rent or lease the assets so sold or transferred.

(i) *Obligations as Lessee.* Enter into any agreements as lessee of any tangible or intangible property, whether real property, machinery, equipment, personal property or fixtures or permit any Subsidiary so to do, if the aggregate of all rental payments by the Company and the Subsidiaries shall exceed an annual rate of $2,100,000.

(j) *Stock of Subsidiaries.* Sell or otherwise dispose of any shares of capital stock of any Subsidiary (except in connection with a merger or consolidation, to the extent permitted under this Agreement, of any Subsidiary into the Company or into another Subsidiary or the dissolution of any Subsidiary) or permit any Subsidiary to issue any additional shares of its capital stock except pro rata to its stockholders.

(k) *Dissolution, etc.* Dissolve or liquidate or permit any Subsidiary so to do.

(l) *New Business.* Engage in any business, or permit any Subsidiary to engage in any business, not of the same general types now conducted by it. The sale of additional products by mail order, including the sale of additional types of insurance, shall not, for the purposes of this Agreement, be deemed a new business.

(m) *Advertising.* Accept or permit any Subsidiary to accept securities of others in payment for advertising.

(n) *Liabilities of Subsidiaries.* Permit any Subsidiary to have any liabilities except (i) liabilities in the ordinary course of business to the Company or any other Subsidiary, (ii) liabilities for the payment of borrowed money to the Company, (iii) current liabilities to others incurred or accrued in the ordinary course of business and (iv) liabilities otherwise permitted under this Agreement.

Source: Form 8-K filed by Downe Communications, Inc. with the Securities and Exchange Commission, May 12, 1972.

Appendix V

Foreign Banks with Securities Affiliate in U.S. as of December 31, 1974

Foreign Bank	Securities Affiliate	Domestic Banking Operations (if any)
Algemene Bank Nederland NV	25% interest in ABD Securities Corp.	New York rep. & branch; Chicago branch; San Francisco rep.
Amsterdam-Rotterdam Bank NV	Interest in SoGen-Swiss International.	One of six shareholders in European-American Bank & Trust (N.Y.), European-American Corp. (Cal.) one of 7 in European Banking Co. Ltd., branch in Chig., agency in L.A.
Banca Commerciale Italiana	Minority interest in Model, Roland & Co.	One of seven in European Banking Co., Ltd., branch in Chig.
Banco Ambrosiano	75% of Ultrafin International Corp.	(None)
Banca Di Roma	33% of Europartners Securities Corp.	Banco di Roma (Chicago); San Francisco Agency, New York Agency Rep.
Bank Leumi Le-Israel B.M.	Leumi Securities Corp. (Israel Secs.)	Branches in N.Y., Miami Rep.
Bank of Tokyo, Ltd.	5% of Nomura Securities Int., Inc.	Rep. in Chicago, majority of Bank of Tokyo of California, 4.95% of Chicago Tokyo Bank. Majority of Bank of Tokyo Trust Co. (N.Y.) agency in N.Y.; Portland branch, Seattle branch, Houston Rep.
Banque de Bruxelles	25% of ABD Securities Corp.	Representatives in New York.
Banque de L'Indochine	50% of Suez American Corp.	Branch in New York.
Banque Lambert	Interest in New Court Securities Corp.	(None)
Banque Rothschild	Interest in New Court Securities Corp.	(None)
Bank Julius Baer & Co., Ltd.	Baer Securities Corp.	Baer American Credit Corp., Ltd. (international finance corp.) (N.Y.)
Bayerische Hypotheken-und-Wechsel-Bank	25% of ABD Securities Corp.	(None)
Commerzbank AG	33% of Europartners Securities Corp.	Branch in Chicago and New York

Foreign Bank	Securities Affiliate	Domestic Banking Operations (if any)
Compagnie Financiere de Paris et des Pays-Bas	20% interest in Becker and Warbur-Paribas Group, Inc., holding co. for: (a) Warburg Paribas Becker, Inc.; (b) A.G. Becker & Co., Inc.; (c) Becker Securities Corp.	(None)
Compagnie Financiere de Suez	50% of Suez American Corp.	New York representative
Credit Lyonnais	33% of Europartners Securities Corp.	New York Branch and representative
Daiwa Bank Ltd.	6.9% of New Japan Securities Int., Inc.; 2.2% of Nomura Securities International Inc.	New York and Los Angeles agencies
Deutsche Bank AG	50% of UBS-DB Corp.	One of six in European American Bank & Trust and one of seven in European American Bank Co., Ltd.
Dresdner Bank AG	25% of ABD Securities Corp.	Chicago and New York branch; L.A. agency.
Robert Fleming & Co., Ltd	Robert Fleming, Inc.	(None)
Fuji Bank Ltd.	2.3% of Nikko Securities International Inc.; 8.5% of Yamaichi International	L.A. and New York agency; Chicago Representative, Fuji Bank and Trust Company (N.Y.).
Hill Samuel & Co., Ltd.	Hill Samuel Securities Corp.	(None)
Industrial Bank of Japan	3.4% of Daiwa Securities Co., Ltd.; 9.4% of New Japan Securities International Inc.; 2.3% of Nikko Securities International, Inc.; 2.1% of Nomura Securities International, Inc.; 8.5% of Yamaachi International Inc.	New York and Los Angeles agency; Industrial Bank of Japan Trust Co. (N.Y.).
Kleinwort Benson Ltd.	Kleinwort Benson, Inc.	(None)
Kredietbank NV	Partial interest in Ultrafin International, Inc.	New York representative.
Long-Term Credit Bank of Japan Ltd.	3.4% of Daiwa Securities Inc.	New York branch.
Mitsubishi Bank Ltd.	2.5% of Nikko Securities International, Inc.; 8.5% of Yamaichi International, Inc.	Los Angeles agency; Chicago representative; Mitsubishi Bank of California

Foreign Bank	Securities Affiliate	Domestic Banking Operations (if any)
Mitsubishi Trust and Banking Corp., Ltd.	2.3% of Nikko Securities International, Inc.	New York agency
Pierson, Heldring & Pierson	Interest in New Court Securities Corp.	(None)
N.M. Rothschild & Sons	Interest in New Court Securities Corp.	(None)
Sanwa Bank Ltd.	2.1% of Nomura Securities International, Inc.	Sanwa Bank Ltd. (Cal.); San Francisco, and New York agencies; Chicago branch.
Schroders Ltd.	Schroder Naess & Thomas Division (investment counselor) of Schroders, Inc.	Schroder Trust Co. (New York)
Societe Generale	Majority of interest in SoGen-Swiss International Corp.	One of six in European-American Bank & Trust (N.Y.); one of seven in European-American Banking Co. Ltd. (Chicago Branch).
Societe Generale Alsacienne de Banque	Interest in SoGen-Swiss International Corp.	(None)
Sumitomo Bank Ltd.	4.2% of Daiwa Securities, Inc.	San Francisco agency; Chicago Branch; New York agency; Sumitomo Bank of California; minority interest in Central Pacific Bank, Honolulu.
Sumitomo Trust and Banking Co., Ltd.	3.5% of Daiwa Securities, Inc.; 9% of New Japan Securities International Inc.	New York representative
Swiss Bank Corp.	Basle Securities Corp.	(None)
Swiss Credit Bank	Swiss-American Securities, Inc.; interest in SoGen-Swiss International Corp.	Los Angeles agency and representative; New York branch
Tokai Bank Ltd.	2.3% of Nikko Securities International, Inc.	New York agency; Los Angeles agency, Tokai Bank of California
Union Bank of Switzerland	50% of UBS-DB Corp.	San Francisco representative; Chicago representative; New York branch representative.
S.G. Warburg & Co., Ltd.	20% in the Becker and Warburg-Paribas Group, Inc.	

Source: *American Banker* July 31, 1975, pp. 186-89.

Mr. St Germain. Thank you, Mr. O'Brien, for your contribution. It's always welcomed.

I note in your testimony you focus on upholding the principle of separate banking and commerce in this country, in the United States, yet I note there you say:

There may be practical consideration which will lead the Congress to temper the potentially disruptive impact of a sound but hard principle with certain modifications.

What do you see as the problems in section 8 as it is currently written, and what suggestions would you have as far as modifying this section is concerned?

Mr. O'Brien. I think the primary point, Mr. Chairman, is that we believe that it is timely to indicate precisely in the bill the need for separation of the securities arm from the commercial arm. This is the time to handle it, before the problem becomes larger, more difficult to handle 2 years, 5 years hence.

I think that is the primary consideration that we are bothered by——

Mr. St Germain. What modifications would you suggest in section 8? You say perhaps it should be tempered.

Mr. O'Brien. I think what would have to be done is some consideration should be given to a grace period which is considered here. I think there is a grace period which is provided for, I think about 10 years or so, that is reasonable. With respect to that, that would be our position.

Mr. St Germain. You heard Governor Gardner testify that the Fed would be suggesting or actually it did this morning suggest a permanent grandfathering of certain securities operations of foreign banks. Were this to be accepted, certainly we would want to know, we the Congress, whether the regulatory framework would be adequate.

As I asked Governor Gardner earlier, I voiced a little skepticism about the oversight being exercised by the Fed alone, and we inquired and asked him to inquire of his colleagues at the Board whether it wouldn't be wise to include the SEC in the regulatory framework for the securities firms if they were, in fact, to be grandfathered.

Would you have any comment on that?

Mr. O'Brien. Mr. Chairman, I think the basic principle which I would like to rely upon is one of comparable and equal regulation. The SEC has had 40 years or so of experience in dealing with the securities activities of the securities business per se, the underwriting and investment banking and brokerage business. As such, they are obviously well qualified to handle that subject.

I don't think, as the appendix indicates, that there is the same level of experience or perhaps even desire on the part of the bank regulatory side. I did hear Governor Gardner's comment. You have stated and I would restate, however, our basic principle with respect to the separation between the securities side and the banking side.

Mr. St Germain. As you know, and as I mentioned earlier to Governor Gardner, the specter of retaliation was rampant last year when we considered this legislation. Many witnesses testified that there would be retaliation against U.S. commercial investment bankers abroad. They gave this as a justification or a reason for modifying the legislation.

Do you consider, as a representative from the securities industry, and therefore, the investment bankers, do you consider that this specter of retaliation or this threat of retaliation is real, and could you give us some indication of the extent of U.S. investment banking operations abroad as a means of measuring the potential for retaliation?

Mr. O'BRIEN. When I was talking with my colleagues yesterday and they were asking me this question as well, I guess I responded in rather colorful language to them that I thought it was an absurd fear. My honest judgment is I don't think that the alleged retaliation is a genuine fear. So I don't hear about it. I don't fear it. I don't have anyone telling me that it is something that we should be concerned about.

Mr. ST GERMAIN. How about the extent of investment banking operations abroad by U.S. firms?

Mr. O'BRIEN. There is, of course, investment banking activity going on. I am not in the position to furnish you with statistics. Of course, the United States is still the financial center of the world because of our markets, but it is a fact that certain firms within the United States are operating abroad, and sometimes operating in a variety of ways in a variety of countries, and I might add, operating with local banks and others abroad.

It is also a fact, however, I think, that principal investment banking business in terms of volume—and I do not have statistics for you nor do I know if I can get them—but I think the principal investment banking business abroad is done by the local banks, the local large banks abroad.

Mr. ST GERMAIN. Domestic banks abroad, in other words?

Mr. O'BRIEN. Yes. The brokerage business, as distinguished from the investment banking business abroad, is a relatively small thing compared to the United States where we have 25 million or 26 million share owners. That is not the case in Europe. So for these reasons I have concluded that I don't think there is a problem in that area.

Mr. ST GERMAIN. In your membership, do you include the investment bankers who do engage in this activity abroad?

Mr. O'BRIEN. Yes. We have a number of members, a relatively small number, but there are members of the association who are international investment bankers operating here and operating abroad and in the Far East.

Mr. ST GERMAIN. Have these members indicated to your association any apprehension about retaliation?

Mr. O'BRIEN. I have not heard this point made to me with respect to retaliation.

Mr. ST GERMAIN. Do they subscribe to your position on this legislation?

Mr. O'BRIEN. The basic thrust of our testimony is, as you know, that there should be the separation of the banking from the securities business. To that there is a clear and strong support by the association starting with the board of directors and the executive committee, and it is subscribed to by the others as well.

Mr. St Germain. Thank you.

Ms. Oakar?

Ms. Oakar. Thank you, Mr. Chairman.

I have one question for both gentlemen.

Do you feel that there is an adequate mix between the private lending activities of the U.S. banks overseas and the U.S. involvement in internatinal lending organizations such as the IMF?

Mr. O'Brien. I am not qualified to answer that question. I don't have the experience.

Ms. Oakar. Perhaps I am not qualified to ask it.

Mr. O'Brien. I don't have the knowledge, and I never will presume to tell you something I am not qualified to tell you. I just don't know the answer.

Ms. Oakar. Mr. Walker?

Mr. Walker. No, nor do I.

Ms. Oakar. I have no other questions.

Thank you, Mr. Chairman.

Mr. St Germain. Thank you.

Mr. Rousselot?

Mr. Rousselot. Mr. O'Brien, we do appreciate your appearance here today.

To follow up on what Chairman St Germain has already mentioned, on page 5 of your statement, you said:

> Foreign affiliated members of your association have argued that this bill could invite foreign governments to retaliate against U.S. commercial and investment bankers abroad.

My question is: Given that the foreign activities of U.S. banks are far more extensive than those of the foreign banks in this country, how would you evaluate that "threat" of foreign retaliation?

Mr. O'Brien. It's very difficult, Mr. Rousselot, for me to evaluate it, for example, to the same degree Governor Gardner could do it. I have an old and basic rule that I generally comment only on areas where I have some, a little experience. As far as commercial banking abroad is concerned, I am obviously not that well qualified.

Mr. Rousselot. Could we, since this is a quote from your statement, could you get some of these foreign affiliated members of your association who have argued this to tell us just how that is going to occur, in their judgment?

Mr. O'Brien. I will be glad to furnish you with something.

Mr. Rousselot. That is the big argument which is being made.

Mr. O'Brien. It may be Mr. Walker would wish to add to that, but if he doesn't I will certainly furnish something.

Mr. Walker. Mr. Rousselot, there is one point that should be made, I think, in connection with this question of retaliation.

The United States has had for 44 years a policy of separation of commercial banking and the securities business, and we believe most of the foreign banks that have come to the United States and set up securities affiliates while also engaging in the banking business did so in the face of this policy and they do so with an awareness that U.S. banks could not do the same thing in the

United States. So, essentially what we are pointing to is that this principle of separation, which does exist in this country, which domestic banks must comply with and which we would seem to be asking, we, or you the Congress, should be asking foreign banks to really play under the same ground rules in this country that our banks do.

Similarly, abroad, I believe domestic banks, I know for a fact securities firms must play under the ground rules that exist abroad, and as a matter of fact, in some cases there are clear discriminations against securities firms abroad.

So in terms of retaliation, it seems somewhat unusual to retaliate against firms doing business abroad when the host country, our country, merely asks that foreign banks do the same thing that domestic banks do.

Mr. ROUSSELOT. As long as we are talking about separation, Mr. O'Brien, I am sure you are well aware that Merrill Lynch has proposed to implement a program which would combine brokerage services with payment of interest on demand deposits and bank card services.

Is it realistic to maintain the traditional separation between banking and commerce in the light of this development?

Mr. O'BRIEN. I believe it is. I have looked at the Merrill Lynch plan, not in depth, and I wasn't present at its creation, but I know a little bit about it and I think it is distinguishable from the commercial banking business, because I think primarily it involves a different relationship between a broker dealer and a client. It flows from the account relationship, and I think to that degree, at least from my analysis, that is a distinguishing feature. I haven't completed or made an exhaustive evaluation but I do think it's distinguishable.

Mr. ROUSSELOT. You don't think this is the foot in the door?

Mr. O'BRIEN. It would seem to me to have one firm, Merrill Lynch, get a foot in the door with 14,500 banks or whatever we have in this country, is, if it is, a very, very small foot.

I think it's primarily geared to providing some services for the investment banking and brokerage client, so I personally am not terribly concerned about it.

Mr. ROUSSELOT. Thank you, Mr. Chairman.

Mr. ST GERMAIN. Thank you, gentlemen.

We want to express our appreciation to you. There may well be some questions from some of the other members who cannot be here this morning that will be submitted to you in writing.

The subcommittee will be in recess until 10 o'clock tomorrow morning, at which time we will hear from further witnesses as listed in the subcommittee notice.

[Whereupon, at 12:10 p.m., the subcommittee recessed, to reconvene Wednesday, July 13, 1977, at 10 a.m.]

INTERNATIONAL BANKING ACT OF 1977

WEDNESDAY, JULY 13, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2128, Rayburn House Office Building, Hon. Fernand J. St Germain (chairman of the subcommittee), presiding.

Present: Representatives St Germain, Annunzio, Hanley, Derrick, Cavanaugh, Rousselot, Brown, Hyde, Hansen, and Leach.

Mr. ST GERMAIN. The subcommittee will come to order.

This morning we continue hearings on H.R. 7325, the International Banking Act of 1977.

We are particularly pleased to welcome to the subcommittee the Honorable Anthony M. Solomon, Under Secretary for Monetary Affairs, Department of the Treasury, and to welcome back Deputy Assistant Secretary of State for Economic and Business Affairs, the Honorable Paul H. Boeker, who last appeared before our subcommittee in connection with our hearings on loans to lesser-developed countries.

As you both know, the subcommittee reported out a bill identical to H.R. 7325 in the 94th Congress. It was subsequently approved by the House on July 29 by voice vote.

We are looking forward to testimony by the Carter administration on this measure. In the 95th Congress it is our hope that we will be able to resolve differences still outstanding, and that at long last an acceptable regulatory measure will be enacted in law.

I think it is important to point out that the longer we are delaying this, the more difficult it will become in the future. With the proliferation and increase in participation by foreign banks in our domestic economy, I feel that it is imperative that we take the steps recommended by the Federal Reserve Board.

Gentlemen, we will first hear from Secretary Solomon.

We will put your entire statement in the record, and you may proceed.

STATEMENT OF HON. ANTHONY M. SOLOMON, UNDER SECRETARY FOR MONETARY AFFAIRS, DEPARTMENT OF THE TREASURY; ACCOMPANIED BY STEPHEN J. FRIEDMAN, DEPUTY ASSISTANT SECRETARY (DESIGNATE) FOR CAPITAL MARKETS

Mr. SOLOMON. Thank you, Mr. Chairman.

It is a pleasure to appear before this subcommittee to present the position of the administration on this proposed legislation. We generally support this legislation with certain modifications that I would suggest.

International banking operations have been growing in recent years, although they are still small in relation to our domestic banking industry. Specifically, while total assets of foreign banks held in the United States have tripled during the past 4 years, rising to $76 billion at the end of 1976, this amount still represented only about 7 percent of the total assets of all domestic banks. In comparison, the total assets held abroad in foreign branches of U.S. banks were almost three times that amount, $220 billion.

Growth in international banking is the financial counterpart of healthy increases in international trade and also reflects desirable reductions in international obstacles to investment. The United States, like our major trading partners, recognizes the importance of this growth to an efficient world economy. In particular, foreign banking operations in the United States have increased competition in the financial services industry here.

We expect international banking operations to expand further in the future. Accordingly, this is an appropriate time for the United States to consider a national policy toward foreign bank operations here.

In determining a national policy we must keep in mind that our regulation of foreign banks may affect foreign government treatment of U.S. banks and other financial institutions operating overseas.

U.S. policy toward foreign direct investment in America reflects the principle that foreign companies, in general, should be accorded the same opportunities and be subject to the same restrictions as domestic businesses. This policy, known as "national treatment," seeks neither to promote nor to discourage foreign investment, but to ensure regulatory equality. Moreover, it is consistent with U.S. treaty obligations governing foreign trade and investment. Accordingly, the basic objective of H.R. 7325, which we support, is to treat foreign banks operating here equally vis-a-vis domestic banks.

Some argue that our policy should reflect reciprocity rather than competitive equality. In this case, reciprocity would permit foreign banks operating here to engage in whatever activities U.S. banks are permitted in selected countries abroad. While reciprocity has a superficial appeal, it would not be desirable for us to adopt it. Such a policy could reduce permissible international banking activities to the lowest common denominator, as countries tighten regulations to achieve strict reciprocity. Furthermore, it could be an administrative nightmare to enforce different sets of rules for different foreign banks operating in this country.

It should be made clear, Mr. Chairman, that the application to foreign banks of restrictions governing domestic banks does not mean that the administration is reaffirming the desirability of any or all of these restrictions. As I am sure this subcommittee is aware, many issues addressed in the foreign bank bill are currently being reviewed by the Congress, the administration and independent regulators.

Indeed, in the areas of this bill dealing with the securities activities of commercial banks, we would prefer that decisions await these reviews. At the very least, my testimony is not meant to prejudge any of this work. In supporting H.R. 7325, we have simply sought to extend the existing regulatory framework, as we find it, to foreign banking.

Our existing laws and regulations covering foreign banks are not balanced. On the one hand, they deny foreign banks certain banking opportunities here. For example, foreign banks are deterred from establishing national banks. In addition, our laws encourage foreign banks to operate branches or agencies, but these operations are unable to obtain Federal deposit insurance.

On the other hand, there is no Federal regulation or supervision of foreign bank branches and agencies, even though almost all domestic banks come under the regulation of either the Federal Reserve, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation.

Mr. Chairman, we support the objective of reducing these disparities of treatment between foreign and domestic banking operations in the United States. We are pleased that the bill will provide foreign banks with new Federal chartering opportunities to establish national banks, and Federal branches and agencies.

At the same time, it also is sensible that H.R. 7325 would subject branches and agencies of foreign banks to Federal regulation comparable to that of domestic banks. In certain respects, the bill recognizes that branches of foreign banks require treatment as a special category of banking institution. For example, since State branching laws are not applicable to interstate branching by foreign banks, the bill employs Federal law to fill the gap.

While offering our general support for H.R. 7325, Mr. Chairman, we recommend several modifications to achieve a greater degree of regulatory equality.

Section 8(a) of the bill applies the Bank Holding Company Act to foreign banks which maintain U.S. branches and agencies. Section 8 also grandfathers nonbanking activities in existence as of December 3, 1974. We recommend moving forward the cutoff date to July 1, 1977. Also, we recommend exempting from the prohibitions of the Bank Holding Company Act those nonbank acquisitions by foreign banks which do not significantly affect the United States. As suggested in Federal Reserve testimony last August, the proposed amendment would:

> Make clear that the nonbanking prohibitions of the Bank Holding Company Act are not meant to prevent foreign banks principally engaged in banking abroad from retaining or acquiring interests in foreign-chartered nonbanking companies that are also principally engaged in business outside the United States.
>
> However, as a corollary, a domestic office of a foreign bank should be required to deal with the domestic operations of a foreign company in which it may have an equity interest on a strictly arms-length basis so as not to give the firm or bank involved an advantage over their respective U.S. competitors.

Generally, the administration believes that the Federal Reserve's proposed amendment would provide greater certainty to foreign banks concerning their nonbank affiliates and is desirable in light of the different regulatory frameworks abroad which permit closer ties between banking and industry.

This amendment is not designed to change the Bank Holding Company Act as currently implemented by regulations of the Federal Reserve Board. It simply gives foreign banks greater certainty about the act's application.

It is desirable to amend the Bank Holding Compay Act in this way for two specific reasons. First, the existing administrative process for exemptions under the act would create considerable uncertainty for foreign banks concerning which foreign nonbanking activities or acquisitions are permissible when they also affect U.S. commerce.

Second, the present version of section 8(a) could be seen as applying the Bank Holding Company Act extraterritorially to prohibit foreign banks located abroad from acquiring or providing assistance to nonbank enterprises abroad.

A second provision of section 8, the proposed treatment of the U.S. securities operations of foreign banks, also concerns us, Mr. Chairman. Specifically, H.R. 7325 proposes that foreign banks now lawfully engaged in securities activities here must terminate these activities by December 31, 1985. However, foreign banks would be permitted beyond 1985 to engage in underwriting securities so long as the securities are sold outside the United States. We recommend that this provision be amended to provide permanent grandfathering for the existing securities operations of foreign banks.

This issue of grandfathering existing securities operations is a difficult one. A responsible argument certainly can be made that, when applying to foreign banks here the principle of separating commercial from investment banking, it produces more uniform treatment to apply the principle both to prospective entrants and to existing firms. However, we believe other considerations outweigh the advantage of such proposed uniformity.

First, divestiture would obviously cause a hardship to the foreign banks involved, and would eliminate a small foreign presence which now may have a procompetitive effect on our large domestic securities industry.

Second, we believe that divestiture would be inequitable to the foreign banks who established themselves here under the rules of the game prevailing at the time. We should also take account of the history of permanent grandfathering that has been applied for domestic banks under the Bank Holding Company Act and also under the McFadden Act. It might be argued that securities activities of domestic banks were not grandfathered in 1933. However, a lack of grandfathering in that case is not a good precedent for the treatment of foreign banks today, because divestiture then was based upon widespread abuses whereas we have no evidence of foreign banks abusing their positions now.

Since I have made my recommendations in regard to permanent grandfathering, I will skip over and turn to the question of section 9.

This is an area where we favor modification, Mr. Chairman. Section 9 would introduce special Federal screening of applications by foreign banks desiring to establish operations within the United States. Specifically, this section would require: First, the Secretary of the Treasury to issue guidelines containing general criteria for the admission of foreign banks; second, Federal and State bank supervisory authorities to solicit the views of the Secretary of State, the Secretary of the Treasury and the Federal Reserve Board before acting on the applications; and third, Federal and State banking authorities to disapprove applications unless foreign banks specifically state that they will comply with U.S. antidiscrimination laws which apply to domestically chartered banks.

Mr. Chairman, we recommend the elimination of section 9 because it would apply to foreign banks only, and would, therefore, be discriminatory. The screening procedures, and Mr. Boeker can speak to this in greater detail, are inconsistent with our policy on foreign investment, and the consultation process as well sets into motion a case-by-case review which again is contrary to our foreign investment policy. We already have a committee on foreign investment established by Executive order which can, in effect, perform the same function.

In regard to this departure from national treatment provisions, we also are concerned by the antidiscrimination laws provision. There is an implication that foreign banking operations were not subject to the law in the past. We have no evidence of nonadherence to U.S. antidiscrimination laws. This applies as well to the antidiscrimination oath, because it singles out foreign banks in a discriminatory way. There are adequate safeguards in existing law, administrative procedures and in other provisions of the proposed legislation.

Now, in regard to another major issue, Mr. Chairman, the question of special deposit insurance. The bill provides for a surety bond or pledge of assets in a way we believe will be unduly onerous, will raise costs for the foreign bank branches and not establish the competitive equality that the overall objective of the bill indicates.

I won't go into technical details, but I understand that the FDIC, in cooperation with the Treasury, believes it is feasible for the foreign bank branches to participate in the Federal deposit insurance fund. There might be some additional requirement of pledging assets, where that would be essential to protect the depositors. We would urge that the FDIC technical people and their proposals on this be consulted, Mr. Chairman.

In regard to interstate branching, the final issue of importance on which we have some suggestions, we propose, as the bill does, that foreign bank branch, agency, and commercial lending operations in existence be permanently grandfathered. It would be appropriate to have July 1, 1977, as the grandfathering date.

We suggest that the State regulatory procedures that apply to domestic State branches be applied to foreign bank State-licensed branches, and the Federal law which applies to domestic Federal branches be applicable to Federally licensed foreign bank branches rather than that the Federal law on branching be applied to both categories of foreign bank branches. This would be both fairer, in our opinion, and would also achieve more exact equality, as is the objective of the bill.

Thank you, Mr. Chairman. That concludes my testimony.

[Mr. Solomon's prepared statement follows:]

STATEMENT OF THE HONORABLE ANTHONY M. SOLOMON
UNDER SECRETARY FOR MONETARY AFFAIRS
U.S. DEPARTMENT OF THE TREASURY
BEFORE THE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

The International Banking Act of 1977 (H.R.7325)

It is a pleasure to appear before this Subcommittee to present the position of the Administration on this proposed legislation. We generally support this legislation with certain modifications that I would suggest.

Growth of International Banking

International banking operations have been growing in recent years, although they are still small in relation to our domestic banking industry. Specifically, while total assets of foreign banks held in the United States have tripled during the past four years, rising to $76 billion at the end of 1976, this amount still represented only about 7% of the total assets of all domestic banks. In comparison, the total assets held abroad in foreign branches of U.S. banks were almost three times that amount, $220 billion.

Growth in international banking is the financial counterpart of healthy increases in international trade and also reflects desirable reductions in international obstacles to investment. The United States, like our major trading partners, recognizes the importance of this growth to an efficient world economy. In particular, foreign banking operations in the United States have increased competition in the financial services industry here.

We expect international banking operations to expand further in the future. Accordingly, this is an appropriate time for the United States to consider a national policy toward foreign bank operations here.

In determining a national policy, we must keep in mind that our regulation of foreign banks may affect foreign government treatment of U.S. banks and other financial institutions operating overseas.

Competitive Equality

U.S. policy toward foreign direct investment in America reflects the principle that foreign companies, in general, should be accorded the same opportunities and be subject to the same restrictions as domestic businesses. This policy, known as "national treatment," seeks neither to promote nor to discourage foreign investment, but to insure regulatory equality. Moreover, it is consistent with U.S. treaty obligations governing foreign trade and investment. Accordingly, the basic objective of H.R.7325, which we support, is to treat foreign banks operating here equally vis-a-vis domestic banks.

Some argue that our policy should reflect reciprocity rather than competitive equality. In this case, reciprocity would permit foreign banks operating here to engage in whatever activities U.S. banks are permitted in selected countries abroad. While reciprocity has a superficial appeal, it would not be desirable for us to adopt it. Such a policy could reduce permissible international banking activities to the lowest common denominator, as countries tighten regulations to achieve strict reciprocity. Furthermore, it could be an administrative nightmare to enforce different sets of rules for different foreign banks operating in this country.

It should be made clear, Mr. Chairman, that the application to foreign banks of restrictions governing domestic banks does not mean that the Administration is reaffirming the desirability of any or all of these restrictions. As I am sure this subcommittee is aware, many issues addressed in the foreign bank bill are currently being reviewed by the Congress, the Administration and independent regulators. Indeed, in the areas of this bill dealing with the securities activities of commercial banks, we would prefer that decisions await these reviews. At the very least, my testimony is not meant to prejudge any of this work. In supporting H.R.7325, we have simply sought to extend the existing regulatory framework, as we find it, to foreign banking.

Existing Law and Elimination of Disparities Therein

Our existing laws and regulations covering foreign banks are not balanced. On the one hand, they deny foreign banks certain banking opportunities here. For example, foreign banks are deterred from establishing national banks. In addition, our laws encourage foreign banks to operate branches or agencies, but these operations are unable to obtain federal deposit insurance.

On the other hand, there is no federal regulation or supervision of foreign bank branches and agencies, even though almost all domestic banks come under the regulation of either the Federal Reserve, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation.

Mr. Chairman, we support the objective of reducing these disparities of treatment between foreign and domestic banking operations in the United States. We are pleased that the bill will provide foreign banks with new federal chartering opportunities to establish national banks, and federal branches and agencies.

At the same time, it also is sensible that H.R.7325 would subject branches and agencies of foreign banks to federal regulation comparable to that of domestic banks. In certain respects, the Bill recognizes that branches of foreign banks require treatment as a special category of banking institution. For example, since state branching laws are not applicable to interstate branching by foreign banks, the Bill employs Federal law to fill the gap.

Proposed Changes in the Bill

While offering our general support for H.R.7325, Mr. Chairman, we recommend several modifications to achieve a greater degree of regulatory equality.

1. Non-Bank Affiliates of Foreign Banks

Section 8(a) of the bill applies the Bank Holding Company Act to foreign banks which maintain U.S. branches and agencies. Section 8 also grandfathers non-banking activities in existence as of December 3, 1974. We recommend moving forward the cut-off date to July 1, 1977. Also, we recommend exempting from the prohibitions of the Bank Holding Company Act those non-bank acquisitions by foreign banks which do not significantly affect the United States. As suggested in Federal Reserve testimony last August, the proposed amendment would

> make clear that the non-banking prohibitions of the Bank Holding Company Act are not meant to prevent foreign banks principally engaged in banking abroad from retaining or acquiring interests in foreign-chartered non-banking companies that are also principally engaged in business outside the United States. ...However,...as a corollary..., a domestic office of a foreign bank should be required to deal with the domestic operations of a foreign company in which it may have an equity interest on a strictly arms-length basis so as not to give the firm or bank involved an advantage over their respective U.S. competitors.

Generally, the Administration believes that the Federal Reserve's proposed amendment would provide greater certainty to foreign banks concerning their non-bank affiliates and is desirable in light of the different regulatory frameworks abroad which permit closer ties between banking and industry.

This amendment is not designed to change the Bank Holding Company Act as currently implemented by regulations of the Federal Reserve Board. It simply gives foreign banks greater certainty about the Act's application.

It is desirable to amend the Bank Holding Company Act in this way for two specific reasons. First, the existing administrative process for exemptions under the Act would create considerable uncertainty for foreign banks concerning which foreign non-banking activities or acquisitions are permissible when they also affect United States commerce. Second, the present version of Section 8(a) could be seen as applying the Bank Holding Company Act extraterritorially to prohibit foreign banks located abroad from acquiring or providing assistance to non-bank enterprises abroad.

2. Grandfathering of Securities Operations

A second provision of Section 8 -- the proposed treatment of the U.S. securities operations of foreign banks -- also concerns us, Mr. Chairman. Specifically, H.R.7325 proposes that foreign banks now lawfully engaged in securities activities here must terminate these activities by December 31, 1985. However, foreign banks would be permitted beyond 1985 to engage in underwriting securities so long as the securities are sold outside the United States. We recommend that this provision be amended to provide permanent grandfathering for the existing securities operations of foreign banks.

This issue of grandfathering existing securities operations is a difficult one. A responsible argument certainly can be made that, when applying to foreign banks here the principle of separating commercial from investment banking, it produces more uniform treatment to apply the principle both to prospective entrants and to existing firms. However, we believe other considerations outweigh the advantage of such proposed uniformity.

First, divestiture would obviously cause a hardship to the foreign banks involved, and would eliminate a small foreign presence which now may have a pro-competitive effect on our large domestic securities industry.

Second, we believe that divestiture would be inequitable to the foreign banks who established themselves here under the rules of the game prevailing at the time. We should also take account of the history of permanent grandfathering that has been applied for domestic banks under the Bank Holding Company Act and also under the McFadden Act. It might be argued that securities activities of domestic banks were not grandfathered in 1933. However, a lack of grandfathering in that case is not a good precedent for the treatment of foreign bankstoday, because divestiture then was based upon widespread abuses whereas we have no evidence of foreign banks abusing their position now.

Third, we feel that our relations with other countries might be damaged as a result of forced divestiture of existing operations of their banks.

These are the disadvantages involved in divestiture. In our judgment, they outweigh the advantages gained from uniformity.

In any case, as you know, Mr. Chairman, the Congress and a number of agencies are in the process of an intensive study of the participation of banks in various aspects in the securities industry. If, as a result of its review of this area, Congress determines that bank securities activities are not in the national interest, Congress of course would not be precluded if it so wished from extending those prohibitions to presently existing securities activities at that time.

3. Special Federal Review of Foreign Bank Applications

I would now like to address, Mr. Chairman, a third basic area in which we favor modification of this bill. Section 9 would introduce special Federal screening of applications by foreign banks desiring to establish operations within the United States. Specifically, this section would require: (1) the Secretary of the Treasury to issue guidelines containing general criteria for the admission of foreign banks; (2) Federal and State bank supervisory authorities to solicit the views of the Secretary of State, the Secretary of the Treasury and the Federal Reserve Board before acting on the applications; and (3) Federal and State banking authorities to disapprove applications unless foreign banks specifically state that they will comply with U.S. anti-discrimination laws which apply to domestically chartered banks.

We strongly recommend the elimination of Section 9, because it would deviate unnecessarily from our overall Federal policy of national treatment. Section 9 would apply to foreign-owned banks only and would establish for these banks new criteria beyond that normally applied to both foreign and domestic banks. In this sense, establishing special guidelines and review procedures for foreign banks operating here would conflict with our traditional policy of neither promoting nor discouraging foreign investment and could set an unfortunate precedent for the establishment of similar procedures for foreign investment in other sectors of our economy. It also could induce other countries to introduce or expand restrictions on American financial activities and investments abroad.

This provision also appears to contradict certain national treatment provisions of treaties of friendship, commerce and navigation which we have with most of the major banking nations because it would apply to establishing international banking operations which do not involve depository or fiduciary functions. With regard to the anti-discrimination provision, we understand that foreign bank operations in the United States already are covered by existing anti-discrimination laws applicable to domestic banks. Thus, it would be inappropriate to incorporate this provision into a new banking law, since such action could imply that foreign bank operations were not subject to the law in the past. Moreover, we have no evidence of non-adherence to U.S. anti-discrimination laws.

Furthermore, we also advise against the second part of the anti-discimination provision that would require only foreign banks to take an anti-discrimination oath as a condition of obtaining charters. This proposal singling out foreign banks is discriminatory. As a final point, Section 9 as a whole simply seems unnecessary because it would provide no additional protection to U.S. depositors or to national interests. There already are adequate safeguards in existing law, administrative procedures and in the proposed legislation.

4. Special Deposit Insurance

Another important provision of H.R.7325, Mr. Chairman, is Section 6, which would require U.S. branches of foreign banks to maintain with the FDIC a surety bond or pledge of assets. We recommend that this section be amended to provide more equal treatment vis-a-vis domestic banks. Specifically, we believe the section should be changed (1) to make insurance optional for those state-licensed branches which operate in those very few states that do not require FDIC insurance for state non-member banks and (2) to offer U.S. branches of foreign banks regular FDIC deposit insurance.

These changes are designed to take care of two concerns. First, while we firmly believe that deposit insurance is highly desirable, we again feel that it should be provided while avoiding unequal treatment between foreign and domestic banks in this area. In particular, we want to avoid departing from the national treatment policy and raising questions about U.S. obligations under our treaties of friendship, commerce and navigation.

Second, we are concerned that the special insurance program currently contained in the bill would be unduly burdensome. It would not offer foreign-owned branches access to the federal deposit insurance fund but instead would require branches to pledge assets or a surety bond against their deposits, with the FDIC as custodian of the assets. In the absence of an insurance fund to pool risks, the pledge of assets might prove inadequate to protect depositors.

Last year, the FDIC worked with Treasury to develop a proposed modification of Section 6 to increase the attractiveness of the deposit insurance program for foreign banks. Under this proposal, foreign-owned branches in the U.S. would apply for regular FDIC insurance coverage and would pay the standard insurance premium of domestic member institutions. In addition, the branch would pledge some assets or a surety bond to the FDIC to cover any additional risk.

The Administration supports the FDIC's proposed modification. However, we believe that deposit insurance should be mandatory for U.S. branches of foreign banks, except, as noted above, in those states where state-chartered, non-member domestic banks are not required to obtain it. With these changes, deposit insurance should be viable for U.S. branches of foreign banks.

4. Interstate Branching

Let me turn finally, Mr. Chairman, to the issue of interstate branching by foreign banks. In Section 5 of the bill, interstate branching by foreign banks would be prohibited unless national banks are accorded the same privilege. However, foreign bank branch, agency and commercial lending operations underway prior to May 1, 1976, would be permanently grandfathered. We support the grandfathering of these operations so as to minimize the disruption of ongoing banking services and we also favor changing the effective grandfather date to exempt operations underway on July 1, 1977. Currently, foreign banks may establish branches in more than one state where the law of each state permits, although domestic banks have no ability to branch outside their home state. This occurs because foreign bank branches are not chartered by states and, therefore, state laws restricting branches chartered by other states are not applicable. Since we favor equal regulatory treatment of foreign and domestic banks, we support a prohibition on interstate branching by foreign banks unless and until U.S. banks are accorded the same privilege. However, we do not favor the language of Section 5, for it would subject both state and nationally licensed foreign branches to the restrictions applying only to domestic national banks. While the basic prohibitions on branching imposed by state law are adopted by Federal law, the latter contains additional, somewhat more onerous requirements (e.g., higher capital requirements). We suggest that the subcommittee could attain its intent by having Section 5 phrased to apply the branching law for domestic national banks to nationally licensed foreign branches, and for domestic state banks to state licensed foreign branches.

Conclusion

Thank you, Mr. Chairman, for providing us with the opportunity to testify on this bill.

oOo

Mr. St Germain. Thank you, Secretary Solomon.

Now we will hear from Secretary Boeker. We will put your statement in the record and you may proceed.

STATEMENT OF HON. PAUL H. BOEKER, DEPUTY ASSISTANT SECRETARY FOR ECONOMIC AND BUSINESS AFFAIRS, DEPARTMENT OF STATE

Mr. Boeker. Thank you, Mr. Chairman.

I will be delighted to summarize, Mr. Chairman, since you are pressed for time this morning.

I am pleased to appear before this subcommittee in firm support of the International Banking Act of 1977. We believe the concept of bringing foreign banks into our system in a more integrated manner is a sound one and strongly back this effort. The assurance of equal treatment of foreign and domestic banks in the United States is consistent with our policy of welcoming foreign investment. The creation of comparable operating and regulatory authority will give further concrete evidence of our intentions. My testimony is, therefore, in favor of the International Banking Act of 1977, and the suggestions which follow are intended to enhance further its effectiveness.

In our review of the bill, we perceive no major foreign policy problems. We are concerned, however, that certain sections may impinge upon our international obligations under our Friendship, Commerce and Navigation (FCN) treaties. U.S. Friendship, Commerce and Navigation treaties with major banking countries generally obligate the signatories to permit freedom of establishment of enterprises of the other party, and to provide national treatment of those enterprises once established.

To help resolve these concerns we would like to make the following suggestions:

We believe section 9 could be deleted. The establishment of a special Federal review of foreign bank applications does not appear to be in accord with national treatment, nor with our open door policy toward inward investment, and it appears foreign banks will receive appropriate guidance under other provisions of this bill, and other laws and regulations.

Section 6 could, instead, make FDIC insurance optional for State nonmember foreign banks in those States where FDIC membership is not required. This, plus the Treasury/FDIC effort to devise a comparable deposit insurance program for foreign banks, would help assure national treatment.

To assure comparable treatment under the branching provisions of section 5, foreign banks which are operating as nonmember State branches could have applied to them the same laws regarding branches that the individual State applies to domestic State banks.

The provision in section 8 of a permanent grandfather clause for existing securities operations of foreign banks would help resolve that concern, and the Federal Reserve's proposed amendment to the Bank Holding Company Act could avoid extraterritorial application.

With these changes, foreign banks in the United States would be provided basically national treatment, and there should be little basis for retaliation by foreign governments against U.S. banks operating abroad.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Boeker follows:]

STATEMENT BY PAUL H. BOEKER
DEPUTY ASSISTANT SECRETARY OF
ECONOMIC AND BUSINESS AFFAIRS

DEPARTMENT OF STATE

BEFORE THE SUBCOMMITTEE ON FINANCIAL INSTITUTIONS,
SUPERVISION, REGULATION AND INSURANCE OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

THE INTERNATIONAL BANKING ACT OF 1977 (H.R. 7325)

MR. CHAIRMAN:

I AM PLEASED TO APPEAR BEFORE THIS SUBCOMMITTEE TO DISCUSS THE INTERNATIONAL BANKING ACT OF 1977 (H.R. 7325). WE BELIEVE THE CONCEPT OF BRINGING FOREIGN BANKS INTO OUR SYSTEM IN A MORE INTEGRATED MANNER IS A SOUND ONE AND SUPPORT THIS EFFORT. THE ASSURANCE OF EQUAL TREATMENT OF FOREIGN AND DOMESTIC BANKS IN THE UNITED STATES IS CONSISTENT WITH OUR POLICY OF WELCOMING FOREIGN INVESTMENT. THE CREATION OF COMPARABLE OPERATING AND REGULATORY AUTHORITY WILL GIVE FURTHER CONCRETE EVIDENCE OF OUR INTENTIONS. MY TESTIMONY IS THEREFORE IN SUPPORT OF THE INTERNATIONAL BANKING ACT OF 1977.

IN OUR REVIEW OF THE BILL, WE PERCEIVE NO MAJOR FOREIGN POLICY PROBLEMS. WE ARE CONCERNED, HOWEVER, THAT CERTAIN SECTIONS MAY IMPINGE UPON OUR INTERNATIONAL OBLIGATIONS UNDER OUR FRIENDSHIP, COMMERCE, AND NAVIGATION (FCN) TREATIES. I WILL FIRST BRIEFLY REVIEW THE NATURE OF THESE TREATIES AND THEN PROCEED TO DISCUSS THOSE SPECIFIC PARTS OF THE BILL WHICH HAVE AROUSED OUR CONCERN.

THE FCN TREATY

THE TRADITIONAL FCN TREATY IS DESIGNED TO ESTABLISH AN AGREED FRAMEWORK WITHIN WHICH MUTUALLY BENEFICIAL ECONOMIC RELATIONS CAN TAKE PLACE. THE TREATY PROVIDES A COMPREHENSIVE BASIS FOR THE MUTUAL PROTECTION OF COMMERCE AND CITIZENS AND THEIR BUSINESS AND OTHER INTERESTS. THE STANDARD TREATY FIRMLY COMMITS THE UNITED STATES TO PERMIT THE FREE ESTABLISHMENT OF FOREIGN-OWNED ENTERPRISES IN MOST SECTORS OF THE U.S. ECONOMY AND INCLUDES A PROHIBITION AGAINST DENYING TO BANKING COMPANIES OF OUR TREATY PARTNERS THE RIGHT TO MAINTAIN BRANCHES AND AGENCIES TO PERFORM FUNCTIONS NECESSARY FOR ESSENTIALLY INTERNATIONAL OPERATIONS IN WHICH THEY ENGAGE.

MODERN FCN TREATIES DO, HOWEVER, RESERVE THE RIGHT OF EACH PARTY TO LIMIT THE ESTABLISHMENT, OR CARRYING ON, OF ENTERPRISES ENGAGED IN BANKING INVOLVING DEPOSITORY OR FIDUCIARY FUNCTIONS. THE TREATIES ALSO FORBID THE SIGNATORIES FROM APPLYING AGAINST EACH OTHERS' FOREIGN OWNED ENTERPRISES ALREADY ESTABLISHED IN THEIR TERRITORIES NEW DEROGATIONS FROM NATIONAL TREATMENT -- I.E., TREATMENT WHICH DISCRIMINATES AGAINST FOREIGN BANKS AS OPPOSED TO DOMESTIC BANKS.

THE ENACTMENT OR APPLICATION OF LEGISLATION AT VARIANCE WITH UNITED STATES TREATY OBLIGATIONS WOULD BE UNFORTUNATE NOT ONLY BECAUSE IT CONFLICTS WITH OUR INTERNATIONAL COMMITMENTS, BUT ALSO BECAUSE IT WOULD WEAKEN THE ABILITY OF THE UNITED STATES TO UTILIZE OUR FCNs, WHERE NECESSARY, AS A BASIS FOR CALLING INTO QUESTION ACTIONS OF FOREIGN GOVERNMENTS WHICH ARE NOT IN

CONFORMITY WITH THE TREATIES. GIVEN THE IMPORTANT PROTECTION AND RIGHTS PROVIDED AMERICAN CITIZENS UNDER THESE FCNs--INCLUDING GUARANTEES OF FAIR AND EQUITABLE TREATMENT, THE RIGHT TO ESTABLISH AND ACQUIRE ENTERPRISES IN THE TREATY PARTNER'S TERRITORY, AND THE OBLIGATION TO PAY FULL COMPENSATION FOR NATIONALIZED PROPERTY--MAINTAINING THE INTEGRITY OF THESE TREATIES IS, WE BELIEVE, VERY MUCH IN THE INTEREST OF THE UNITED STATES.

Possible FCN Violations

WE BELIEVE THAT THERE ARE THREE POSSIBLE FCN VIOLATIONS IN THE BILL.

1) THE FIRST REGARDS SECTION 9, WHICH WOULD ESTABLISH A SPECIAL FEDERAL REVIEW OF FOREIGN BANK APPLICATIONS. THIS MAY VIOLATE OUR TREATY OBLIGATIONS IN SO FAR AS IT IS A NEW MEASURE WHICH WOULD APPLY TO THE ESTABLISHMENT OF BANKING OPERATIONS WHICH DO NOT INVOLVE DEPOSITORY OR FIDUCIARY FUNCTIONS. THE SECTION WOULD APPLY ONLY TO FOREIGN BANKS AND WOULD ESTABLISH CRITERIA OVER AND ABOVE THOSE NORMALLY APPLIED TO BOTH FOREIGN AND DOMESTIC BANKS. THEREFORE, THIS PROVISION WOULD APPEAR TO BE CONTRARY TO THE NATIONAL TREATMENT PROVISIONS OF TREATIES WHICH WE HAVE WITH MOST OF THE MAJOR BANKING NATIONS.

2) SECTION 6, WHICH REQUIRES MANDATORY DEPOSIT INSURANCE FOR FOREIGN BANKS, IS ANOTHER PROVISION WHICH MAY HAVE SIGNIFICANT TREATY IMPLICATIONS DERIVING FROM NEW DEPARTURES FROM NATIONAL TREATMENT FOR ESTABLISHED BANKS. TO THE EXTENT

THIS PROVISION REQUIRES OF ESTABLISHED FOREIGN BANKS DEPOSIT INSURANCE WHICH IS NOT REQUIRED OF DOMESTIC BANKS, IT APPEARS TO VIOLATE OUR TREATY OBLIGATIONS, ESPECIALLY IF THIS REQUIREMENT IS SUBSTANTIALLY MORE BURDENSOME.

3) SECTION 5 WOULD PROHIBIT INTERSTATE BRANCHING BY FOREIGN BANKS, EXCEPT FOR GRANDFATHERED OPERATIONS SO LONG AS NATIONAL BANKS ARE UNABLE TO OPERATE A BRANCH OUTSIDE THEIR HEADQUARTERS STATE. THE PROHIBITION DOES [redacted] APPLY TO STATE-CHARTERED FOREIGN BANKS WHICH ARE NOT FEDERAL RESERVE SYSTEM MEMBERS. THIS RESTRICTION WOULD PROHIBIT FOREIGN BANKS OPERATING THROUGH STATE-CHARTERED BRANCHES FROM PARTICIPATING IN ANY FUTURE REGIONAL AGREEMENTS TO PERMIT INTERSTATE BRANCHING BY DOMESTIC STATE-CHARTERED BANKS, AND WOULD APPEAR TO CONSTITUTE A NEW LIMITATION ON NATIONAL TREATMENT INCONSISTENT WITH OUR TREATY OBLIGATIONS. CURRENT STATE LAWS DO NOT CURRENTLY ALLOW INTERSTATE BRANCHING, SO THIS CONCERN IS MINOR.

OTHER CONCERNS

I HAVE NOTED THAT SECTION 9 MAY BE IN VIOLATION OF OUR FCN TREATIES. I WOULD ALSO LIKE TO OBSERVE THAT THIS SPECIAL REVIEW OF FOREIGN BANK ENTRY CONFLICTS WITH OUR GENERAL OPEN DOOR POLICY ON INWARD INVESTMENT AND COULD ESTABLISH AN UNFORTUNATE PRECEDENT FOR REVIEW OF FOREIGN INVESTMENT IN OTHER SECTORS.

SECTION 8 SUBJECTS FOREIGN BANKS AND BANK HOLDING companies to various provisions of the Bank Holding Company Act of 1956. This raises the problem of extraterritoriality to the extent that it might apply to the activities of foreign banks outside U.S. jurisdiction (such as investments in other companies which have nonbanking operations in the United States.)

Finally, foreign banks have expressed concern that Section 8 would require divestiture of existing securities activities in the United States by 1985.

Summary

I would like to offer the following suggestions to help resolve the concerns expressed above:

1) Section 9. This section could be deleted. Foreign banks will receive appropriate guidance, whether Federal or State branches or agencies, under other provisions of this bill.

2) Section 6. A preferred resolution of our concern would be to make FDIC insurance optional for State non-member foreign banks in those states where FDIC membership is not required. We support the Treasury/FDIC effort to offer a deposit insurance program for foreign banks comparable to that required for domestic banks.

3) Section 5. To assure comparable treatment, foreign banks which are operating as non-member State branches could have applied to them the same laws regarding branches that the individual state applies to domestic state banks.

4) Section 8. This section could contain a non-terminating

GRANDFATHER CLAUSE. ALSO, A PROVISION COULD BE PROVIDED TO AVOID EXTRATERRITORIAL APPLICATION. IN THIS REGARD WE SUPPORT THE FEDERAL RESERVE'S PROPOSED AMENDMENT TO THE BANK HOLDING COMPANY ACT.

WITH THESE CHANGES, FOREIGN BANKS IN THE U.S. WOULD BE PROVIDED BASICALLY NATIONAL TREATMENT, AND THERE SHOULD BE LITTLE BASIS FOR RETALIATION BY FOREIGN GOVERNMENTS AGAINST U.S. BANKS OPERATING ABROAD.

THANK YOU, MR. CHAIRMAN

Mr. ST GERMAIN. Thank you for a well summarized statement.

Secretary Solomon, on page 5 of your statement with respect to the grandfathering of securities activities, I am intrigued.

In the third paragraph you state:

We believe divestiture would be inequitable to the foreign banks who established themselves here under the rules of the game prevailing at the time.

Were there any rules and are there any rules today? Is it not a fact that there has been and is an absence of any rules on a Federal level?

Mr. SOLOMON. I don't understand your question, Mr. Chairman.

Mr. ST GERMAIN. That is because I don't understand your statement. You say on page 5:

We believe divestiture would be inequitable to the foreign banks who established themselves here under the rules of the game prevailing at the time.

Mr. SOLOMON. At the time, in 1933, since 1933?

Mr. ST GERMAIN. Right. There have been no rules.

Mr. SOLOMON. Right.

Mr. ST GERMAIN. We are attempting to establish rules with this legislation. There is an absence of rules or regulations, is there not?

Mr. SOLOMON. That is correct, but it was perfectly legal, Mr. Chairman, in these 43 years for them to establish securities affiliates.

Mr. ST GERMAIN. Because there were no rules.

Mr. SOLOMON. Isn't that true of many areas of national economics?

Mr. ST GERMAIN. Because there were no rules. Therefore, how can you say rules prevailing, when there are no rules? Now, this legislation was first introduced in 1974, and you are asking us to extend this grandfathering despite the action taken last year—what is the recommended date?

Mr. SOLOMON. July 1, 1977.

Mr. ST GERMAIN. That troubles me. I mean, you talk about competitive equality as opposed to reciprocity. Certainly if that is the philosophy we are following, I am a little troubled by: One, your saying no rules and two, your saying let's bring the grandfathering forward to July 1, 1977, despite the fact that these foreign banks have known full well that the push was on since 1974 for this legislation.

Mr. SOLOMON. It's up to the subcommittee, of course, Mr. Chairman, to make its own judgment as to the appropriateness of the cutoff date. We just felt that since this was the date that you had previously established, when the bill was considered in 1975 and in 1976, that it would be more equitable to update the cutoff date.

Mr. ST GERMAIN. You don't consider that the actions over the past 3 or 3½ years, should have served notice to these foreign banks establishing security affiliates?

Mr. SOLOMON. Mr. Chairman, I am not familiar whether, in these 3 years, new security affiliates have been established.

Mr. ST GERMAIN. If that be the case, why the request to move the date forward to July 1, 1977?

Mr. SOLOMON. Normally in grandfathering one tends to use a date that is not too far distant in the past. I can supply for the record what new security affiliates have been established, in the 3-year interval. That might help the subcommittee.

Mr. St Germain. It would, yes. At the bottom of page 7, I am bothered here also:

> The administration supports the FDIC's proposed modification. However, we believe that deposit insurance should be mandatory for U.S. branches of foreign banks except, as noted above in those States where State-chartered nonmember domestic banks are not required to obtain it.

We have done a lot of work on bank failures. We had a bank failure in Rhode Island very recently; no deposit insurance, a rather tragic situation for the depositors who for the most part were not sophisticated depositors. They were hard-working people who had been deceived, so to speak, because the State had granted a charter to this institution. They readily accepted the judgment of the State officials who granted this charter, which proved to be very erroneous. As a matter of fact, the State should have been on notice that the liabilities exceeded the assets when they approved the charter.

Now, it seems to me that we in the Congress, rather than to sit back and say well, in those States where they don't require insurance they need not have insurance, we should make every effort absent saying to the State legislatures you must henceforth require deposit insurance, to encourage and to twist very gently the arms of the State legislatures in each and every State of this Union, to achieve the goal of insurance for every financial institution in the country this country should have deposit insurance?

Don't you feel that is the goal that we should seek?

Mr. Solomon. In general, I would agree, Mr. Chairman. We were looking in this area to avoid any charges of departing from exact competitive equality, and there were only nine States involved.

Now, most of the depositors are, of course, corporate depositors, but there are some individuals who should be protected, where the deposit insurance is important. That is not in our view an important recommendation on the part of the Treasury.

Mr. St Germain. That's good to hear, because I really and truly feel if we are going to require deposit insurance for these foreign banks, then we should not in any way indicate to these nine States that are still dragging their heels that we agree with their not requiring deposit insurance of State-chartered banks. We do require it of all nationally chartered banks. That is a sine qua non, as you know.

Mr. Solomon. It could possibly be interpreted in some quarters as a departure from national treatment, but on the other hand, I think it's a de minimis case, and I don't feel that in itself would be likely to provoke retaliation.

Mr. St Germain. Perhaps it's because of the trauma that I observed in a recent case, the one I cited, of hard-working people faced with a situation wherein they would lose their entire life savings, and I am perhaps a little more sensitive in this area.

Mr. Annunzio?

Mr. Annunzio. Thank you, Mr. Chairman.

Mr. Secretary, you have stated in your statement you do not favor granting the Federal Government review procedures over State-chartered foreign banks as this procedure would deviate from a policy of national treatment. Would it not also deviate from national treatment to grant the Federal Reserve Board authority to set reserves on foreign-owned, State-chartered banks?

Mr. SOLOMON. You are right in a certain sense, Mr. Annunzio. There are some compelling reasons of overall monetary policy as the presence of foreign banks and particularly big foreign bank branches begins to grow in this country. I feel that the substantive attempt to reduce disparities and give something more close to national treatment is a worthy objective, and, therefore, we support the subcommittee's bill.

We recognize that in certain areas there will be other factors which will have to prevail over an exact, formalized type of equality. The Fed has made a very convincing argument, we feel, that effective monetary policy does require the right to set reserve ratios. We believe that this is not the kind of departure from national treatment in regard to State nonmember banks that would be badly received abroad to a degree that would cause us serious problems. But you are absolutely right, sir, that technically it is different, because reserves are set in the case of State nonmember banks by the State authorities, not by the Federal Reserve.

Mr. ANNUNZIO. Mr. Secretary, I have sat all through the hearings the last session on this legislation, and I am sitting through the hearings doing the best I can to get to all of the hearings. What you should state for the record so the American people can have a full understanding is that we do have American banks in Rome, in London, and in Frankfort and Brussels. We have Bank of America; we have the Chase Manhattan; we have First National Bank of Chicago; we have Continental Bank; you name it, we have branches in these foreign countries.

For the record so that the American people can understand, you know, we are not just a chosen people, that everybody else is wrong and we are always right, what about the treatment of American banks in these foreign countries?

Mr. SOLOMON. You mean as a result of this bill, Mr. Annunzio?

Mr. ANNUNZIO. No. We didn't pass the bill yet. How are they treated now?

Mr. SOLOMON. On the whole the treatment has been very generous.

Mr. ANNUNZIO. Take Germany, for example. In Germany do they comply with the German bank laws? A German bank can have an interest in a crop corporation, where an American bank cannot. They have their own laws. In other words, I would like the record to state that American bankers and American citizens who are in these foreign countries and are established there, the kind of treatment that we get. Now if they are getting good treatment, tell us.

Mr. SOLOMON. They are, sir.

Mr. ANNUNZIO. They are?

Mr. SOLOMON. On the whole, U.S. branches——

Mr. ANNUNZIO. On the whole, if they are getting good treatment, we have to reciprocate. There is a little matter of reciprocity there.

Mr. SOLOMON. You are talking about certain countries in Europe primarily where I can answer in the affirmative. There are one or

93-031 O - 77 - 19

two other countries of importance where, I believe, if there is not formal discrimination there may be some de facto discrimination, but in regard to most countries in Europe and in the European Economic Community I think they receive comparable national treatment in their major activities.

Mr. ANNUNZIO. What I am getting at is I would like the record to show we are treated in Europe in a manner consistent with the obligations that those people have to their own countries. Are we, Mr. Chairman? You are shaking your head.

Mr. ST GERMAIN. You know the subcommittee did visit five countries last year.

Mr. ANNUNZIO. I wasn't one of those, because I read the newspapers, and I didn't go on the trip.

Mr. ST GERMAIN. I would state it's the first trip I ever took.

Mr. ANNUNZIO. I don't care if you have taken 12 trips. I have taken 15, but I missed that trip.

Mr. ST GERMAIN. The point is that we did determine that as far as the depository institutions are concerned——

Mr. ANNUNZIO. I am happy the chairman is bringing that point across.

Mr. ST GERMAIN. There are in some countries some differentiation between the domestic banks and our banks operating there, not on international trade. However, as far as depository institutions are concerned, in their fiduciary capacity, just as Mr. Boeker cites in his statement, that these are the exceptions from the treaty. In other countries; they are not allowed to take deposits, domestic deposits.

Mr. ANNUNZIO. Right.

Mr. ST GERMAIN. So there are some differentiations.

Mr. ANNUNZIO. I appreciate the chairman helping me out, because you see, as Members of Congress, when we get elected from a district, we don't have a crystal ball, we can't possibly know all of these things that are going on. Your two witnesses are specialists in your field. This is all you have to concentrate on. I get 2,000 letters a month on all different kinds of subjects, and when a committee of Congress does go to a foreign country to make a study of a particular problem, we have the whole press down on our necks.

How are we supposed to find out what is going on if we don't go over and look? I want to make that clear, Mr. Chairman, so the more we cut down these trips the less effective we are becoming, and the more money it's going to cost the taxpayers, not like some people who would like to have you believe that we are wasting the taxpayers' money. We are wasting it if we don't go abroad and find out what is going on and improve our relationship with some of these foreign countries. We will be wasting the taxpayers' money as the years go on.

We are a lot better off going overseas like you fellows to find out what is going on. There is no reason why we should be deprived from not going on some of these trips.

I know my time has expired, and that is another good thing in the Congress that we do. You see we never heard anybody but ourselves. Now I am cut off, I can't ask you any more questions.

Mr. ST GERMAIN. I assure the gentleman, if he would like the opportunity on the second round, he will be recognized.

Mr. ANNUNZIO. If I am here I will be recognized for the third round.

Mr. ST GERMAIN. Mr. Hyde?

Mr. HYDE. Thank you, Mr. Chairman. It's a great temptation to yield my time to Mr. Annunzio.

Mr. ANNUNZIO. You know, Mr. Hyde, I will accept it.

Mr. HYDE. I know it.

Let me ask, Secretary Solomon or Secretary Boeker, aren't we giving away a bargaining chip in this bill? Aren't there countries we don't have treaties with that might present some problems if we permit them to open banks in this country? I am thinking of the Bank of Uganda, the Bank of Cuba, and the Bank of Vietnam. We are really putting no restrictions whatsoever on foreign banks operating in this country.

Shouldn't there be some reciprocity requirements cranked into this bill?

Mr. Boeker?

Mr. BOEKER. We have considered that question, and Mr. Solomon commented in his statement, I think, along the same lines I would, that in this case reciprocity would not appear to be an efficient principle in terms of our own interests on which to organize this bill. It would give us, in effect, a panoply of differing regulations applying to different foreign banks depending on what kind of treatment U.S. banks got in their jurisdiction.

I think the basic approach of the bill, which is not reciprocity but an effort to provide equality in a different plane, that is equality of treatment between foreign banks operating in the United States and domestic banks operating in the United States, is a sounder basis for building U.S. policy on regulation of foreign banks.

I think in most of the countries overseas where we do major banking business, U.S. banks are treated quite generously, as Mr. Solomon says. There certainly are cases, and many cases in the developing world—and some of them you cited—where our banks are provided very, very limited opportunities or none.

I am not sure that these cost the U.S. banking industry a great deal in many cases, and I think we probably have other means of dealing with it, within our overall relationship with those countries. Certainly, wherever U.S. banking is not offered a fair opportuity to do business, it would be one of our objectives in our overall foreign relations to try to deal with that by seeking an FCN treaty, and if we can't get that, by trying to pursue the same interests otherwise; but I don't think the best means to do that is through reciprocity provisions.

Mr. HYDE. In other words, this isn't the appropriate vehicle to address that problem.

Mr. BOEKER. Right.

Mr. HYDE. All right. I have no further questions.

I yield back my time.

Mr. ST GERMAIN. Mr. Allen?

Mr. ALLEN. Thank you, Mr. Chairman.

Secretary Solomon, will you repeat or clarify for me the statement you made about the requirements in this bill with respect to antidiscrimination?

Mr. SOLOMON. Yes, sir.

Our understanding is that the foreign bank branches are complying fully with U.S. laws. We have no information on any situation where there has been a complaint. I am not saying it may not have existed at some time, but we asked throughout the executive branch, and we have had no reports. Therefore, to single out bank branches and to say U.S. antidiscrimination laws should apply, seems to us not only unnecessary but it almost is not worthy of the dignity of the United States.

It gives the impression in some way they have been exempt from the law, or they have possibly not even been obeying it. It does represent a clear departure from national treatment, particularly the oath—the second part of the antidiscrimination provision—since we do not require that oath from domestic banks. Therefore, those were the specific reasons for our recommendation that that section be deleted.

Mr. ALLEN. Do you mean, Mr. Solomon, that it is your understanding that under the law American banks are not required to provide employment on an equal basis and to comply with equal rights and protection under the Fourteenth Amendment of the Constitution of the United States to employment and otherwise?

Mr. SOLOMON. On the contrary, Mr. Allen. My statement meant to say—and I thought I said—that both domestic banks and foreign bank branches are under U.S. law and, U.S. sovereignty, and they have to comply with those laws.

Mr. ALLEN. If they are already doing it how would they be in any way hurt by having it written into the law?

Mr. SOLOMON. They would not be hurt; their dignity might be offended at having to swear an oath which is not being asked of American bankers. But it would also give them a clear-cut case for pointing to discriminatory departure from national treatment. They would not be hurt by it.

Mr. ALLEN. Tell me, Mr. Secretary, if the Arabs have a bank here, or open a bank here, do you think they will be employing and seeking the business of the Jewish community and people from the Jewish community?

Mr. SOLOMON. I am not sure I understand the import of your question.

Mr. ALLEN. I say, if the Arabs should open a bank here, or a branch here, do you think that they would give equal employment opportunities and opportunities to borrow money to the Jews in America?

Mr. SOLOMON. I believe that the existing laws are quite clear, sir, and if they were willing to violate those laws, I don't see why they wouldn't be willing to violate any additional reaffirmation of the previous laws.

Mr. ALLEN. In other words, it's just reaffirmation in this bill that bothers you, and not the fact they would be required?

Mr. SOLOMON. That is right.

Mr. ALLEN. To comply?

Mr. SOLOMON. I have no substantive problem at all with the laws on antidiscrimination. I have suffered from it myself and the laws are a great thing.

Mr. ALLEN. I understand both you and Mr. Boeker have indicated that in those States whose legislatures do not require Federal deposit insurance for deposits, that you do not think that foreign banks should be required to provide insured deposits for their depositors? Is that correct?

Mr. SOLOMON. As I explained to the chairman, this is a formal departure from achieving the stated objective of the bill, which is equality where it can be achieved. Now, it's not, I think, a major enough issue to provoke. This is my own personal judgment and Mr. Boeker may differ, but I don't think it's a major enough issue if the subcommittee were to disregard that recommendation, to provoke charges of discriminatory departure from national treatment. But it is open to that charge. Since there are so few banks that are in that category, namely State-chartered nonmember banks in those nine States—there are only nine where FDIC insurance is not compulsory—it seems to me that the subcommittee might consider this suggestion.

As I said before, Mr. Chairman and Mr. Allen, this is not a major issue.

Mr. BOEKER. May I just say I don't disagree with that, and it seems to me this is a small problem of States that do not require FDIC insurance of State-chartered nonmember banks.

The national treatment question, it seems to me here is also a nuanced one, in that national treatment in this circumstance would say that we should not apply to foreign banks treatment that is substantially different from that applied to domestic banks. This question relates not only to whether or not deposit insurance is required, but to whether the form of deposit insurance is, in fact, roughly comparable to what would be required of others or is substantially more burdensome. The thought that I had indicated in my statement was that the same objective might be achieved by offering to foreign banks, including State-chartered nonmember banks, deposit insurance which was not substantially more burdensome than that available to domestic banks. If that were attractive enough, the objective could be achieved for all foreign banks without necessarily making it mandatory for this small category. But it is not a major issue.

Mr. ALLEN. I have been informed my time has expired, but when I come back to the second round I am going to ask you to be considering this question:

If we are not going to require them to insure their accounts with the Federal Deposit Insurance Corporation, would you—and don't answer this now because my time has expired—would you favor a requirement that they put on their pass books and deposit books a statement, "Your deposit is not insured."?

Mr. ST GERMAIN. Mr. Derrick?

Mr. DERRICK. I have no questions, Mr. Chairman.

Mr. ST GERMAIN. Mr. Leach?

Mr. LEACH. Thank you, Mr. Chairman.

Secretary Solomon, you give a very reasoned case for grandfathering securities operations. But I would like to make an observation and ask several questions about this issue.

The goal in law is usually equitability, and it seems to me that we are creating inequitability vis-a-vis our own banking system when we allow some banks to do something that other banks are not allowed to do, and that the only equitability here is some sort of quid pro quo abroad, meaning that somehow our banks will be given greater latitude in their operations abroad in exchange for giving greater latitude for foreign bank operations here, but this means equitability for a few banks only. What I would like to know is is there any danger of retaliation if we do not authorize the grandfathering provision, and if so, where, and what banks will be affected?

Mr. SOLOMON. First, Mr. Leach, the reasons for recommending permanent grandfathering go beyond that of simple retaliation, but let me answer the question of retaliation.

This is an intangible. Clearly we have had clear expressions of displeasure and concern from certain foreign governments, Germany and Switzerland to name two, that the whole thrust of the bill they feel in some way is not fair, given the treatment of American banks in their countries.

I feel they would have much less of an argument, substantially less of an argument, if we were not forcing divestiture of existing operations which have operated here during this last 40-year period.

I do not know what form, if any, the retaliation or the restrictive actions might take. There might not be any at all. But then there might very well be. I think it is also fair to recognize the overall improvement and continued growth of international banking and multinational banking, the employment giving flows of capital and trade which are of mutual benefit.

We certainly should not think of this as a one way concession.

Mr. ST GERMAIN. Secretary Solomon, I wish you would look at Governer Gardner's testimony, both yesterday and when he came before us as representing the Treasury on this issue of retaliation. He agreed yesterday that the only indication of any type of retaliation we would get is not from the central banks but rather from some of the foreign banks that have voiced this, No. 1.

No. 2, you are familiar with the Blundon committee.

Mr. SOLOMON. Let me answer your first point, Mr. Chairman. I have received two communications from two European governments which have pointed out the problems that this will give them; that they have not engaged in restrictions so far on U.S. branches there; that this whole question became a political question in their countries and they cannot offer any assurances.

Mr. ST GERMAIN. Don't you feel those should be placed in our record and available to us?

Mr. SOLOMON. If you want them, sir.

Mr. ST GERMAIN. Yes, please.

Mr. SOLOMON. I would have to check with the foreign governments.

Mr. ST GERMAIN. Right, if you are able to, if there are no constraints, naturally. We understand.

Mr. SOLOMON. But they do not threaten retaliation; they say there will be political pressures for retaliation.

Mr. ST GERMAIN. From the banks in their countries?

Mr. SOLOMON. Right. Therefore, just as we in our Government are responsive to our economic interests, I don't assume that other governments are completely impervious to their economic interests.

Mr. LEACH. Mr. Secretary, if we could go on just a minute, it seems to me we have a fairly strong defense to a divestiture approach in this situation in that we would not be giving our banks any particular advantage. We would just be applying national law universally.

It also seems to me that the prospects are that there will be massive sums of foreign capital available for investment in the U.S. securities in the not too distant future, and that we will be seeing a new situation develop in proportion to that which has held in the past. In this new era of expanded foreign capital flows, we will be giving a competitive edge to foreign banks over our own securities industry, and over our own banking system.

I am just wondering if that is the type of thing we want to do for the good of our banks as well as for the good of our own securities industry. We are not talking here about mandating regulations on these banks that we don't apply to our own banking institutions. I think we are at a terribly appropriate time period to deal with the issue now.

In 5 years it's going to be a far bigger issue. Would you comment?

Mr. SOLOMON. Mr. Leach, I can understand your point. I don't share it though, because I think there are other considerations. First of all, I think the competition is healthy; second, in the banking and financial world, a very big distinction is made between setting policy on future entrants and forcible divestiture of existing operations that were legal under the conditions under which they were established.

We, the United States, are constantly approaching other governments and saying to them, look, you changed the rules of the game on U.S. business abroad. Now, that is not fair. If you want to set policy for the future we understand that, but to change the rules as they affect operations already in existence, is normally in international economic diplomacy considered inequitable.

I think there are some other arguments as well, but I would base my case primarily on these two factors. Competition is healthy; it does bring more trade and employment, and investment into this country. It is inequitable, in our view, to force this divestiture after they have been operating under certain ground rules for 40 years.

Mr. LEACH. Thank you.

My time has expired.

Your point of view is well expressed. Thank you.

Mr. ST GERMAIN. The Chair is constrained to observe we have a new philosophy for American business, to wit: That they do not have enough competition, don't compete against each other, and if you are going to have true competition you must bring in foreign interests.

Mr. SOLOMON. That is why we have an open trading system, Mr. Chairman. We can put a wall around this country and suffer a decline in our economic standard of living, but I assume you are in favor of open trade, competitive trade from foreigners as well as investment flows, and I know you are from your position in other legislation. So I don't feel this should be any exception, sir.

Mr. ST GERMAIN. You can't compare apples and oranges.

Mr. Cavanaugh?

Mr. CAVANAUGH. Thank you, Mr. Chairman.

Mr. Solomon and Mr. Boeker, in comparing your testimony with that of Governor Gardner, I notice remarkable similarities in your recommendations for suggested amendments to the legislation, with the exception that Governor Gardner, on page 5 of his testimony, addressed himself to a perceived defect of section 7, which would allow for State-chartered subsidiaries of large foreign banks to be exempted from monetary controls, and he recommended that those foreign charters with more than $1 billion in world assets be subjected to monetary controls.

Does State and Treasury not have an opinion, or would you please express your opinion?

Mr. SOLOMON. Mr. Cavanaugh, I may be wrong, I only got a second hand report as to his testimony yesterday, but my understanding was that the change in the Fed's position was not with regard to monetary control; it was in regard to the veto power they would have over the establishment of State-chartered, State-approved foreign bank branches that were not members of the Fed. But I understood that that was in regard to the veto approval; it was not in regard to monetary control. Is that correct?

Mr. BOEKER. I believe, as I understand it, Mr. Gardner's point was that the monetary controls in section 7 ought to apply to a foreign banking operation, in effect, regardless of its form of operations. In other words, the definition of what kind of banking operations these controls are extended to, whether an agency, branch, subsidiary or whatever, should be clarified and extended.

Mr. CAVANAUGH. The criteria he set was the worldwide assets in excess of $1 billion.

Mr. BOEKER. Right, which is, I believe, the criterion in section 7. His point was, I believe, that the extension of monetary controls in section 7 would thereby more assuredly be effective.

Mr. CAVANAUGH. To State-chartered subsidiaries?

Mr. BOEKER. Right.

Mr. CAVANAUGH. Do you agree or disagree?

Mr. BOEKER. I don't disagree with that, no.

Mr. CAVANAUGH. Mr. Solomon?

Mr. SOLOMON. We don't disagree with that either. It seems to us to make sense if we are going to have Fed monetary control authority to establish reserve ratios you might as well have them on subsidiaries as well as on branches.

Mr. CAVANAUGH. Mr. Solomon, you may have responded earlier. I didn't come in for the chairman's questions on section 9 and the requirements for Treasury to produce standards and guidelines. Did you comment on that in greater detail than in your testimony?

Mr. SOLOMON. Yes, I did, sir.

Mr. CAVANAUGH. All right.

Mr. SOLOMON. Do you want me to repeat it?

Mr. CAVANAUGH. No. It's not necessary. I will review the record. That is all I have, Mr. Chairman.

Mr. ST GERMAIN. Mr. Brown?

Mr. BROWN. Thank you, Mr. Chairman.

Mr. Solomon, I think it is your position that there should be uniformity of treatment of foreign institutions, foreign financial institutions, branches, et cetera, in this country with domestic institutions. If that is true, there shouldn't be any recrimination or retaliatory action by other nations, it would seem, if all banks, whether they be foreign-based or domestically-based, are treated the same in this country. Is that not your position?

Mr. SOLOMON. My position is that there are certain cases where I would suggest that equality not be applied to force divestiture of existing operations. But in the future——

Mr. BROWN. I was going to come to the securities aspect of the special functions of foreign agencies or foreign financial branches, whatever you want to call them. Basically speaking, isn't that, conceptually, isn't that what you believe we should do, that is deal with all institutions in this country, whether foreign or domestic, and treat them all the same?

Mr. SOLOMON. To the maximum extent possible, unless there are overwhelming factors on the other side.

Mr. BROWN. As I understand, there are certain countries that do not adopt that policy with respect to U.S. banks in foreign countries. Is that not correct?

Mr. SOLOMON. Well, Mr. Boeker answered that while you were out of the room, sir, I believe. We believe—in fact, we know—that the great majority of important European countries do treat our banks very generously, and they do have comparable treatment.

There are other countries in the world, however, some developing countries and one or two industrialized countries in Asia, where there is a significant differentiation in treatment toward U.S. branches abroad and much more restrictiveness.

Mr. BROWN. But it would be very difficult to administer laws, don't you agree, if we attempted to treat them with direct reciprocity?

Mr. SOLOMON. Right. That was the point.

Mr. BROWN. To the extent that we treat foreign institutions in this country as we treat domestic institutions, don't we provide, in effect, the encouragement for others to do likewise?

Mr. SOLOMON. I am not sure I understand.

Mr. BROWN. To the extent we treat everyone uniformly, we provide an incentive for other nations to treat our institutions in those countries uniformly?

Mr. SOLOMON. Yes. I think to some degree. I don't know how meaningful that incentive will be in certain countries, but I think that the great majority of countries, in fact virtually all countries, would understand our establishing a uniform policy on future entrants.

I think where real problems may arise are, as you said earlier, where we try to force a kind of differential discriminatory, non-national treatment in a couple of selected areas, or on operations that have existed in the past, which were in accordance with our situation at that time. As far as future entrants go, I think that is entirely true, sir.

Mr. BROWN. The bill before us does not treat foreign branches or foreign banks in this country uniformly with domestic banks, does it, because there are certain things that newly established foreign banks in this country would do, different regulations than domestic banks would be subject to; is that not correct?

In other words, don't you require Federal approval? Let me confess I am still trying to recall the bill of last year, and I presume this is the same, and I have not had the chance to go over it, but my recollection of it is any newly established, foreign based, financial institution in this country would have to have Federal approval, which is not true of a State-chartered bank.

Mr. SOLOMON. As I understand the bill, sir, there are two tracks in this bill, and they could get either Federal approval from the Comptroller of the Currency or they could get State approval from the State authorities. So I don't think there is any significant discriminatory treatment.

Mr. BROWN. You are recommending insofar as FDIC insurance those kinds of things that basically there would be substantial uniformity between what a domestic bank is required. As I recall your testimony, you suggested these changes be made.

Mr. SOLOMON. Yes.

Mr. BROWN. Getting back to the grandfathering of securities functions, as I understand it, those institutions, foreign institutions in this country at the present time that are dealing in this area are by and large not the ordinary depository institution we think of. It was also my recollection that the Glass-Steagall Act was passed primarily because of the substantial exposure to risk that the depository institutions had when they got in the securities business; isn't that true?

Mr. SOLOMON. What happened, sir, was that in 1933 when the Glass-Steagall Act was passed, the United States was confronted with major abuses, and there were scandals and shocking ones in regard to abusing these relationships between banks and associated securities affiliates. The situation today is quite different. We have no indication of any abuses. They are run very separately and on an arm's length basis.

Our feeling is that the conditions, thank God, do not prevail today as they did in 1933. Therefore the response of the Congress should be a realistic one, and there is no need, therefore, to force for no good reason a divestiture of these securities affiliates.

Mr. BROWN. When we talk about flagrant abuses, et cetera, these are abuses harmful to someone, so the Glass-Steagall Act was to protect whom from being harmed? Basically depositors, wasn't it?

Mr. SOLOMON. Basically depositors, yes. But also there may have been shareholders as well who were hurt by the kinds of transactions that went on.

Mr. BROWN. I tend to concur with your conclusion in your statement regarding this area of the bill, grandfathering, et cetera, because it seems to me as we know that function now, as it is being performed by foreign institutions in this country, they are not depository institutions, that the Glass-Steagall Act was aimed at back then.

Mr. SOLOMON. I see your point.

Mr. BROWN. That seems a legitimate basis for saying that that which we feared we should not fear in this case.

My time has expired.

Thank you very much.

Mr. ST GERMAIN. I am going to ask unanimous consent that all members be allowed to submit questions to you in writing to be answered for the record, and hopefully prior to the markup. We will have about a week to work on them.

Some of the members have agreed to do this in view of the fact we have a second panel to appear before us this morning, and we want to give them an opportunity to be heard thoroughly.

Do any of the other members of the subcommittee wish to ask any further questions at this time?

Mr. HYDE. Mr. Chairman, may I briefly be recognized?

Mr. ST GERMAIN. Yes.

Mr. HYDE. Thank you.

I really don't want to ask a question, but I want to supplement the question I asked before concerning reciprocity in foreign countries.

I understand the purpose of this bill is to provide a basis of equality of treatment of foreign and domestic banks in our country, but I think in that context it's useful to familiarize ourselves with part 2 of the FINE Study that was so monumentally assembled by this subcommittee and this committee.

Chapter 4 discusses foreign banking laws and regulations governing overseas operations of our banks. On page 863 of that document we learn that only Mexico and Sweden prohibit foreign bank participation in all foreign institutions, seven other countries no longer allow foreign bank entry, but allow banks which are already active to continue to operate on a limited basis; Chile; Peru and Colombia.

Peru prohibits entry, but allows foreign bank participation up to 20 percent.

Venezuela prohibits foreign entry into the banking system, but it makes an exception for banks from other Latin American countries. It does not permit foreign banks to establish agencies and nonbanking opposition. Other developing countries have curtailed foreign bank entry, Malaysia, the United Arab immigrants. The Canadian banks are allowed to accept deposits of U.S. residents, although the lending of these funds is restricted.

Eleven other countries allow U.S. banks entry, but impose substantial restrictions on their activities; Colombia; Costa Rica; Egypt, and Spain; Argentina; Hong Kong and Singapore. Banks operating in Argentina must stay in Buenos Aires. Greece requires the importation of $10 million of capital for each new branch. In Japan new entries are not prohibited, but are virtually impossible to obtain.

The Republic of China limits banks to a single office. Japan and Nicaragua allow foreign entry only in the form of branches. Once they are domiciled, treatment of foreign banks is generally inequitable. I guess the trick is to get domiciled.

So reciprocity is a word that ought to be spelled with a capital "R," and ought to be looked at in that context, it seems to me. I realize you are saying this is not the vehicle to deal with that. I think, however, it's part of the background we ought to have before us.

Thank you. I yield back my time.

Mr. St Germain. I might state that when we met with the central bank in Bern, Switzerland, I observed to the central bank at the time that reciprocity is a great word but it depends on whose dictionary you are using.

I am wondering, did you gentlemen have an opportunity to read the hearings in the Senate and in the House on the bill last year? For instance, Dr. Jahn's testimony, page 379, as well as the FINE Study chapters on foreign banking just referred to by our colleague, Mr. Hyde.

Mr. Solomon. I read various sections of it, sir.

Mr. St Germain. Thank you.

Mr. Allen?

Mr. Allen. No questions, Mr. Chairman.

Mr. St Germain. We want to thank you, gentlemen. As we say, we are going to submit additional questions in writing and we appreciate your appearance this morning, and your assistance.

Mr. Solomon. Thank you.

Mr. St Germain. Now we will hear from our second panel, John F. Lee, executive vice president of the New York Clearing House Association, and for the Conference of State Bank Supervisors, Dr. William E. Whitesell, secretary of banking, Commonwealth of Pennsylvania, accompanied by Alex Neale, vice president and director of Federal legislation.

We will first hear from John F. Lee, executive vice president of the New York Clearing House Association. He is first on our witness list, so we are not showing prejudice.

STATEMENT OF JOHN F. LEE, EXECUTIVE VICE PRESIDENT, NEW YORK CLEARING HOUSE ASSOCIATION

Mr. Lee. Good morning, gentlemen. I am John F. Lee, executive vice president of the New York Clearing House Association, on whose behalf I appear this morning.

The bill you are considering, H.R. 7325, we believe, should not be dealt with as though it were a minor housekeeping measure needed to tidy up the Federal banking laws. It is a bill, we believe, of considerable importance. Its passage could signal the beginning of a fundamentally new approach to bank regulation, not just for foreign banks, but for domestic banks as well. We have submitted a written statement for the record, pointing out some of the problems our members perceive should the law be altered in the manner proposed, and I will say only a few words by way of summary now.

This measure proposed for the purpose of regulating foreign banks in the United States, we believe, will weaken the dual banking system. In its striving for equality between foreign banks and domestic banks, the bill shifts certain regulatory powers from the States, where they now reside, to the Federal Government. If the bill becomes law, it will be the Federal Government which will decide whether foreign bank entry will occur and whether foreign bank expansion will take place.

The Texas Legislature, for example, will not be able to control whether Houston becomes an international banking center. The Georgia Legislature will no longer be at liberty to admit the entry of foreign banks into Atlanta. That decision will be made in Washington. As you know, by long historical tradition an option is given to the U.S. banks to conduct their business subject either to Federal or State regulation. The present pattern of foreign bank regulation is consistent with that tradition. Foreign banks are under the present law in precisely the same position as domestic banks. They are subject to the provisions of the Bank Holding Company Act; their deposits are required to be insured with the FDIC to the same extent as any domestically owned banks. Foreign-owned State banks, just as domestically-owned State banks, may be, but are not, required to be members of the Federal Reserve System.

Branches, agencies, or other unincorporated establishments of foreign banks are subject to whatever regulation is imposed by the licensing State. They are not subject to any Federal regulation, thus being precisely equated with domestic State nonmember banks, which choose not to become insured. The provisions of the bill restricting interstate banking by foreign banks subjecting nearly all of them to reserve requirements and other provisions of the Federal Reserve Act, as well as the requirement of posting a surety bond or pledge of assets with the FDIC and requiring Federal approval of such banks' operations in the United States, would, we believe, deny foreign-owned banks the option of choosing to operate under State regulation only.

None of these provisions is necessary or desirable. By subjecting all foreign banks' entities simply by reason of their foreign ownership or citizenship to laws that now apply to some, but not all, components of the American banking system, this bill would clearly be perceived as discriminatory by foreign countries. While foreign central bankers have a traditional reluctance to criticize domestic proposals of our monetary authorities, I can assure you that our foreign banking friends have conveyed strong protests to the members of the New York Clearing House Association.

What logic is there in permitting a West German bank the right to have a branch only in Chicago and West Germany continuing to permit a U.S. bank to have branches in Frankfort, Munich, and other German cities?

Just a word about foreign banks' securities affiliates. The argument is put forth that, because banks in this country cannot have securities affiliates, foreign banks should not be allowed to own them, either. However, the very banks which must compete against them do not complain. Even some brokerage firms have acknowledged the beneficial effect of foreign bank securities activities in the U.S. markets. Their presence here unquestionably helps U.S. firms gain acceptance in securities markets abroad.

Foreign securities firms compete openly and fairly. Since when has it been the policy of this Nation to stifle competition? We should strive to remove anticompetitive laws and not to add new ones.

In conclusion, I would like to express our view that H.R. 7325 is unnecessary and undesirable. It will disrupt the smooth and efficient functioning of our banking system. It will engender animosity here and abroad, and it may even initiate a shift in bank regulation endangering the dual banking system.

Thank you.

[The prepared statement of Mr. Lee, on behalf of the New York Clearing House Association, follows:]

STATEMENT OF JOHN F. LEE

EXECUTIVE VICE PRESIDENT

NEW YORK CLEARING HOUSE ASSOCIATION

ON H.R. 7325--THE INTERNATIONAL BANKING ACT OF 1977

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION,

REGULATION AND INSURANCE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

U. S. HOUSE OF REPRESENTATIVES

I am John F. Lee, Executive Vice President of the New York Clearing House Association, on whose behalf I am appearing today.

The New York Clearing House Association has been vitally interested in the subject of foreign banking legislation since 1974, at which time the Board of Governors of the Federal Reserve System first completed its Task Force report. This Association filed a 220 page analysis of the bill submitted by the Board of Governors to the Congress in 1975. (That analysis can be found as a part of the record of the hearings held by Senator McIntyre in January, 1976.) We are pleased that in the course of legislative history to date the Board and the Congressional committees which have considered the proposed legislation have responded to a number of our suggestions.

In addressing H. R. 7325, our Association still believes that additional legislation is unnecessary with respect to the regulation of foreign banks operating in the United States.

The stated purpose of the bill is the elimination of the disparities existing between the powers of foreign banks operating in the United States and those of domestic banks, particularly with regard to the ability of foreign banks to engage in interstate banking and in investment banking activities. In order to achieve such purpose, the bill would superimpose federal regulations over the state regulations dealing with foreign banks operating in the United States.

An evaluation of this purpose and the legislation proposed for its implementation must be made within the parameters of two fundamental principles. The first is that the right to elect either a federal or a state banking charter has long been regarded as best serving the public interest. The second is that strengthening the international financial system through competition best serves our national interest. It fosters the commerce of the United States and increases the ability of the U.S. financial centers to compete with those abroad.

Judged in the light of these principles, the present bill is undesirable. It would deny to foreign banks options which are available to domestic banks under our present system. By such denial, this bill will inevitably be perceived as discriminatory by some foreign countries and it will invite retaliation by such countries against U.S. banks operating abroad.

Erosion of the Present Dual Banking System

As you know, by long historical tradition, an option exists in the United States to conduct the business of banking subject either to federal or state regulation. The present pattern of foreign bank regulation is consistent with that tradition. Foreign-owned banks are, under the present law, in precisely the same position as domestic-owned banks. Foreign-owned state banks are subject to the provisions of the Bank Holding Company Act. Their deposits are required to be insured with the Federal Deposit Insurance Corporation to the same extent as any domestically-owned state bank subject to the Bank Holding Company Act. Foreign-owned state banks, as domestically owned state banks, may be, but are not required to be, members of the Federal Reserve System. Under present law, direct branches, agencies, or other unincorporated establishments of foreign banks are subject to whatever regulation is imposed by the licensing state. They are not subject to any federal regulation, thus being precisely equated with domestic state non-member banks which are not insured.

The provisions of the bill restricting interstate banking by foreign banks, subjecting nearly all of such banks to reserve requirements and other provisions of the Federal Reserve Act as well as the requirement of posting a surety bond or pledge of assets with the Federal Deposit Insurance Corporation, and requiring federal approval of such banks' operations in the United States, would deny foreign-owned banks the option of choosing to operate under state regulation only. As I will cover in more detail later, none of these provisions is necessary or desirable.

Federal Reserve Board Approval for Foreign Banks to Establish State Chartered Branches and Agencies

The present system has worked well without the additional federal approval provisions proposed by the bill. Foreign bank capital in the United States has increased dramatically during the past decade. Those states, such as New York, Georgia, Illinois and California, which have been the most receptive to the entry of foreign banks, have augmented their banking markets and permitted a wider range of choices without in any way jeopardizing the soundness of their banking systems.

Multi-State Operations of Foreign Banks

No restrictions need be imposed by the Federal Government on multi-state operations of foreign banks. Such operations are already greatly restricted. A foreign bank seeking to establish a full scale banking subsidiary is subject to exactly the same limitations as a domestic bank. A foreign bank seeking to operate a branch or agency in a particular state must obtain a license from that state. Nearly 40 states do not permit branches or agencies of foreign banks. Welcoming a foreign bank with a branch or agency in another state is the result of a deliberate choice of the entry state. For instance, the Illinois legislature in permitting foreign banks to branch in Chicago could have provided that no such bank with a branch, agency or subsidiary in another state could avail itself of this privilege. It chose not to do so.

Section 3(d) of the Bank Holding Company Act allows any state to permit the entry of out-of-state bank holding companies. The states are also free to authorize branches of non-member banks incorporated in other states. Such recognition of the right of a state to make its own election allows experimentation and development on a state-by-state basis. There is no need to abandon such principles when dealing with foreign banks. This is particularly so, since the overwhelming majority of domestic banks are in fact not prejudiced by the limited extent of interstate banking permitted to foreign banks, especially in light of the sophisticated international market in which foreign banks compete as well as the ability of domestic banks to establish Edge Act Corporations and loan production offices in various states.

Indirect Membership in the Federal Reserve System

No showing has been made for the need (i) to impose reserve requirements on foreign branches and agencies whose parent entities have assets exceeding $1,000,000,000, or (ii) to require compliance by foreign branches and agencies with various provisions of the Federal Reserve Act. These requirements result in a form of indirect membership in the Federal Reserve System. Moreover, the benefits of such indirect membership are of limited value in comparison with domestic banks.

The unsubstantiated premise that reserve requirements are needed to make banks operating in the United States responsive to its monetary policies is undercut by the fact that no such mandatory membership requirement is imposed on domestic banks. Foreign banks do maintain reserves as required by the laws of the states in which they are located. Further, they have always voluntarily complied when requested by the Federal Reserve Board to maintain reserves identical to those required of U.S. banks, as U.S. banks have voluntarily cooperated with central bankers of foreign host countries.

Surety Bond with FDIC

There is not sufficient justification for requiring branches of foreign banks to maintain a surety bond or pledge of assets with the Federal Deposit Insurance Corporation. Foreign-owned banks that are subsidiaries of bank holding companies are now required to insure their deposits. As to the unincorporated establishments of foreign banks, such establishments have almost exclusively confined themselves to activities incidental to the foreign and international business of their home bank. Their business is primarily money center oriented, relating to so-called "big ticket" transactions. As presently conceived, deposit insurance, with its maximum coverage of $40,000, offers such banks no advantage and their customers no significant protection. To the extent that foreign banks have sought to conduct a retail business in the United States by soliciting consumer deposits, they have done so either by choice or economic constraints through the vehicle of domestic banking subsidiaries and have obtained deposit insurance. Furthermore, the requirement of a surety bond or pledge of assets is particularly onerous when combined with the generally imposed state requirement that a foreign branch or agency maintain approved assets equal to 108% of its liabilities.

Investment Banking
Performed by Foreign Banks

The investment banking business conducted by affiliates of foreign banks in this country is largely confined to servicing their own foreign customers in the U.S. market. As such, they simply transact here what their home countries regard as a true banking business.

This Association recommends that no limitation be placed on investment banking activities of affiliates of foreign banks which have commercial banking operations in the United States. Such investment banking activities have been modest in scope with only a minimal impact when compared to the size of the United States market.

Furthermore, the bill is seriously defective because in creating a restriction regarding such activities no permanent grandfather rights have been provided for existing securities affiliates of foreign banks. Such treatment contrasts with the permanent grandfather rights afforded by the Bank Holding Company Act for domestic bank holding companies. The few securities affiliates of foreign banks which would be granted grandfather rights represent long-term investments of personnel and funds made in good faith -- investments which would be rendered largely valueless in the absence of permanent grandfather rights.

Weakening of International Financial System

The national interest in strengthening the international financial system is best served by facilitating foreign activities of United States banks and domestic activities of foreign banks. The bill would undercut that interest. It would discourage the operations of foreign banks in the United States by requiring federal approval and by subjecting nearly all foreign banks operating in the United States to reserve requirements and other provisions under the Federal Reserve Act, certain provisions of the Bank Holding Company Act, the need to pledge assets or a surety bond with the Federal Deposit Insurance Corporation and other similar laws.

By subjecting all foreign-banking entities, simply by reason of their foreign ownership or citizenship, to laws that now apply to some but not all components of the American banking system, this bill would clearly be perceived as discriminatory by foreign countries. While foreign central bankers have a traditional reluctance to criticize domestic proposals of our monetary authorities, I assure you that our foreign banking friends have conveyed strong protest to the members of the New York Clearing House Association. What logic is there in the United States permitting a West German bank the right to have a branch only in Chicago and West Germany continuing to permit a U.S. bank to have branches in Frankfurt, Munich and other German cities.

Foreign policy problems with regard to domestic activities of foreign banks have thus far been avoided, since such banks have come to accept our tradition of having banks geographically circumscribed and supervised on a state-by-state basis. Any change in that tradition, particularly if it restricts the current U.S. activities of foreign banks, would very likely give rise to unnecessary friction.

Conclusion

If foreign banks enjoy any competitive edge, they do so at the sufferance of the states within whose borders they operate and which the states have the power to remove. Far from providing for competitive equality between U.S. and foreign banks, the bill would discriminate against foreign banks by denying them options available to U.S. banks under our present system. Such discrimination is likely to invite retaliation by foreign countries against U.S. banks and damage U.S. markets and the financing of our foreign trade. The result can only be disruptive of the international financial system.

Mr. St Germain. We thank you.

Now we will hear from Mr. Whitesell. You may proceed. We will put your entire statement in the record.

STATEMENT OF WILLIAM E. WHITESELL, SECRETARY OF BANKING, COMMONWEALTH OF PENNSYLVANIA, MEMBER, FEDERAL LEGISLATION COMMITTEE, CONFERENCE OF STATE BANK SUPERVISORS; ACCOMPANIED BY ALEX NEALE, VICE PRESIDENT AND DIRECTOR OF FEDERAL LEGISLATION OF THE CONFERENCE

Mr. Whitesell. Thank you.

Mr. Chairman, it is a pleasure to appear before you and this subcommittee. I am William E. Whitesell, secretary of banking for the Commonwealth of Pennsylvania, and a member of the Federal Legislation Committee of the Conference of State Bank Supervisors, in whose behalf I am testifying today.

First, at the outset, may I say that the Conference of State Bank Supervisors strongly supports provisions of the bill that would permit the Comptroller of the Currency to waive the requirements of the National Bank Act that all directors of a national bank be U.S. citizens and require that only a majority of the directors be American citizens when the bank is foreign-owned. This proposal is an extension of the concept of dualism. Our domestic banks now have this chartering option, and we believe it should also be made available to foreign banking institutions desirous of operating in our country. This provision would also add to the Federal "presence" in regard to the regulating of foreign-owned banking institutions in the United States. However, we would oppose a Federal charter or license for a foreign banking institution carrying with it the authority to organize and operate within a State irrespective of State law.

Second, the Conference of State Bank Supervisors opposes the one-State limitation that would be imposed on foreign branches. At first glance, this appears desirable from the standpoint of providing equitable treatment between foreign and domestic banks in their interstate operations. However, an examination of the facts discloses that our domestic bank holding companies, through their bank and nonbank subsidiaries and other facilities, conduct far more extensive interstate banking activities than do the 18 foreign-owned banks that have established branches in this country in more than one State. While the multi-State locations of these foreign branches are confined principally to New York and Illinois, data which have appeared in the American Banker newspaper in 1975-76, reflect there are 13 large bank holding companies alone in this country that have 1,642 nonbanking offices, approximately 1,483 of which are located in States other than that of the anchor bank of the holding company. These 13 bank holding companies, through their subsidiaries, are engaged in a wide range of bank-related activities, including consumer and sales finance, mortgage banking, leasing, selling and reissuing credit-related insurance, factoring, real estate advice, management consulting, et cetera. These 13 bank holding companies alone make relatively unimportant in comparison the interstate banking activities of the small number of foreign branches that are in more than one State.

In addition, most foreign banks, through their branches, pursue primarily a wholesale banking business rather than compete with our domestic banks in local retail markets.

In Chicago, for instance, where there are 27 foreign bank branches located in the Loop area, only three branches have ground-floor locations, and actively compete for local retail deposits. The other branches are in office buildings in off-street locations and are engaged principally in transactions with multinational corporations. Of the 53 foreign banks with branches in New York, only 4 are actively competing for retail domestic deposits at this time through their branches. The other foreign bank branches in New York are competing with our large money center banks there in wholesale-type banking activities.

Third, the multi-State prohibition on foreign branches contained in this bill is contrary to our national interests, and Conference of State Bank Supervisors believes this subsection should be stricken from the bill. These provisions have the practical effect of limiting foreign branches to one State for the foreseeable future, and under such conditions foreign branches would, in all likelihood, locate in California or New York for their one-State operations. Thus, other States would be estopped from inviting into their borders a foreign branch that happened to also be located in New York or California. This would discriminate against such States which might desire to increase their roles in international financial affairs.

It is in our national interests to promote other areas than New York and California as international banking centers.

Fourth, we oppose provisions of the bill which would give the Federal Reserve Board authority to set reserves on foreign-owned, State-chartered branches, agencies and New York investment companies where the parent bank has total worldwide assets in excess of $1 billion.

First of all, affiliation with the Fed for reserve purposes is optional for domestic State-chartered banks, regardless of size, and it should be optional for foreign banking institutions operating in this country.

Second, the Fed has made no clear showing it needs reserve-setting authority over all State-chartered domestic banks—let alone foreign banks—in connection with its monetary policy responsibilities. The Fed carries out its monetary policy objectives principally through its Federal Open Market Committee operations.

The Federal Reserve Board for a number of years has been attempting unsuccessfully to extend its reserve-setting authority over nonmember depository institutions, largely on the ground that it needs such authority for its monetary policy role. The Conference of State Bank Supervisors believes this issue should be decided on its merits in separate and searching hearings, and not tied to the issue of regulating foreign banking institutions that choose to operate in this country under State charter or license. There simply has been no showing by the Fed that optional affiliation with the Fed by our domestic commercial banks—or foreign banks—has impeded the Fed in carrying out its monetary policy objectives. The conference considers the Fed's efforts to extend its reserve-setting role through this bill as unjustified.

A 1974 study commissioned by the Conference of State Bank Supervisors on the optional affiliation-monetary policy question, conducted by Professors Ross M. Robertson and Almarin Phillips, holds that while major monetary policy weaknesses have been revealed in the recent past, and should be anticipated in the future, optional affiliation of some banks with the Fed for reserve purposes cannot be considered high on the list of factors contributing to these weaknesses, if eligible at all for inclusion. I have copies of that study, which I would like to have inserted in the record.

Fifth, other provisions of section 7 of the bill would give the Fed a veto power over States in determining whether foreign banking institutions could be organized under State law. In addition, under this section the Fed could impose on foreign banking institutions operating under State license, regulatory controls as though such institutions were member banks.

These proposals are unwarranted, and we vigorously oppose them. Why should the Fed have the veto power over a State in one of the primary areas of a State's responsibilities in the banking field, namely, the licensing of a bank, a branch or agency to meet the public interest. Governor Gardner indicated in his testimony that he had no objection to deleting this veto provision from the bill. We would favor deletion of the entire section.

Foreign banks have been operating under State oversight for many years, and the Conference of State Bank Supervisors is not aware of any showing by the Fed or any source, that under such supervision any of our national objectives have been impeded in any way. Foreign banks have been coming to our country in increasing numbers, and it should be hoped that they continue to do so, for they have provided a valuable competitive stimulus to our domestic banks and have aided the presence of American banks overseas. Additionally, although their assets in this country are about $76 billion, it should be borne in mind that as of April 1977, assets of U.S. banking offices abroad were about $223 billion, or nearly three times as large.

Foreign banks operating as subsidiaries in this country have $11.5 billion in deposits which are under FDIC insurance. The FDIC, along with State banking departments, examines and supervises such institutions, as it does our other State-chartered nonmember banks. Branches and agencies of foreign banks (except in Massachusetts, where one branch is located) submit monthly reports of condition to the Federal Reserve banks. I am certain our State banking departments where foreign banking institutions are located would be willing to furnish the Fed with other data regarding foreign bank operations under State supervision, which the Fed can demonstrate it needs in order to carry out its responsibilities.

Sixth, with respect to the provisions in the bill for requiring FDIC insurance for foreign branches which accept domestic deposits, the Conference of State Bank Supervisors has no consensus view. I should point out, however, that State banking departments, in the absence of FDIC insurance, have resorted to various statutory or legal substitutes and approaches to assure the safety of domestic deposits of foreign branches. The statutory form is generally patterned after New York Banking Law pertaining to foreign banks. Agencies do not accept deposits.

Seventh, with respect to the securities affiliates of foreign banks in this country, it is believed that Federal legislation affecting this activity should properly come only after completion of extensive congressional review of the Glass-Steagall Act, such as that which is currently being carried out by the Senate Securities Subcommittee. If, after completion of such review, prohibitions are continued on domestic banks engaging in such activities, CSBS would favor prohibiting these activities by foreign banks. However, even under these conditions, it is believed only equitable to grandfather-related existing operations.

Mr. St Germain. Pardon me for interrupting, Mr. Whitesell. We will insert your proposed statement in the record at this point and give members of the subcommittee an opportunity to interrogate you.

[The prepared statement of Mr. Whitesell, on behalf of the Conference of State Bank Supervisors, follows:]

STATEMENT OF MR. WILLIAM E. WHITESELL

ON BEHALF OF

THE CONFERENCE OF STATE BANK SUPERVISORS

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION,

REGULATION AND INSURANCE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

U. S. HOUSE OF REPRESENTATIVES

RE: H. R. 7325--THE INTERNATIONAL BANKING ACT OF 1977

Mr. Chairman, it is a pleasure to appear before you and the members of this Subcommittee. I am William E. Whitesell, Secretary of Banking for the State of Pennsylvania, and a member of the Federal Legislation Committee of the Conference of State Bank Supervisors, in whose behalf I am testifying today.

The Conference of State Bank Supervisors (CSBS) expresses its strong support for provisions of this bill that would permit the Comptroller of the Currency to waive the requirements of the National Bank Act that all directors of a national bank be United States citizens, and require that only a majority of the directors be American citizens when the bank is foreign-owned.

CSBS regards this proposal as an extension of the concept of dualism. Our domestic banks now have this chartering option, and we believe it should be also made available to foreign banking institutions desirous of operating in our country.

However, the Conference would oppose a federal charter or license for a foreign bank, branch or agency, carrying with it the authority to organize and operate within a state irrespective of state law[1/]. It is the position of the Conference that a state should have the right to structure the financial organizations within its borders in a manner which the state believes best serves the needs of its residents.

1/ Foreign banks operate in California, Georgia, Hawaii, Illinois, Massachusetts, New York, Oregon, Puerto Rico, the Virgin Islands and Washington. A few states specifically prohibit foreign banks while a number of state statutes are silent in this area.

Aside from the dual chartering provision, which it supports as indicated above, CSBS regards certain other provisions of the bill as entirely too sweeping in their scope and, in their final analysis, representing an unwarranted derogation of the authority of states to regulate foreign banking institutions desiring to operate in this country under provisions of state law.

Interstate Banking Operations

One of the provisions of this bill to which CSBS must voice its strong opposition is the prohibition on multi-state locations that would be imposed on foreign bank branches until our domestic national and Federal Reserve member banks can also branch interstate. Multi-state operations of foreign banks established or approved before May 1, 1976 would be permanently grandfathered.

At first glance this provision might appear to be desirable from the standpoint of providing equitable treatment between foreign and domestic banks in their interstate operations. Data from the Federal Reserve Board, for example, disclose that some 18 foreign-owned banks have established branches in this country in more than one state. These multi-state branches are confined principally to New York and Illinois, although a few foreign banks have two-state branch locations in Massachusetts, Oregon, Puerto Rico, the Virgin Islands and Washington. A close examination of the facts discloses that our domestic bank holding companies through their bank and non-bank subsidiaries and other facilities have far more extensive interstate banking facilities and operations than do a limited number of foreign bank branches operating in this country.

Our domestic banks utilize a wide range of multi-state bank holding company bank and nonbank affiliates, Edge Act Corporations, loan production offices, traveling loan and deposit-producing offices and a nationwide correspondent banking network that make relatively insignificant in comparison, the interstate efforts of foreign banking institutions operating in this country.

In illustration of the above, during late 1975 and early 1976 the American Banker newspaper featured a number of articles reflecting the spread across the United States of nonbank subsidiaries of bank holding companies[2/]. Thirteen bank holding companies were analyzed in these articles as to the number of offices of each and the number of states in which they operate. The identities of these bank holding companies are set forth in Exhibit No. 1.

The data reflected that while the main office of the anchor banks of the 13 bank holding companies reviewed are located in seven states, the offices of their nonbank subsidiaries are located in 43 states. These 13 bank holding companies have 1,642 nonbanking offices, approximately 1,483 of which are located in states other than that of the anchor bank of the holding company. These 13 bank holding companies utilize 35 Edge Act Corporations in their interstate operations and 23 loan production offices.

The American Banker articles disclosed that the 13 bank holding companies through their subsidiaries are engaged in a wide range of bank-related activities. These activities (the number of the 13 holding companies which engage in the particular type of operation

2/ American Banker issues of October 23 and 29, November 5, 13 and 20, December 4, 12, 22 and 29, 1975; January 6, 13 and 21 and February 9, 1976.

is listed in parenthesis) are as follows: consumer and sales finance (12); mortgage banking (12); leasing (11); selling and reissuing credit-related insurance (10); factoring (7); investment management advice (7); real estate advice (6); providing venture capital to small businesses (6); computer services (4); trust services (2); marketing travelers checks (2); commercial leasing (1); management consulting (2); urban redevelopment (2); credit card services (1); travel services (1); making and servicing of government guaranteed student loans (10); various accounting services (1); and underwriting insurance (1). Most of these lending and service-related functions help generate deposits for banks.

In addition to the above-mentioned interstate bank-related affiliates, there were as of year-end 1976, seven U. S. bank holding companies which owned banks in more than one state through grandfathering provisions of the Bank Holding Company Act of 1956. For example, the Western Bancorporation headquartered in Los Angeles, California owned banks in Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. The Northwest Bancorporation headquartered in Minneapolis, Minnesota owned banks in Iowa, Montana, Nebraska, North and South Dakota and Wisconsin.

Aside from the foregoing, I think it is pertinent to point out also that most foreign banks through their branches in our financial centers pursue primarily a wholesale banking business rather than compete with our domestic banks in local retail markets. Former Federal Reserve Board Vice Chairman, George W. Mitchell, testified before the Senate Subcommittee on Financial Institutions during 1976 on S. 958, the Foreign Banking Act of 1975. At that time, in discussing the principal reason why foreign banks have entered the

United States, he stated it has been

> . . . to service the needs of multi-national corporations (both U. S.- and foreign-based) which tend to be customers of these banks and to accommodate home country customers who do business in the United States. Servicing these customers is likely to remain the primary business of foreign banks operating in the United States.

Mr. Mitchell added that some foreign banks in an effort to diversify their business and to gain a more stable deposit base are likely to develop a significant retail business in the United States, but that in all probability this would continue to be a distinctly secondary aspect of the U. S. business of these companies[3/].

It should also be noted that Section 3(d) of the Bank Holding Company Act presently provides the legal mechanism for full-service banking across state lines by either domestic or foreign banks. This section permits the acquisition or establishment of commercial banks by bank holding companies located out-of-state, if the statute of the state in which the bank is located specifically authorizes such action "by language to that effect and not merely by implication." The State of Maine has enacted legislation to permit out-of-state acquisitions on a reciprocal basis, effective in 1978. New York has on several occasions introduced legislation to permit reciprocal interstate banking. However, no law has been enacted by that State which would actually provide for such activity.

3/ Hearings before the Subcommittee on Financial Institutions of the Committee on Banking, Housing and Urban Affairs, U. S. Senate, on S. 958, The Foreign Banking Act of 1975, p. 163.

While the interstate prohibitions of this bill are designed to promote the concept of equitable treatment between foreign and domestic banks, CSBS regards the problem as largely illusory, and considers the proposed remedy as being contrary to our national interests. The bill, for example, has the practical effect of limiting foreign branches to one state for the foreseeable future. In all likelihood foreign branches, under such conditions, would choose California or New York, our country's leading international financial centers, as the base for their one-state operations. Under such conditions, a state desirous of expanding its role in international banking matters would be estopped from inviting a foreign bank branch to locate within its borders if the branch happened also to be located in another state. To prevent what is perceived as a competitive advantage favoring foreign banks, the bill would in fact discriminate against states other than New York and California in their international banking aspirations. It is the position of the Conference that a state should be permitted to invite an out-of-state foreign bank branch to operate within its borders if this is believed in the interests of the state, without the necessity for Congress to impose its will on states on the issue of whether our domestic banks can branch across state lines.

Authority of the Federal Reserve System

Section 7(a) of H.R. 7325 would provide that the Federal Reserve Board could set reserves over foreign-owned state-chartered branches, agencies or New York investment companies where the parent bank had total world-wide assets in excess of $1B. The Federal Reserve Board by letter to this Subcommittee dated May 25, 1977, is also proposing that reserve requirements be imposed on state-chartered subsidiaries of large foreign banks where this asset-size test is met. These reserve requirements would be imposed as an alleged prerequisite to the Fed's monetary policy obligations.

The Conference of State Bank Supervisors opposes the above provisions. First of all, affiliation with the Federal Reserve System is optional for domestic state-chartered banks, regardless of size. This affiliation should also be optional for foreign banking institutions. The bill attempts to make this affiliation more palatable simply by attaching a size criterion. Size is not a proper criterion for imposing reserves. To carry this to its logical conclusion would require that all large domestic banks be affiliated with the Federal Reserve System.

Secondly, the Fed, outside of some ex cathedra pronouncements, has made no clear showing that it needs reserve-setting authority over all state-chartered domestic banks--let alone foreign banks--in connection with its monetary policy responsibilities. The Fed carries out its monetary policy responsibilities principally through its Federal Open Market Committee operations.

In 1974 the Conference of State Bank Supervisors commissioned a study on the optional affiliation-monetary policy question. A copy of this study, which is being furnished for the record, states in part[4/]:

4/ The study by Professors Ross M. Robertson and Almarin Phillips entitled, Optional Affiliation with the Federal Reserve System for Reserve Purposes is Consistent with Effective Monetary Policy, holds that while major monetary policy weaknesses have been revealed in the recent past, and should be anticipated in the future,

> There is substantial agreement that the reserve measure most useful for control purposes is the monetary base (base money), which is defined as the net monetary liabilities of the federal government (i.e., the Federal Reserve and the U. S. Treasury) . . . . Growth of the monetary base is essentially determined by Federal Reserve holdings of U. S. government securities, the major source component of the base. Although views differ on the precision with which the monetary base can be regulated, the consensus among monetary economists is that its size can be set within very close tolerance on a monthly basis.

Whether the Fed needs reserve-setting authority in connection with its monetary policy responsibilities was touched on in an article appearing in the Spring 1973 issue of The Bankers Magazine entitled, "Where Does American Banking Go From Here?" authored by Henry C. Wallich, then Professor of Economics at Yale University, and Mable I. Wallich. They stated at that time:

> . . . . The bulk of commercial banking has been exposed to a special tax, in the form of reserve requirements. It makes no essential difference that the revenues from the tax reach the Treasury via the Federal Reserve. There is no particular reason for this tax since the Federal Reserve can quite well conduct monetary policy operations without required reserves. (Underlining added.) (Page 25.)

As this Subcommittee is aware, the Federal Reserve Board in connection with a proposal now before the Senate Banking Subcommittee on Financial Institutions on the question of nationwide NOW accounts (S. 1664), has proposed that it be given reserve-setting authority over all federally-insured depository institutions with respect to NOWs offered by such institutions.

In testifying on the NOW account issue and the relationship

---

optional affiliation of some banks with the Fed for reserve purposes cannot be considered high on the list of factors contributing to these weaknesses, if eligible at all for inclusion.

of nonmember institutions with the Federal Reserve System for reserve-setting purposes, on June 20, 1977 Mr. George A. LeMaistre, Chairman of the FDIC, stated in part:

> . . . . There have been several studies of the monetary control issue by economists outside the Federal Reserve. All of those that I am familiar with have concluded that increased Federal Reserve membership is not important to the effectiveness of monetary policy, at least with member banks comprising the proportion of the money supply that they do now . . . .

The Federal Reserve Board for a number of years has been attempting unsuccessfully to extend its reserve-setting authority over nonmember depository institutions, largely on the grounds that it needs such authority for its monetary policy role. The Conference believes this issue, which is of considerable importance to the dual banking system, should be decided on its merits in separate and searching hearings, and not tied to the issue of regulating foreign banking institutions that choose to operate in this country under a state charter or license. There simply has been no showing by the Fed that optional affiliation with the System by our domestic commercial banks has impeded the Fed in carrying out its monetary policy objectives--let alone that foreign banks operating here have done so--and the Conference considers the Fed's approach to extend its reserve-setting role through this bill is unjustified.

Aside from the fact that the Fed has not demonstrated its need for reserve-setting authority over foreign banking institutions, let me point out that all states with branches of foreign banks apply reserve requirements equivalent to those of domestic state-chartered banks. Even in Illinois, where there are no state reserve requirements for domestic banks, branches of foreign banks are required to maintain reserves equal to those imposed by the Federal Reserve on member banks. Foreign agencies do not accept domestic deposits and reserves are not maintained against them. In New York, where fifty-three foreign banks have branches, in addition to reserves, foreign branches must maintain a special liquidity reserve in the form of five per cent of assets segregated and maintained under a restricted deposit agreement subject to withdrawal only with the consent of the New York State Superintendent of Banks. This reserve is over and above vault cash and other liquidity reserves. Thus, in actual practice, foreign branch reserves may well be higher than those of domestic banks.

It should be also pointed out that foreign branches (except in Massachusetts where one branch is located) furnish monthly copies of condition reports to the interested Federal Reserve Banks, as well as to their respective state banking departments. These reports contain data on reserves held by such institutions.

In Chicago, Illinois, where 27 foreign branches are located, these branches until recently, when the Fed indicated it no longer needed such data, submitted weekly reports to the Fed indicating reserves they were holding on deposits.

Other provisions of Section 7 would authorize the Federal Reserve Board to impose regulatory controls on foreign banking institutions operating under state supervision as though such institutions were member banks. And, Section 7(e) would actually authorize the Fed to exercise a veto power over state banking departments as to whether these foreign branches, agencies or investment companies could be organized under state law. This subsection is an outrageous affront to states. Why should the Fed have the final authority as to whether a state can exercise a fundamental prerogative of its sovereignty, namely the right to license a banking institution in its borders that it believes will serve the public interest--and which the state has the primary authority and responsibility to regulate and supervise.

The foregoing provisions of Section 7 not only are unwarranted, but they possess adverse implications for the dual banking system. In addition, they leave the states with responsibility for supervision but without real authority.

Foreign banks have been operating in this country for many, many years under state law and supervisory controls. These institutions have been growing in this country in recent years and they have been providing a competitive stimulus to our domestic banks. Furthermore, they are a vital consideration in connection with the facilitating of international trade and with respect to the growing presence of our U. S. banks overseas. In this regard, according to data from the Federal Reserve Board, the assets of U. S. banking offices abroad, as of April 1976, were some $223B, or approximately 3-1/2 times as great as the $66B in assets held by foreign banking operations in this country.

I am not aware of any showing that the absence of the extensive federal controls proposed in this bill has been contrary to our national interests, or resulted in banking practices that have been unsafe or unsound. In fact, state banking department performance over the span of a century of experience regulating foreign banks has been generally excellent. During hearings on S. 958, the Foreign Banking Act of 1975, former Federal Reserve Board Vice Chairman, George Mitchell, stated in part:

> There is nothing to indicate that foreign banks are "abusing" their powers in the sense that they are using the opportunities available to them under the present system to engage in any improper or unsound banking practices. On the contrary, it has been the experience of the Board that foreign banks operating in the United States have scrupulously complied with existing U. S. laws and regulations and have been generally cooperative in their dealings with the Board.

In view of the adverse implications of this Section to the dual banking system, and the absence of any showing that its provisions are needed, the Conference requests this Section be stricken from the bill.

FDIC Insurance

Section 6 of the bill would require that any foreign branch which accepts deposits of United States citizens, residents or businesses whose principal place of business is in the United States, must maintain with the FDIC a surety bond or pledge of assets in amounts determined by the FDIC for the purpose of protecting such deposits to the same extent and in the same amount that they would be protected in an insured bank.

The Conference of State Bank Supervisors has no consensus view on the necessity of extending FDIC insurance to foreign branches which take domestic deposits and to agencies which do not take domestic deposits. I would like to point out, however, that state banking departments regularly examine foreign-owned state-chartered subsidiaries, branches and agencies for safety and soundness. Because the FDIC does not insure deposits of foreign branches and because capital is a nebulous concept, states have resorted to various statutory or legal substitutes and approaches to assure the safety of deposits. The statutory form is generally patterned after New York Banking Law (sec. 202) which requires:

> 1.(a) Upon opening a branch and thereafter, a foreign banking corporation . . . shall keep on deposit . . . with such banks or trust companies or private bankers or national banks in the State of New York as such foreign banking corporation may designate and the Superintendent may approve, interest-bearing stocks and bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this State, or of a city, county, town, village, school district, or instrumentality of this State or guaranteed by this State, or dollar deposits, or obligations of the International Bank of Reconstruction and Development or obligations issued by the Inter-American Development Bank, or obligations of the Asian Development Bank, to an aggregate amount . . . of not less than one hundred thousand dollars; provided, however, that the Superintendent may from time to time require that the assets deposited . . . may be maintained by the foreign banking corporation at such amount as he shall deem necessary or desirable for the maintenance of a sound financial condition, the protection of depositors and the public interest, and to maintain public confidence in the business of such branch or branches . . . .
>
> 2. Each foreign banking corporation shall hold in this State currency, bonds, notes, debentures, drafts, bills of exchange or other evidences of indebtedness or other obligations payable in the United States or in United States funds or, with the prior approval of the Superintendent, in funds freely convertible into United States funds, in an amount which shall be not less than one hundred eight per centum of the aggregate amount of liabilities of such foreign banking corporation payable at or through its agency, agencies, branch or branches in this State . . . (The Superintendent) . . . may require such foreign banking corporation to deposit the assets required to be held in this State . . . with such banks or trust companies or private bankers or national banks located in this State, as such foreign banking corporation may designate and the Superintendent may approve.

The above requirement, generally known as the "108 per cent rule" has found its way into the statutes or practices of Illinois, Massachusetts and Washington. The State of Illinois requires foreign branches, in addition to the 108 per cent rule, to maintain interest-bearing obligations or dollar deposits of not less than the greater of $100,000 or five per cent of total liabilities, such obligations or deposits to be maintained with a state or national bank.

Nonbanking Activities

Section 8 of this bill is designed to deal with possible competitive advantages enjoyed by foreign banks over domestic banks through securities affiliates of foreign banks operating in this country.

The securities affiliates of foreign banks are relatively few in number and are located principally in New York City, where they engage primarily in brokerage activities for foreign customers of these banks.

CSBS believes that federal legislation affecting the securities activities of foreign banks should properly come only after completion of extensive Congressional review of the Glass-Steagall Act such as that which is currently being carried out by the Senate Securities Subcommittee. If, after completion of such review, prohibitions are continued on domestic banks engaging in activities now forbidden them by the Glass-Steagall Act, the Conference would favor prohibiting such activities by foreign banks. However, should this development occur, CSBS believes it only equitable to grandfather related existing operations.

Thank you Mr. Chairman.

Mr. WHITESELL. In addition to the Conference of State Bank Supervisors Commission study which I mentioned earlier, I also have the articles from the *American Banker,* to which I referred, and which I would like to submit for the record.

Mr. ST GERMAIN. You can submit them to the subcommittee, and we will determine how much goes in the record, because we haven't seen it as yet. Mr. Whitesell, on the subject of the present prospective expansion for foreign banks into other States, can you give us an estimate of the number of States that are presently actively attempting to attract foreign banks?

Mr. WHITESELL. I can't give you an estimate of the number trying to actively attract them. I think the foreign banks presently operate in 11 States. There may be others that are trying to attract them, which simply haven't been able to do so.

Mr. ST GERMAIN. Can you discuss for us the situation in Texas and comment on the growth of international banks in Houston, despite very severe restrictions on foreign banking operations in the State of Texas?

Mr. WHITESELL. I cannot, but in answer to that question, as well as the former one, we would be glad to submit a formal written statement, Mr. Chairman.

[In response to the information requested by Chairman St Germain, the following letter was received from Alexander W. Neale, Director of Federal Legislation, Conference of State Bank Supervisors, on behalf of Mr. Whitesell:]

OFFICE OF THE EXECUTIVE VICE PRESIDENT-ECONOMIST

July 22, 1977

Honorable Fernand J. St Germain
Chairman
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
2128 Rayburn House Office Building
Washington, D. C. 20515

Dear Representative St Germain:

RE: International Banking Act of 1977 (H.R. 7325)

During the appearance of Mr. William E. Whitesell, Secretary of Banking for the State of Pennsylvania, before your Subcommittee on July 13 regarding the above bill, you inquired of Mr. Whitesell as to an estimate of the number of states presently attempting to attract foreign banks.

As you know, foreign banks are presently operating in California, Georgia, Hawaii, Illinois, Massachusetts, New York, Oregon, Puerto Rico, Washington and the Virgin Islands. In addition to the foregoing, the statutes of Missouri and Ohio would appear to permit foreign-owned agencies. However, none are located in those States.

In addition to the above states, Florida, during 1977, passed legislation that would permit foreign-owned banks to establish agencies and representative offices. Florida law would prohibit foreign banking institutions from taking domestic deposits, thus the statutes of Florida would effectively prohibit foreign-owned branches from operating in that State.

The Pennsylvania legislature has passed legislation -- not yet signed into law -- which would permit foreign-owned branches and agencies.

During Mr. Whitesell's testimony, you also asked him to discuss the current situation in Texas and to comment on the growth of foreign banks in that State.

1015 EIGHTEENTH STREET, N.W. • WASHINGTON, D.C. 20036 • (202) 296-2840

Inquiry of the state banking department at Austin, Texas discloses that the statutes in Texas prohibit foreign corporations from doing a banking business in that State. As a consequence, there are no foreign-owned subsidiary banks, branches or agencies operating in that State. There is an Agreement Corporation operating in the State of Texas.

Cordially,

Alexander W. Neale

Alexander W. Neale
Vice President -
Director of Federal Legislation

Mr. St Germain. California and Georgia have limited foreign banks to the agency at this point, as opposed to the branch form of operation. Can you tell us whether or not the absence of the power to accept deposits in these States by foreign banks, since they are restricted to agency, has interfered with their expansion?

Mr. Whitesell. I don't know whether I can respond to whether or not it has interfered with the expansion. I can comment about the consistency of that with respect to the general view that the Conference of State Bank Supervisors has of whether States should have the right to determine whether they want agencies, branches, or subsidiaries chartered in their respective borders.

Mr. St Germain. In Pennsylvania, you are encouraging foreign banks entering, but Pennsylvania prohibits branching by geographic limitation; is that correct?

Mr. Whitesell. That is correct.

Mr. St Germain. And, therefore, you effectively prohibit branching in that manner within the State of Pennsylvania, by these foreign banks.

Mr. Whitesell. What we have is what I might term exceptional legislation there. The bill which is supported by the Pennsylvania Bankers Association, the administration, and which has not yet been signed into law, by the way——

Mr. St Germain. Has it passed the legislature?

Mr. Whitesell. It has passed. We are simply cleaning up a minor insurance element on that in conference, but that element of our omnibus bill has passed both houses with no trouble, so there will be no problem there. Those branches, agencies, or whatever we allow to be established, can be established anywhere in the State that the foreign-owned bank wants to establish them, and we had absolutely no opposition on that from any bankers that I know of, even though the State law for domestic banks in the Commonwealth has contiguous county prohibition. The anticipation is it would be only Pittsburgh, Erie, and Philadelphia, since that is where we have the foreign trade.

Mr. St Germain. Figures on foreign bank assets and liabilities indicate that they operate their multi-State offices as a network; in other words, substantial borrowing and lending between offices in different States. If a foreign bank branch takes deposits in New York and lends them to a branch in Chicago, how can the New York State supervisor be certain the assets behind the deposits in New York are sound; to wit, since the loans are being made in Chicago, doesn't this form of operation imply a need for overall regulation of the entire foreign bank network in the United States.

Mr. Whitesell. I believe last year concerning the Foreign Banking Act of 1975, first deputy superintendent of banks Len Lapidus testified on that before the Senate, and he expressed considerable confidence that the New York State banking authorities were, in fact, able to determine to his satisfaction whether or not those foreign banks are operating soundly and safely, which I take it is the import of your statement about are we engaging in some undue risk here to allow them to lend wherever they like.

We have a comparable situation in Pennsylvania with the State-chartered banks that I supervise, that is, Girard has foreign loans;

Girard Bank gets deposits domestically and loans those moneys abroad, and we don't have hesitancy with examiners.

Mr. St Germain. Doesn't the FDIC also examine Girard Bank?

Mr. Whitesell. They always examine——

Mr. St Germain. FDIC examines Girard Bank, also?

Mr. Whitesell. That is correct.

Mr. St Germain. Not only here but the foreign branches except in Switzerland?

Mr. Whitesell. FDIC does not examine Girard Bank. I misspoke there. I think we do a joint examination with the Federal Reserve.

Mr. St Germain. Girard is international?

Mr. Whitesell. No, it is a State member bank.

Mr. St Germain. It is a State member bank; therefore, the examinations are performed by a Federal regulatory body, both within the State of Pennsylvania and its foreign operations in the foreign countries in which it operates?

Mr. Whitesell. Concurrently with ours.

Mr. St Germain. So you can't draw a parallel between that and what you refer to.

You say Mr. Lapidus said New York State supervisors he thinks are competent. New York is an exceptional State. For State-chartered banks, I think that our experience on this subcommittee in going to various States, examining failures of various banks, indicates to us that there is still, and I am sure you will agree with me, some room for improvement in State bank supervision?

Mr. Whitesell. I wouldn't argue for a minute that there isn't room for improvement in the State system and the national system. Now I think those banks by and large that have failed have been banks where the FDIC has also done examinations, and that has not prevented bank failures there. So I wouldn't want to lay bank failures at the door of the State supervisor, especially when you look at the biggest banks that failed, like the Franklin National and San Diego case, where they were national banks chartered with the Federal Government and were not State banks at all, and State authorities did not even get into those banks to examine them.

Mr. St Germain. We won't have a long debate on this, but I still have my reservations about the efficacy of some of the State banks' supervision in some of the States.

Mr. Whitesell. Mr. Chairman, I don't want to engage in the debate with you on that at all. I just would like to point out——

Mr. St Germain. They are not all as fortunate as Pennsylvania.

Mr. Whitesell [continuing]. That the biggest failures have been nationally-chartered banks and not State-chartered.

Mr. St Germain. Because nationally-chartered banks are the large banks, but we have had also failures on the State level in many cases attributable to poor State supervision.

Mr. Whitesell. Well, I would be——

Mr. St Germain. I am not going to go back and forth with you all day on this. I expressed an opinion, and you have an opinion. Fortunately, I have the vote.

Mr. Whitesell. I am well aware of that, Mr. Chairman.

Mr. St Germain. My time has expired.

Mr. Allen?

Mr. ALLEN. Mr. Chairman, you are doing so well, take my time and continue on.

Mr. ST GERMAIN. Thank you.

Mr. Whitesell, do the State supervisors establish a liaison to meet the problem that I referred to earlier, where, if deposits are acceptable in one State and loans are made in another State through an exchange of information?

Mr. WHITESELL. Does that secure the loan?

Mr. ST GERMAIN. No;

Mr. WHITESELL. Oh, does this occur. I am sorry.

Mr. ST GERMAIN. An exchange of information between State bank supervisors. Let's take the example I cited earlier of New York deposits their loans made in Chicago. Is there a liaison established between the Illinois State bank supervisor and the New York State bank supervisor?

Mr. WHITESELL. I suspect not in the way in which you mean that, though there is a classification of what we call national credits, that is, credit lines of a certain amount are established, examined, and looked at by a kind of joint venture with the regulatory bodies in general, not just the bank supervisors, that is, the State bank supervisors participate in that as well.

Mr. ST GERMAIN. Mr. Lee, on page 2 of your statement, you state the bill will be perceived as discriminatory and invite retaliation—we are hearing that word time after time after time—against U.S. banks operating abroad.

We have asked many witnesses about this, both in these hearings yesterday and today, and we will ask more of them in the next few days. The question has been asked in the Senate in their hearings, and we asked them in our hearings last year, and we find it difficult to pinpoint even this morning with Mr. Solomon—whether or not we ever see those statements, those memoranda, is questionable—but this subcommittee did discuss this matter with the foreign central banks, and that is why we asked the question.

What evidence do you have that this will invite retaliation? I am not talking about banks, but rather the regulatory authorities in the foreign countries.

Mr. LEE. Mr. Chairman, I am well aware that your subcommittee made a study of foreign central banks principally in Europe and elsewhere as well, and I know Mr. Mitchell made a serious effort to discuss the possibility of retaliation with foreign central bankers.

As I tried to bring out in my statement, there really is a reluctance on the part of foreign central bankers when speaking with Government officials to be completely candid. They shade what they say, to be very polite about it. They don't want to threaten, and I am sure that is not their intention.

We feel, and we hear, and we firmly believe, if a bill of this sort is passed, there will be a very gradual ratcheting down and tightening up. It won't be one day somebody standing up and saying we are embarrassed about the United States and we are going to hit them with retaliation. It won't come that way at all, but it will come in a very subtle way, and we are very much concerned that over a period of time the climate for international banking will become less favorable than it is today.

Mr. St Germain. So it is a feeling you have?

Mr. Lee. It is a feeling; that is correct.

Mr. St Germain. Perhaps the observation of the way an eyebrow is tilted?

Mr. Lee. Absolutely. No one comes to us and says you had better get to Washington and testify on this bill because if it passes, we are going to do this to you and that to you. No one says that. There is no evidence I can present to you.

Mr. St Germain. So it is a feeling?

Mr. Lee. It is a feeling.

Mr. St Germain. I was very fortunate; since I am French, I had a private luncheon with the Bank of France, and we took our jackets off, and we ate too much, but we talked a great deal, and I didn't get that feeling in discussing this legislation with them, and that was the primary purpose of our inquiry and our trip.

Mr. Lee, on page 7, you referred to the permanent grandfather rights traditional in U.S. banking legislation. However, there were divestitures required on the Bank Holding Act Amendments of 1970, and, moreover, as has been testified to earlier this morning, on the Glass-Steagall, there was absolute divestiture required within 1 year. So that it is not unheard of.

Mr. Lee. It is not unheard of. It is very traumatic, I think, Mr. Chairman, you will agree.

Mr. St Germain. Of course.

Mr. Lee. There is certainly one precedent——

Mr. St Germain. It is like if you get gangrene in your leg and have to have it amputated, it is traumatic, but necessary?

Mr. Lee. That is not our perception.

Mr. St Germain. If it is considered necessary, it is traumatic, but if considered necessary, you nonetheless have to do it.

Mr. Lee. We don't equate foreign bank affiliates with gangrene in the leg.

Mr. St Germain. I didn't mean to imply that. Let's equate it with something else. Eminent domain: I have a business along a highway, but they are going to widen that highway, so they take my business away or make it an 8 lane or 4 lane with divider and, as a result, my customers are gone. It is traumatic. I lost my source of income, but it happens.

Mr. Lee. You are right, sir; in eminent domain it is also traumatic, yet there is an effort by the court to make the entity whole. In this case foreign investments made over a long period of time in this country with the expectation that the rules would remain the same will be suddenly cut off and no recompense given.

Mr. St Germain. On page 3, you say nonmember domestic State banks which are not insured are not subject to any Federal regulation. This may be true, but is it not true they are subject to certain forms of Federal banking laws, for example, under the Glass-Steagall Act that prohibited dealing in securities, and this applies to noninsured State banks as well as all U.S. banks; is that not correct?

Mr. Lee. That is correct.

Mr. St Germain. My time has once again expired, as well as Mr. Allen's time.

Thank you, Mr. Allen.

Mr. Hyde?

Mr. HYDE. Mr. Lee, with reference to section 8, we have heard arguments that foreign banks that have securities affiliates have enjoyed some significant competitive advantages over the U.S. banks. In your experience, is this the case?

Mr. LEE. No, indeed. We feel quite the opposite. Our banks feel that their presence in this country, even though the business they do in this country is very minimal, is of assistance to us, not only here but especially in allowing us access to and gaining us access in the markets abroad.

Mr. HYDE. Mr. Whitesell, we were treated to an interesting colloquy about the demerits of State examination versus FDIC, Comptroller General, and Federal Reserve examination. Is it your experience that Federal bank examiners put their trousers on one leg at a time just like State bank examiners do?

Mr. WHITESELL. I could say facetiously we require ours to jump into them two legs at once.

Mr. HYDE. There is no infusion of genius that suddenly happens to a Federal bank examiner that is not available to a State bank examiner?

Mr. WHITESELL. I think that is correct, sir. Actually, we use some of the same schools the FDIC uses. We do not use any of the schools that the Comptroller of the Currency puts on.

Mr. HYDE. I have no further questions, and I yield to the gentleman from Michigan.

Mr. BROWN. As I recall, Mr. Whitesell, when we were having hearings of my subcommittee of the Government Operations Committee, it was alleged there was shopping around being done by banks, based upon the strictness of regulation, examination, et cetera, and isn't my recollection correct that the allegation was made that a very substantial Pennsylvania bank switched from a State charter to a national charter on the basis that the regulation by the Comptroller's Office was less stringent than that of the State?

Mr. WHITESELL. Let me say, sir, the only thing I know about that is what I read in the newspaper, but I read in the newspaper that was, in fact, the case.

Mr. BROWN. I wanted to bring this out because the chairman suggested that maybe States don't do as good a job.

Mr. WHITESELL. You are correct, I think, in stating that was one of the assertions in that hearing, and that certainly was a major part of one or more articles that appeared in the Wall Street Journal, and I don't think it was ever really denied by the people in that bank.

Mr. BROWN. Wasn't that a rather substantial bank, as I recall?

Mr. WHITESELL. Yes, it was, almost $7 billion in total assets now, the second largest bank in Pennsylvania.

Mr. BROWN. After hearing your statement and Mr. Lee's statement, as I indicated to Mr. Solomon, I haven't had a chance to go over the present bill, but I presume it is substantially the same as last year's bill, and when I asked him the question about this bill not providing uniformity, the chairman and Mr. Solomon said it does provide uniformity, and I think you and Mr. Lee pointed out it doesn't grant uniformity?

Mr. WHITESELL. I would agree it does not give uniformity. For instance, I think we need only to point to the fact that if Pennsylvania and New York wanted to currently allow banks from each State to branch into the other, that is possible under present law. Now, if this bill is passed, Pennsylvania then doesn't have the same right with respect to foreign banks that it has with respect to domestic.

Mr. BROWN. That is the point I was making and the response from Solomon was that, oh, no, we have taken care of that. I thought maybe this was a different version of the bill.

Mr. WHITESELL. No, I think he probably isn't as sensitive to that as a State bank regulator would be.

Mr. BROWN. Thank you very much. I appreciate both of your statements.

Mr. ST GERMAIN. Mr. Cavanaugh.

Mr. CAVANAUGH. I have no questions.

Mr. BROWN. Mr. Chairman, one second.

I think, Mr. Whitesell, in your statement you testified on the Glass-Steagall aspect of this matter. It is your proposal that foreign institutions presently functioning in this country be grandfathered in, both as far as the institutions and the ongoing functions; is that not correct?

Mr. WHITESELL. That is correct.

Mr. BROWN. Pending some determination of change or continuance of the policy of the Glass-Steagall Act?

Mr. WHITESELL. Our general position is that those things really shouldn't be changed until we have had a thorough review of Glass-Steagall; that is correct.

Mr. BROWN. Let me presume a little further. As I understand it, those institutions that are engaging in the securities business are not depository institutions as we know them, not retailers as such. Should any grandfathering of institution and function bear with it the complementary grandfathering restriction that they may not engage, in effect, in a retail depository function so long as they are permitted to engage in all the activities they are presently engaged in that are more liberal insofar as applied to domestic banks?

Mr. WHITESELL. You are asking, should that happen; was that the question?

Mr. BROWN. Yes.

Mr. WHITESELL. I think the position of the Conference of State Bank Supervisors is that we would simply grandfather them as if it exists now; we let it continue to exist.

Mr. BROWN. Should they be able to then participate in the additional function of a retailing depository institution which they don't engage in at the present time?

Mr. WHITESELL. I think—I just have to look to see if any of those banks currently engage in a retail business, and I don't know whether the answer to that is affirmative or negative. But we would be glad to check on that and see, if you like. I think our position would be regardless of whether they are engaged in a retail or strictly wholesale, they should be grandfathered.

Mr. Brown. You still haven't answered my question. Grandfathered as to what they are doing or as to what they are doing plus whatever else they might be able to do under the legislation?

Mr. Whitesell. I think the latter, instead of the former characterization.

Mr. Brown. Thank you.

Mr. St Germain. Gentlemen, without objection, there will be additional questions submitted to you in writing, and we will ask you to answer for the record.

The subcommittee will be in recess until 9 a.m. tomorrow morning, at which time we will hear from the witnesses as listed on the witness list which was distributed on July 12, the revised witness list.

[Whereupon, at 12 noon, the subcommittee recessed, to reconvene at 9 a.m., Thursday, July 14, 1977.]

INTERNATIONAL BANKING ACT OF 1977

TUESDAY, JULY 19, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9:00 a.m., in room 2128, Rayburn House Office Building, Hon. Fernand J. St Germain (chairman of the subcommittee), presiding.

Present: Representatives St Germain, Annunzio, Hanley, Wylie, and Hyde.

Mr. ST GERMAIN. The subcommittee will come to order.

This morning the subcommittee resumes hearings on H.R. 7325, the International Banking Act of 1977. Unfortunately, due to the business of the House last week in connection with our deliberations on the National Consumer Cooperative Bank Act, it was necessary, with very little notice, to cancel last Thursday's hearing and to reschedule those witnesses for today. We certainly apologize for the inconvenience that we realize this has caused a number of our witnesses, particularly those witnesses who have traveled a great distance, to express their views on the pending legislation.

In order to accommodate our guests from overseas, we are pleased to grant their request to be heard first this morning. I do apologize for the early hour, but in order to cover all of the witnesses essential for us to consider, it has been necessary to begin early and I have no doubt we will be continuing late into the afternoon today.

We will hear from the first panel—the European Economic Community panel—and the witnesses are Lord O'Brien of Lothbury, president, British Bankers Association; Dr. Wolfgang Jahn, member of the board, Commerzbank AG; and Paul Fabre, deputy managing director, French Bankers Association, accompanied by William D. Rogers, partner, Arnold & Porter.

Gentlemen, we will hear from Lord O'Brien first.

We will put your statement, the statement of the European Economic Community Banking Federation, into the record along with the annex accompanying it, at the conclusion of your individual statements, and you may proceed.

STATEMENT OF THE RT. HON. LORD O'BRIEN OF LOTHBURY, PRESIDENT, BRITISH BANKERS ASSOCIATION

Lord O'BRIEN. Thank you, Mr. Chairman, and thank you for giving us the opportunity to meet with you today. We apreciate why it was not possible last week and we have been enjoying the pleasures of Washington meanwhile, so don't worry on that account.

Mr. ST GERMAIN. We hope you helped our economy out a little bit despite the heat.

Lord O'BRIEN. Mr. Chairman, my colleagues and I much appreciate the opportunity you have given us to testify before your distinguished committee concerning the bill to provide for Federal regulation of participation by foreign banks in U.S. domestic financial markets. (H.R. 7325)

May I introduce my associates. On my right, Dr. Wolfgang Jahn, member of the board, Commerzbank, Germany, and on my left, Mr. Paul Fabre, deputy managing director, French Bankers Association, who is appearing in the place of Mr. Georges Smolarski, Credit Lyonnais, who was originally to appear at the July 14 session. I am Lord O'Brien, president of the British Bankers Association.

We three are spokesmen for the European Banking Federation, which represents the commercial banks in the member states of the community—Belgium, Denmark, France, Germany, Holland, Ireland, Italy, Luxembourg and the United Kingdom.

We have behind us a strong supporting panel, the names of whom I will not give now, although I hope they may be written into the record.

We are sure you will study with care the written submission we have made to you.

Since we hope, all three, to speak during this 10-minute opening I must be brief.

Your committee, Mr. Chairman, are the representatives of the strongest economy in the world. For many years by firm support of free trade and fair and open competition you have been largely instrumental in bringing the free world out of the ruins of war to greater prosperity than ever before. You have been in the forefront of the internationalization of business and commerce. Nowhere has this been more striking in the past 20 years than in the banking industry where the worldwide activities of American banks have exceeded all others. The world has benefited greatly from these developments—never so more than in the financial aftermath of the energy crisis which began towards the end of 1973.

We hope the United States is going to continue to encourage freedom of development and competition in the banking industry across national boundaries.

The banks we represent naturally have no desire to see their present opportunities in the United States constrained by new legislation. We know also that there are strong feelings in certain quarters in the United States that foreign banks should be permitted to operate in more than one State and, in the interests of furthering international trade, this would no doubt be desirable.

Nevertheless our banks accept that it is for the U.S. authorities to decide how their banking system should be regulated. If further regulation is considered necessary, our banks press most strongly that it should be based strictly on nondiscrimination between domestic and foreign banks operating in the United States.

Even if the principle of nondiscrimination is fully observed in all matters covered by the bill, our banks will feel that they have been harshly treated if there is not at the very least permanent grandfathering of all existing operations, both of branches and securities affiliates. These operations represent much investment of money, time, personnel and experience which we believe has sharpened competition and benefited the U.S. economy. We can see no good reason for bringing operations which now exist to an end and hope your committee will agree. I would add that even permanent grandfathering will not save some foreign banks from considerable hardship.

We note that the operations of existing securities affiliates are, in the present draft bill, to benefit only from temporary grandfathering. This is a meaningless concession which ensures a gradual rather than sudden death—but death all the same.

Finally, on the subject of grandfathering, so far as multistate branches are concerned, we strongly question whether it is fair that the effective date should be so far back as May 1, 1976, and note with approval that the Fedral Reserve Board appears to share this view.

Not all aspects of the proposals now before you are of equal concern to the banks in each of our countries. But they are united in their support of all the objections we are placing before you. I have not covered all of them in this brief resume, knowing that my colleagues wish to emphasize some of them in their remarks which follow.

In conclusion, all I will say is that we have read the written submission by the Institute of Foreign Bankers and, if we may, would commend it to you as an excellent paper.

Now, Mr. Chairman, if I may, I will pass the word to Mr. Paul Fabre.

STATEMENT OF PAUL FABRE, DEPUTY MANAGING DIRECTOR, FRENCH BANKERS ASSOCIATION; ACCOMPANIED BY WILLIAM D. ROGERS, PARTNER, ARNOLD & PORTER

Mr. FABRE. Mr. Chairman, members of the subcommittee, the investment banking and securities affiliates of European banks play a small but constructive role in the U.S. capital markets. They have introduced new capital resources and healthy competition for underwriting, trading, and market making. They have also contributed to the development of a central securities market through the liquidity they have brought to U.S. securities markets. This is particularly true as regards the regional exchanges such as the Boston, Philadelphia, Midwest and Pacific Stock Exchanges. We believe this is supportive of the procompetition policy embodied in the Securities Acts Amendments of 1975.

In the decade during which most of these firms have been in existence, neither we nor any of the experts who have testified before you, have become aware of any regulatory problems that would suggest a need for correct legislation. Furthermore, investment banking and securities affiliates of European banks have the status of SEC registered broker/dealers. They are under regulatory supervision not only of the SEC, but also the NASD and the stock exchanges of which they are members.

Due to the structural differences between the U.S. banking system, with its separate commercial banks and securities firms, and the "universal" banking system in Continental Europe where banks perform both functions, the practical effect of H.R. 7325 would be to preclude effective European competition with U.S. securitites firms. Moreover, it would force dissolution of existing securities affiliates established with great effort and at considerable cost. On the Continent, investment banking is exclusively undertaken by the banks. Therefore, to exclude European bank related securities firms from the U.S. market is to exclude Europe.

The provisions contained in section 8 of the bill, which would grandfather existing securities activity until 1985 and thereafter allow foreign securities affiliates to underwrite, but not distribute or deal in securities in the United States, is not a solution. Such partial grandfathering would permit foreign banks to take the risks of underwriting, while denying them the freedom to distribute securities in the U.S. market for which an issue is tailored and the underwriting risk calculated. This, and the ability to act as a dealer in secondary markets in the United States, are necessary, even with important European placement capabilities for some issues, if we are to continue as an active underwriter in your market. Moreover, our securities affiliates would be crippled immediately upon passage of H.R. 7325 because they would be unable to offer a meaningful future to employees or customers. Passage of the House bill would not be slow, but quick death for our securities affiliates as viable entities.

We would hope that upon review, and realizing the serious problems we have with this legislation, the committee would revise it, preferably to eliminate section 8 in its entirety. That failing, we would hope to see at the very minimum a full grandfathering of securities activities existing at the present time and some flexibility for future such activities by the very few foreign banks not already shareholders of a securities affiliate who might like to enter into such activity. This would not open the possibility of any significant increase in such activity by foreign banks. It would avoid an unnecessary arbitrary result.

Thank you Mr. Chairman, with your permission, I would now turn the presentation over to Dr. Jahn, who will address problems of other nonbanking activities of foreign banks.

STATEMENT OF DR. WOLGANG JANG, MEMBER OF THE BOARD, COMMERZBANK AG

Dr. JAHN. Mr. Chairman, members of the subcommittee, I am most grateful for the opportunity of appearing before you. I will limit my comments to section 8 of H.R. 7325 insofar as this section would prohibit nonbanking activities, other than the investment banking activities that have been discussed by my colleague Mr. Fabre.

For European banks that wish to do or continue doing business in the United States, the prohibitions of section 8 are most troublesome. We fully understand the policies of the Bank Holding Company Act; we accept them as the law of the United States; and you may be sure that there is a separation between our banking in the United States and any nonbanking companies in the United States of which our banks have ownership or control of the kind prohibited by the Bank Holding Company Act.

But by accepting the law and the public policies of the United States in the United States we still are not able to apply that law and those policies to the home offices of our banks. These banks are subject to the law and policies of their home countries.

We appreciate that the Federal Reserve Board has recognized these problems of extraterritorial application. At least one of the amendments to section 8 proposed by the Fed, namely, to exempt nonbanking activities principally conducted outside the U.S., looks to a solution of our problems; however this apparent liberalization is subjected to conditions which raise genuine questions about the sufficiency of these amendments.

But let me come back to the problems of section 8 as set forth in the bill itself. The main problem results from the fact that, for various historical and economic reasons, many foreign banks have interests in industrial and commercial companies in their own country. These companies would be precluded from making new capital investment in the United States. Also, in the case of foreign banks operating in the United States which have interests in nonbanking companies already operating here, such banks would either have to terminate their U.S. activities or divest themselves of their holdings. Even permanent grandfathering would not avert these adverse consequences because grandfathering applies only to the status quo.

Let me remind you that the appointed institutional role of continental European banks in their countries' economy—not an accidentally appointed role, but a role developed over a century of deliberate governmental decisions—that the appointed role of European banks is not identical with that of American banks. It is different in more ways than I have time to explore fully here.

But in the context of nonbanking activities it is essential to know first that many banks—that is they are depository institutions, as well as investment banks and brokers. As such, continental banks acquire and sell shares in industrial and commercial enterprises. That is part of their legally constituted business. But apart from that, our banks were at times—and may be again—urged by their governments, or forced by economic necessity, to acquire such shares. Many such industrial and commercial holdings had to be acquired by bans during the Great Depression in order to prevent the collapse of enterprises—others were acquired at the request of the government to prevent a take-over deemed contrary to the public interest. In my country many of these holdings were acquired as long as 50 years ago.

And one more most significant factor must be known: European security markets are incomparably thinner than those of the United States, and divestiture would be impracticable and extremely unsettling.

With this background I hope you will understand why section 8 in its present form would face us with an unacceptable dilemma: either to attempt to sell shares in inadequately receptive markets against our own economic interests and perhaps even against the public policy of our own countries, or to liquidate our banks in the United States. Either step would be destructive and would threaten the equilibrium and the functioning of what is left of a free international economy. During the recent recession we had to relearn that our economies are interdependent. None of the free industrial nations can any longer adopt policies that ignore its trading partners and allies. We share the same fate.

Thank you.

Mr. ST GERMAIN. At this point we will put your entire statement—the statement of the European Economic Community Banking Federation—into the record.

[The statement of the European Economic Community Banking Federation follows:]

E. E. C. BANKING FEDERATION

Statement

on H.R. 7325

International Banking Act of 1977

Hearings before the
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
of the Committee on Banking, Finance and Urban Affairs

House of Representatives
July 14, 1977

1. The Banking Federation of the European Economic Community appreciates the opportunity to express its views on H.R. 7325, a bill to regulate foreign banks in the United States. The E.E.C. Banking Federation represents the bankers associations of each of the nine member-countries of the European Common Market, hereinafter referred to as the European banks.

2. All of the European banks would be adversely affected by the proposed legislation, although the impact on each of them would not be exactly identical because of certain diversities in the banking regulations of their respective countries. To the extent that there is an impression that the bill which the House of Representatives passed last year, and to which H.R. 7325 is virtually identical, is generally acceptable to European banks, the purpose of this statement is to dispel this impression.

3. Europeans are somewhat confused at this stage as to what United States policy toward foreign banks really is. On the one hand, bills like H.R. 7325 aim to restrict the activities of foreign banks in the United States. At the same time, European bankers are constantly receiving delegations of American business and political leaders from various states and cities of the United States - even delegations led by Governors and Mayors - encouraging them and through them, their clients, to expand their activities in banking and in industry, and otherwise to invest in different American countries.

4. While prohibiting <u>interstate banking</u>, H.R. 7325 attempts to deal with the already existing multistate branches of foreign banks by permanently grandfathering such branches. Although it is appreciated that this is an attempt to deal with existing branches in an equitable way, the Subcommittee's attention is drawn to the fact that the bill would nevertheless prohibit banks presently operating in the United States from branching in the future and would also preclude banks not now present in the United States from establishing branches in more than one state. It would thus prevent European banks from responding affirmatively to the desires of various states and cities that they establish themselves there.

5. Then, there is the crucially important issue of what, in the United States, is called <u>non-banking activities</u> of foreign banks. This is an area in which the differences of organization and practice in the overall financial and industrial field between the United States and most E.E.C. countries are particularly sharp, and where the proposed bill does not adequately take such differences into account. The so-called universal banking, i. e. full range service banking, has been the traditional system in continental European countries so that investment, securities and commercial operations as well as the owning of equity positions in non-financial institutions are generally integrated into the activities of a single bank.

6. With respect to <u>securities operations</u>, in the nine years during which most of the investment banking and securities affiliates of European banks in the U.S. came into existence, there seem to have been no problems that would necessitate corrective legislation. These investment banking and securities affiliates have the status of SEC registered broker/dealers and are under regulatory supervision, not only

of the SEC, but also the NASD and the stock exchanges of which they are members.

7. The practical effect of H.R. 7325 would be to force the dissolution of foreign bank owned securities firms and prevent many European institutions from doing business in the United States securities markets. This is so because in their home countries, the only entities that can perform securities transactions are banks having commercial activities as well. These banks are not asking that the American unit of a European bank be allowed to perform both commercial and securities activities within the United States. They ask only that the foreign banks not be prohibited from establishing two separate units in the United States, one to perform commercial banking activities and the other, investment banking activities, solely because outside the U.S., in their home country, the parent banks perform both functions. If Europeans are not to be excluded from the American securities market altogether, it is the European banks which must have the opportunity to establish securities operations because the simple fact is that on the Continent no one else engages in this business.

8. The United States, as a matter of public policy, seeks vigorous competition in the securities field. One effective way to encourage such competition is to permit European securities operations in the U.S. And the only way to achieve this is to allow European banks to establish American securities affiliates. It should be borne in mind, of course, that total turnover in U.S. securities by E.E.C. banks is of very modest size relative to the total U.S. market.

9. The provisions contained in Section 8 of H.R. 7325, which would allow foreign securities affiliates to underwrite, but not distribute or deal in securities in the United States after 1985, are unrealistic. This 1985 cutoff date - or partial grandfathering - would mean that foreign banks could continue to take the risks of underwriting, but lose their ability to resell the underwritten securities. Without the freedom to distribute securities in the United States market for which an issue is tailored and the underwriting risk calculated, as well as the ability to act as a dealer in secondary markets in the United States, it is impractical, even with important European placement capabilities for some issues, for those firms already established to continue as active underwriters in the United States market.

10. Existing European banks' securities activities in the United States would be crippled immediately upon passage of such a bill. With a cutoff date of 1985, they would be unable to offer a meaningful future to their customers or to their employees. In short, passage of this bill would not be slow, but quick death for existing European securities affiliates as viable entities. Limited grandfathering is no grandfathering.

11. However, even with unlimited grandfathering, the bill would close the door to new continental European securities operations in the United States because no one else but banks are in the securities business in most European countries. Passage of the bill as presently worded means a decision effectively to keep Europeans out of the securities business in the United States. Thus what is supposed to be equal, national treatment is in reality unequal and discriminatory.

12. As regards the other aspect of non-banking activities, particularly industrial investments, the impact of the bill presently before the Subcommittee would be extremely disruptive. While it purports to permit grandfathering of banks' participation in non-banking activities acquired prior to December 4, 1974, it would prevent many European companies from establishing industrial plants and commercial operations in the United States. This is so, because for various historical and economic reasons already referred to, many foreign banks, in their own country, have interests in industrial and commercial companies. These companies would be precluded from making new capital investment in the United States. Also, as section 8 of the bill is now worded, foreign banks operating in the United States which have interests in non-banking companies already operating there, would either have to terminate their United States activities, or divest their holdings. Even permanent grandfathering could not cope with the problem because grandfathering assumes a static situation and does not allow for any changes in existing investments or permit new investments. The result of H.R. 7325 would be completely contrary to the efforts to attract European investment to the United States which, as we understand it, is current federal policy and the policy of individual states.

13. The bill would also produce the serious result that United States law would, in effect, apply to European banks and corporations in their own country. This occurs, of course, if a European bank that does business in the United States wishes to invest or expand its investment outside America in a foreign company that happens to be doing business in the United States. Such an investment would, for all practical purposes, be prohibited by the bill. Thus, the bill would have an indirect extra-territorial effect and create a conflict with the domestic laws of several continental countries.

14. We believe that European banks already established should be permitted to continue to operate in the United States, in the manner in which such activities are now carried on. We do not see why there should be a December 1974 cutoff date, as there is in the bill. The European banks that have entered the United States in commercial banking, investment banking, or both, have done so in good faith. Thus it is unfair and unjustified to destroy their existing interests. Even full grandfathering, however, would not solve the problem of the extra-territorial impact of this bill and the discouragement it would create for future European investment in the United States.

15. There is attached to this statement a fuller analysis of Section 8 of the International Banking Act of 1976 (which is identical to Section 8 of H.R. 7325) prepared by the E.E.C. Banking Federation for the Senate Subcommitte on Financial Institutions and which describes in fuller detail our views on the non-banking provisions of the bill.

16. As regards both the securities and industrial participation aspects of European banks, the Federal Reserve Board has on June 1, 1977 offered amendments which contain some elements improving the bill; but they are not sufficient to meet many of the concerns discussed in this paper and raise new complex problems.

17. There are other reservations which the European banks have concerning H.R. 7325. Among these are the following:

93-031 O - 77 - 23

a) The provisions authorizing the Federal Reserve Board to impose reserve requirements on foreign banks are in effect a denial of equal treatment. While federally chartered U.S. banks are subject to such requirements, State-chartered banks do not have to be. American banks would thus have an option which is to be denied to foreign banks.

b) The provision requiring federal charters for new foreign branches is also discriminatory because not all branches newly established by American banks will be under the same requirement.

c) Requiring surety bonds or a pledge of assets with the Federal Deposit Insurance Corporation could also be said to be discriminatory, since FDIC-insurance is optional for many American banks and is, indeed, because of its 40.000 dollars limitation irrelevant for the wholesale operations of foreign banks, which is their major activity.

d) The citizenship requirements in sections 2 and 3 of the bill for directors of national banks and Edge Act corporations remain much stricter than in most countries in the European Community.

18. The Subcommittee's attention should also be invited to the various treaties of friendship, commerce and navigation between the United States and other countries. These treaties provide that each party must treat enterprises controlled by nationals of the other party in a manner no less favorable than that afforded its own nationals. If one looks behind the letter of H.R. 7325 and examines the

business and structural realities in some of the European countries, a serious question arises as to whether H.R. 7325 is consistent with existing treaty commitments.

19. Aside from the major problems which European bankers find with H.R. 7325, they are also aware of the debate taking place in the United States over possible reform of the international banking system and of the various proposals which exist in this regard. European banks thus see themselves having eventually to adjust to further changes, beyond those proposed in H.R. 7325 - changes which in certain areas will perhaps move in different or diametrically opposite directions. For example, it has been suggested that it would make economic sense for American banks to be permitted to branch interstate. While it would be improper for us to participate in the internal U.S. debate on bank reform, we cannot help wondering whether much uncertainty and disruption could not be avoided, if the subject of foreign banks were dealt with in the global context of the proposed overall reforms.

20. In conclusion, the E.E.C. Banking Federation feels certain that it is not the intention of the bill before the subcommittee to exclude its banks and major companies from investing or trading inside the United States market. Yet this would be its effect mainly because of its failure to take adequately into account the financial and industrial structures of Europe. In this interdependant world in which the United States and Europe must cooperate for their mutual economic well-being, ways must be found to adapt the respective institutions and traditions to each other's needs and to avoid discriminatory legislative constraints. **Banking legislation on both sides of the Atlantic should be based on the principle of reciprocity.**

ANNEX TO STATEMENT

ON H.R. 7325

PRESENTED ON BEHALF OF

EEC BANKING FEDERATION

The attached comments on Section 8 of the International Banking Act of 1976 were prepared by the EEC Banking Federation and presented last year to the Subcommittee on Financial Institutions of the Banking, Housing and Urban Affairs Committee of the United States Senate. Since H.R. 7325, the International Banking Act of 1977, is virtually identical with the Act passed by the House of Representatives in 1976, these comments remain applicable. They are offered as a constructive contribution in the belief that some amendments to alleviate the problems outlined would not conflict with the spirit of the legislation now under consideration.

COMMENTS ON SECTION 8

4. Section 8 of the International Banking Act of 1976 applies the restrictions of the Bank Holding Company Act of 1956/ 1970 to the non-banking operations in the United States of foreign banks which control branches, agencies or commercial lending companies in the United States. It requires that they terminate all non-banking activities as of December 31, 1985, except that existing industrial participations may be maintained under certain conditions and that foreign banks which have subsidiaries or affiliates engaged in underwriting may continue to underwrite after that date if they do not sell securities in the United States. To qualify to continue to underwrite, such subsidiaries or affiliates must have been established by December 3, 1974, or acquired pursuant to a contract entered into before or on that date.

5. We respectfully submit the following comments on the effect the proposed Section 8 of the International Banking Act of 1976 would have on the non-banking activities and the securities operations of European banks.

I. Industrial participations of foreign banks and foreign Bank Holding Companies

6. We generally have no objection to the application of the Bank Holding Company Act to the extent that it limits associations between U.S. subsidiaries or affiliates of foreign banks and U.S. subsidiaries or affiliates of

foreign firms. A problem would arise only if Section 8 would impose the provisions of the Bank Holding Company Act on the associations outside the United States which exist between foreign banks and foreign firms and which are established in compliance with the legislation in their own country.

7. As it is worded, Section 8 would definitely preclude the operation in the American market of:

   a) all the foreign banks which, in their home country and in conformity with their country's legislation, retain an industrial ownership in non-banking firms established, or to be established, in the United States or are controlled by holding companies also controlling such firms;

   b) all non-banking firms which, in their home country and in conformity with their country's legislation, are controlled by a bank which has a unit in the United States, or by a holding company also controlling such a bank.

8. In other words, if Section 8 were not modified, even with a permanent grandfathering, the only foreign banks or firms which could maintain or establish units in the United States would be those banks or firms from countries which have the same legislation as the United States - as far as industrial connections are concerned - or banks or firms from other countries having different legislation but which voluntarily forego the benefits of such legislation.

9. In the countries where they are authorized, such connections exist generally between major banks and major firms which, owing to their size, are among those which may wish and which have the means to establish units in the United States. These banks and firms are therefore faced with the following dilemma: They must

- either waive their national structures in order to establish units in the United States - a harsh requirement and generally highly impractical;
- or, while maintaining their domestic structures, give up either for the bank or for all the industrial firms belonging to the group - any prospect of establishing units in the United States.

10. The consequences mentioned above would, of course, immediately affect those foreign banks already established in the United States.

11. Therefore, the provisions of Section 8 have to a large extent extra-territorial implications which consequently create a very serious conflict between the American legislation and that of a certain number of European countries.

12. European banks consider that such an extra-territorial application of the Bank Holding Company Act is neither fair nor necessary and that it gives rise to the most serious difficulties.

13. It is generally accepted that any foreign bank unit must comply with the host country's legislation for all its operations in that country. On the other hand, in most countries and especially in Europe, the banking legislation applicable to foreign banks generally respects the parent's legal status and accepts that this status is drawn from different legal principles. These countries are aware that such differences at the parent's level may have certain consequences for the subsidiaries or branches established in their territory. They however consider that, provided the banks comply witn the host country legislation for their operations in that country, the differences existing between the legal status of domestic banks and that of the foreign bank's parent cannot seriously affect the operations of the foreign banking unit in the host country and that it is therefore unnecessary to take them into consideration.

14. Compliance of the foreign banking unit's operations in the host country with the host country's legislation, together with the host country's non-interference with the domestic legislation which governs the foreign bank's parent, are the general foundations on which all international banking networks have been created and have developed for the common good of all the countries concerned. Of course, any country may deny a foreign bank access to its territory if it believes - after due review of the specific features of the bank - that it is not trustworthy. But to deny a bank access to a country on the grounds that it has at home a

different legal status whose consequences are mainly felt in another country would be - in relation to the accepted custom - a quite new development and a most dangerous precedent.

15. Such a precedent should also be avoided because it does not seem to be, in the specific case of non-banking connections, a practical solution to the problem of relationships between banks and their industrial clients.

16. First of all, it is well-known that any industrial firm established in a foreign country tends to look to the bank it uses in its home country, if this bank is also present in the same foreign country; or, if such is not the case, to another bank from its home country. It is also well-known that this trend rarely results in the establishment of exclusive relationships, because the foreign firm nearly always requires the services of the host country's banking system. The fact that the foreign bank and firm belong to the same financial group does not give rise, in the foreign country where both are established, to any substantial difference from this pattern.

17. Secondly, why give more importance to the legal relationships between the banks and firms of a foreign group than to the financial relationships that exist between any industrial firm and a bank? Such financial relationships are often more important since the bank, if it were to withdraw its financial support, could place the firm in a difficult position.

18. Thus, the provisions of Section 8 which deal with non-banking activities do not necessarily prevent or put an end to the practical problems caused by financial and personal relationships between banks and their industrial clients. They at best further one method of enforcing principles, which the United States is legitimately devoted to, but which are not acknowledged, at least to the same extent, in many other countries of the free world.

19. Certainly, a foreign bank holding company created in the United States should abide by the methods used in the United States. But in the United States, the coexistence of a bank and a firm whose connections are established in a foreign country which legally authorises them reflects neither a violation, nor even an ignorance of the principles of American legislation. In so far as it does not give rise to disturbing effects in practice - and we have seen that such is not the case - it only adds to all the specifically national characteristics that the bank and firm retain in the host country, another feature whose importance should not be overestimated.

20. The extensive application of the Bank Holding Company Act to industrial ownership that foreign banks may retain does not therefore seem necessary either in order to protect the principles of American legislation or to prevent situations likely to threaten the interests of the United States.

21. Conversely, such an extensive application would have extremely regrettable consequences on the development of the economic relationships between American and Europe. As already pointed out, the banks and the firms which would be affected by Section 8 are among the major banks and industrial firms in several European countries. Since they generally cannot contemplate waiving their domestic structures in their own country they would be unable to establish or to carry on their activities in the United States, which is precisely the country in the world where they have the strongest incentives to become established.

22. Taking into consideration the importance of the American market, it is unnecessary to emphasize the important and serious distortions - as far as competition is concerned - which would arise at the international level between the banks or the firms which would not have access to this market and those which would. In this way, the implications of Section 8 are going much further than banking policy; they are also dealing with foreign investment policy as a whole. In fact, it is the frail balance presently existing in international competition, especially between the United States and Europe, which may be gradually but deeply affected.

23. The European banks are convinced that the Congress of the United States does not mean to go so far. Consequently they respectfully ask Congress to reconsider - after a more exhaustive review of the problem - the provisions of Section 8.

24. Even permanent grandfathering of the prior situations does not solve the problem. The only fair and convenient solution would be to apply the Bank Holding Company Act exclusively to the legal relationships established in the United States and not to take into consideration those relationships established outside the United States between foreign banks and non-banking firms in accordance with their domestic legislation.

25. The European banks are convinced that modifying Section 8 to the extent referred to above will not be prejudicial to the interests of American banks or to the American economy as a whole and that it will avoid important and serious problems in the economic relationships between America and Europe.

II. Securities operations

26. Our comments concerning the application of the Bank Holding Company Act to foreign banks which have in the United States both a commercial bank and a unit engaged in securities operations are similar to those comments dealing with other non-banking activities expressed above.

27. As a practical matter, the consequences of such an application, though limited to banking and accompanied by a nine year phasing-out period, would also raise problems for foreign banks far out of proportion with the practical difficulties sought to be addressed by this legislation.

28. The Glass-Steagall Act, as summed up by Congressman Rees before the House of Representatives, was aimed at keeping American commercial banks' resources for the purposes within their own sphere and at avoiding their being used - through subsidiaries - to investment in securities likely to prove too risky an investment. Many other countries, especially those in Europe, were also concerned with these problems. Most of these countries adopted less sweeping or different measures because they were better adapted to their own domestic situation.

29. It is fair that the American legislation should not allow the American unit of a foreign bank to perform both commercial banking and investment banking activities. This would indeed be a formal violation of U.S. law. But inversely, if the banking units are quite separate, as in the case of two subsidiaries or of a subsidiary and a branch, and if these units have no inter-relationship whatsoever other than those existing outside the United States at the foreign bank's or a foreign holding company's level, there does not seem to be any formal violation of the Glass-Steagall Act, at least according to the accepted custom applied in Europe to a problem of this nature. It would be sufficient to establish clearly the total separation of the two units. Indeed, with the full agreement of the competent American authorities, a number of foreign banks have already established securities affiliates in the United States.

30. In order to justify the application of the Bank Holding Company Act abroad, it has also been argued that the foreign bank, with a commercial bank and a security affiliate at its disposal in the United States, would have a competitive advantage in the American market over other American banks.

31. This assertion does not appear to be justified. It is not the foreign bank which is operating in the United States, but its two banking units; both units are completely separate. The unit with the status of a commercial bank competes with other American commercial banks; the foreign investment banking unit competes directly with American investment banks. Granted, some customers of one unit may tend to also become customers of the other, but obviously this cannot go very far.

32. On the other hand, as American legislation is more restictive than most European legislation in this regard, the rule of equal treatment applied in the same way on both sides of the Atlantic does not guarantee, as it should, a fair and equal reciprocity.

33. If investment and commercial banking were as separate in Europe as they are in the United States, both European Commercial and investment banks could establish units in the United States without violating the laws of the United States. Reciprocity would be complete because European

countries permit American investment and commercial banks to operate in their countries. But due to different laws in European countries, securities operations are generally performed by banks which have a commercial banking activity. It would therefore be difficult for them to cease commercial banking operations in the United States so that they could establish investment banking operations there. It they could not establish or maintain investment activities in the United States, the U.S. investment banking market would be closed to many banking units representing an important section of European investment banking, while European countries would still be open to American investment banking. After all, foreign banks would be prohibited from doing in the United States what U.S. banks are permitted to do in Europe. Therefore, the reciprocity which has hitherto existed would be seriously impaired.

34. As a matter of fact, by restricting in such a way the U.S. investment banking market for foreign banks, one would practically reduce competition in that market, whereas the constant trend of the U.S. Legislation - such as the 1975 securities acts amendments - is to maximize competition.

35. Neither the phasing out period provided for in Section 8, nor the possibilities it allows for certain activities after December 31, 1985, seem satisfactory.

36. In the first place, the operations which will continue to be authorized will not produce enough profits for the units concerned. These banking units would immediately be faced with the problems of a bank which is known - by staff and customers - as having no prospects whatsoever in the future. Therefore even these operations will disappear. The question for European banks will not be to terminate some activities, but to close their units long before the deadline. In fact, they will have to close as quickly as possible in order to avoid losses in addition to those inevitably arising from divesture.

37. Therefore, the measures provided for cannot in any way be presented as achieving the results of a real grandfather clause. While the Congressmen who passed the bill certainly meant to achieve this aim, the actual consequence of Section 8 will be a harsh dismissal. The prejudice caused to the banks concerned would be most unfair, all the more because they started their activities in the United States in good faith and in full compliance with American law.

38. As far as both securities operations and industrial ownership are concerned, the solution which would best reconcile the national principle of equality of treatment and the international principle of reciprocity, would be to adhere, for foreign banks, to a purely territorial interpretation of the Bank Holding Company Act.

39. European banks are convinced that their present investment banking activities do not represent an excessive share of the American market. They are also convinced that by operating through separate units on the commercial banking and the investment banking markets they do not imperil either fair competition or the soundness of banking operations in the United States.

93-031 O - 77 - 24

Mr. ST GERMAIN. I would like to state that this subcommittee, along with staff, did in fact take the time during one of the hottest Augusts on record in Europe 2 years ago, to go to the Central Bank of Europe during the congressional August recess and speak with the Central Bank of Europe relative to this legislation, to visit with our American banks who are present in many of the European countries.

I assure you what the subcommittee has undertaken in this area has not been taken in a manner that is not cognizant or that has not attempted to be as cognizant and as sympathetic as possible to the interests of the foreign banks who have established their presence in this country and who might want to establish a presence in this country.

By the same token, we also are dealing with our own domestic banks.

Now, in the statement last night when I read the plea about mayors and Governors and businessmen going to European countries asking that businesses and banks establish an estate, frankly, gentlemen, that plea isn't that overriding because there are a number of factors which are responsible for that.

I would certainly state that there is definitely an amount of sincerity involved. By the same token, it makes for good headlines at home, particularly when reelection time comes around for the Governors and the mayors.

If we in the Congress were to be guided by the desires of mayors of large cities, small cities and Governors of States—all on a very legitimate basis—I think you would find that our trade with the European Economic Community would be chaotic because whenever a particular industry in Europe might be producing and exporting to the United States an item that would be in competition with that being produced in one of those States, they would immediately insist upon retaliatory practices so that the imports from Europe in competition with the products being produced in their States and large cities might be excluded to eliminate the competition.

Fortunately, we in the Congress are here to exercise an overview in the best interests of the country as an entity and in the best interests of trade with our friendly nations. We must keep that in mind and understand that the actions of mayors and Governors are not the dominant factors, but rather the conclusions reached as to what is better for our Nation as a whole.

I have a series of questions here that could be answered by any one of you. I will ask one of the three of you to undertake the list. In a few instances, however, I will refer to Lord O'Brien directly and I imagine he might want to address the questions himself.

In the conclusion of the statement you gentlemen state the bill fails to take into account the financial structure of Europe and ways must be found to adapt institutions and traditions to one another's needs.

Now, you must help us to understand this view. Do you mean that we are to permit EEC banks to do business in the United States in terms of their needs and traditions or should EEC banks adapt their business to the financial and industrial structure of the United States and adjust to our needs and traditions?

Lord O'BRIEN. Mr. Chairman, may I attempt to answer that question?

Mr. ST GERMAIN. Surely.

Lord O'BRIEN. I think we would all accept that banking business conducted as a visitor in any country must be conducted in accordance with the regulations and laws of that host country.

Speaking for the United Kingdom, we would certainly expect any foreign bank coming to the United Kingdom to accept our laws and our ways and we don't in any way wish to contest your undoubted right to require the same of any banks here.

All we do say is that in the interests of promoting freedom of competition and the international work of banks, if those laws can be framed in a way which encourages banking rather than discourages it, that is very much to our taste.

Mr. ST GERMAIN. I certainly must agree with you that we in no way in this legislation wish to discourage the very welcome presence of foreign banks in this country. That is why we are happy to have your contributions.

Now, Lord O'Brien, in this instance during the January 1976 Senate hearings, the following exchange took place between yourself and Senator McIntyre.

> Senator MCINTYRE. Would you agree the Federal Reserve does have a legitimate concern over the impact of foreign banking operations in this country on the conduct of domestic monetary policy?
>
> Lord O'BRIEN. Certainly.

Now I ask you, Lord O'Brien, would your reply to that question today be the same as it was in January 1976?

Lord O'BRIEN. It can't be otherwise, Mr. Chairman. I am a lifelong Central Bank person and I must recognize the overriding authority of the Central Bank in any country. Of course, your country is different from ours. You have a dual banking system; you have State law and Federal law which we don't have. In my country there would be absolutely no doubt the Central Bank has these functions and must be enabled to carry them out and I have no question that is also true in the United States.

Dr. JAHN. Obviously none of us would dream of denying the right of a Central Bank system to control its operations in the working of the system. However, the European system is different from that of the United States. We have observed that the Federal Reserve System of this country conducts open market operations.

It has been said the foreign banks are not subject to reserve requirements. Although the reserves are not kept with the Federal Reserve system, all of our banks operating under State charters are maintaining the same financial reserves in some States in the same amounts that the Federal Reserve would require. They are also, of course, dependent on the whole regulatory structure which requires the States to go along with certain overall rulings.

In addition, all funds which our banks bring in from abroad to the extent they are good assets—that is, in U.S. dollars—a certain amount would be subject to a reserve requirement with the Fed.

Essentially what I am saying is, we not only do not deny the right of Federal Reserve control, but in fact the Federal Reserve does exert control over us—all we do is operate a State bank in the same way other State banks would operate and no more.

Mr. St Germain. Lord O'Brien, referring to the statement submitted and which I read last night, you state:

To the extent there is an impression that the bill which the House of Representatives passed last year in which H.R. 7325 is virtually identical and acceptable to the European banks, the purpose of this statement is to dispel that impression.

Now, I must as an individual agree with you that there was such an impression based upon previous testimony in January 1976 before the Senate Subcommittee on the Federal Reserve bill S. 958. At that time you made the following statement:

In general, the Federal Reserve bill is one which, if it were to become legislation, would make the position of foreign banks in the United States of America not too uncomfortable.

Now, the Fed, as testified both last year and this year, does not view the bill as substantially different from its own legislative proposal. What has occurred in the last year and a half might have made the EEC banks more uncomfortable with the legislative proposal before us today.

Lord O'Brien. As I say, while we are a delegation representing the banks of the nine nations of the European Economic Community as a whole, the effect of this legislation now proposed on the banks in each of our countries is somewhat different. For my part, I would say that the bill now before you, if it were modified along the lines proposed by the Federal Reserve, by Mr. Steve Gardner the other day, would certainly not make the British banks too uncomfortable.

I think it would still leave some of the German banks and the French banks less comfortable than the British banks because they have a different type of business in this country.

Mr. St Germain. Gentlemen, in your statement you assert you would object to mandatory deposit insurance. Am I correct in that impression?

Lord O'Brien. Yes.

Mr. St Germain. How do you view the situation in California where a number of EEC banks have established agencies, where foreign banks are not allowed to accept domestic deposits unless they can obtain deposit insurance? Do you feel this is a discriminatory act on the part of the State of California?

Dr. Jahn. Mr. Chairman, I think we ought to make a basic distinction. Those banks, branches or subsidiaries operating in the United States which do retail banking, which ask for everybody's deposits, ought to be members of an insurance system and I do think that some States require them to be members. In most cases they realize that they have to be members anyway because they just wouldn't get the man in the street to place deposits with them otherwise.

However, the case is different with other types of banks which sit up on the 40th story of some big building and haven't the machinery to do retail banking and don't want to do it.

My own bank, for instance, has operations in New York City and Chicago and has an explicit policy not to solicit small deposits nor to offer small loans.

We do not have the technical machinery to cope with retail deposits, and we don't intend to compete with the local banks for this business. We solicit large deposits; one, five, ten or twenty million dollars, from big corporations.

Mr. ST GERMAIN. Would these be, in many instances, compensating balances?

Dr. JAHN. Absolutely. We abide by the rules generally applied in the country by the leading banks of the country. We would hope that we get big deposits.

Now, if we go bust, the big corporation which has $10 million on deposit with us would be compensated $40,000, which we think is perfectly meaningless. As a matter of fact, our own deposit insurance system at home is probably more effective for the big deposits because it covers far larger amounts than could be covered by FDIC.

Those banks which do retail business in the United States could legitimately be asked to be members of the system, but those that only may have a few small depositors, but otherwise do nothing but wholesale business—and most of them do not even have their offices at street level—should be excluded or have the option to belong.

If we had a certain number of individual deposits in the United States, I wouldn't mind having them insured the same way as the others, but the structure of our bank is fundamentally different.

Mr. ST GERMAIN. I must state to the panel this is probably one of the more difficult areas in this legislation because there is much disagreement by proponents of the legislation as to how this should be handled.

You state that in your country you now have deposit insurance that is more effective. In other words, you cover a larger portion of the deposits than is covered by FDIC?

Dr. JAHN. Yes, sir.

Mr. ST GERMAIN. Could you tell the subcommittee——

Dr. JAHN. It is very simple. We had some international mishaps; one major breakdown of a bank in Germany. Following that, we worked under a system where all the banks pay a large amount into a joint fund by which up to two-thirds of their equity would be covered for losses which might occur.

If somebody has $20 million with us, he might be fully covered—I am sorry. One-third of our equity. In the case of my bank, that would be roughly six or seven hundred million deutsche marks. That would be the limit that would be covered. To all practical purposes, everybody would be.

Mr. ST GERMAIN. You say one-third of your equity. How would that apply as to the depositors?

Dr. JAHN. Each one. Mr. A, Mr. B, Mr. C. Each would be fully covered up to the individual total of one-third of our total equity. That is a very large amount. For all practical purposes, I don't think we have any difficulty.

Mr. ST GERMAIN. The fund was recently established.

Dr. JAHN. In the last two or three years. It is still being built up.

Mr. ST GERMAIN. Should there be a major—let's hope it never happens—but, God forbid, a major catastrophe, and should the fund not have sufficient assets to cover that for the other banks to participate, is that how it is structured?

Dr. JAHN. We have several things. We have first the obligation of all the member banks to pay in additional amounts if needed. In addition, we have under the auspices of the Central Bank an additional system under which banks which are not necessarily bankrupt but in difficulty would be supported by providing liquidity for them temporarily to get them straight again.

This system is still being built up and includes all our depositors in the United States, by the way, so people who deposit money with us in this country would be equally covered. I admit this is not a universal system and doesn't apply to every country, but what does apply is that most foreign banks would not solicit small deposits and if they do they should be members and in fact most of them are members.

Mr. ST GERMAIN. This has been very helpful.

I wonder if you gentlemen could put your collective brilliant heads together—and I say that very sincerely—and give us some concrete suggestions as to how you might like to see this handled?

You state at the present time you are not accepting any street deposits from individuals. However, here is one of our concerns. There is nothing that guarantees that a year, two years from now, you might not change your policy and decide, "Well, we are going to go out and see if we can't solicit some of these deposits."

Of course, with the structure the parent bank has, this is encouraging to us, but nonetheless we still have to look at the possibilities that may occur. Frankly, with this deposit insurance, which you now have in effect, it also reduces the problems—if this was in existence in all the other countries it would make our deliberations much easier because one of the problems we have is, "Oh, sure, we will insure the deposits here through FDIC. However, FDIC has no control over the parent."

If the parent should have problems, there is no control by FDIC and there is nothing they can do to oversee this and, as a result thereof, you might say that FDIC, with no control whatsoever, finds the fund called upon to pay off these depositors. It is not an easy area.

Whatever assistance or suggestions you can give us in this area will be appreciated deeply.

Lord O'BRIEN. Thank you very much, Mr. Chairman. We would greatly appreciate the opportunity of putting in a paper which we hope might make suggestions which would meet your very legitimate concern in this area, and also we feel deal fairly with your visiting banks, if I may so describe them.

Mr. ST GERMAIN. That would be very much appreciated. Frankly we would like to receive this at the earliest possible date.

Dr. JAHN. We agree with the FDIC proposal put forward last year which creates a system under which a voluntary membership would be possible. I think nobody ever denies that the foreign banks abide by whatever is requested by the Federal regulatory authorities. I do think that if the Fed or FDIC would say: "Now, you have 5 percent or 7 percent of your deposits in amounts under $100,000; you must become a member," we at least would do so. I think that could be said for all foreign banks, looking at past experience, and at how they have behaved toward your regulatory authorities. I don't think any bank working in the environment of a guest country would consider not doing what its regulators request.

Mr. ST GERMAIN. I want to make it clear to all witnesses who have appeared and who will appear, in introducing this legislation, none of us want to convey the impression that there have been any foreign banks functioning in this country in an insidious manner. That is not the point. The point is, the Fed has requested more regulatory powers.

The other factor is that we want to ensure there is competitive equality between the foreign bank presidents and our domestic banks. On the question of interstate banking, I think everyone is in agreement if there should be a change in the legislative picture for our domestic banks, this would automatically be accompanied by a like change for our very welcome foreign banks functioning in this country.

No one is trying to exercise any prejudice here. There is no reason to. Your banking interests here have been helpful to us and we want to encourage you to stay on and to participate with us. Are there questions? Mr. Wylie.

Mr. WYLIE. I am sorry I was a little bit late. You may have answered this question.

I was in Europe with the chairman of the subcommittee and talked to various bank officials in Europe about this bill. When I came back for a television interview the question was put to me: Why shouldn't foreign banks operating in the United States be treated the same as domestic banks?

What would your capsulized answer be to that? I realize it may be a very elementary question for you, but that is the kind of a question we are asked to explain to the public.

Dr. JAHN. I think we are all in agreement on equal treatment. The problem is that equal treatment for essentially different things is a difficult matter to achieve. First of all, we, of course, ought to know what order of magnitude we are discussing. Latest statistics show that all foreign bank branches in the United States of America have about .7 percent of the total deposits of the whole banking system in their accounts. If you include all subsidiaries, and agencies, in California and elsewhere, of foreign banks, you arrive at just under 2 percent out of a total of roughly $750 billion total deposits of U.S. banks.

Mr. WYLIE. But that is increasing.

Dr. JAHN. It is increasing. If you consider the last 3 years, foreign bank assets increased by 1 percent from 6 percent to 7 percent. If you take the total bank assets, not just of the big reporting banks, but the total of the entire banking community, and compare them with the total assets of foreign banks you will observe an increase to 7 percent from 6 percent when the Fed bill was introduced.

I think we are really looking at something quite limited. Compare $66 billion, which I think are the total assets now with American assets abroad, which are over $320 billion. I don't argue against any legislation, but I do say we are talking about a limited field of interest to a few people.

Now, on equal treatment, we haven't asked for any privilege. We have, in fact, used the existing legislative background to operate in State-licensed systems where we thought we would follow our customers coming to the United States—and a great many have come over these last years and invested in the United States. It went the other way around over long years when American banks followed American industries to Europe. We have 35 American banks in our country.

We used the State system and the opportunities offered by certain States that actually changed their laws to permit foreigners to operate in their States. We are not national banks or member banks, but State nonmember banks. If we were unable to be that, there would be two consequences. First, we couldn't follow our customers, some of whom are American corporations with whom we are friends on the European side, and, second, the possibility of major cities in the United States becoming more international centers would be precluded. New York would probably be the No. 1 choice and everybody who comes here would go to New York, and other places would probably be ignored because the relative sizes are such that people might tend to stick to New York and not go elsewhere, to Chicago, or Atlanta, any other place. This would be difficult.

Mr. WYLIE. Apparently there isn't any really simple answer to the question, but when you talk about a $66 billion operation in the United States, that isn't exactly peanuts any more, regardless of percentage. What we are really talking about is reciprocity versus national treatment. Isn't that it?

Dr. JAHN. Yes.

Mr. WYLIE. As long as the domestic banks are similarly restricted, how can you say this bill does not represent equal national treatment and is discriminatory?

Dr. JAHN. Apparently it is the view of the States that they should be free to invite whomever they please to invest on the nonmember level. Even in the proposed law, the Fed doesn't ask us to become full members, which would automatically give a number of answers to other structural problems. The dual banking system exists. It is not our invention. We have used the framework in which the American bank system operates, no more than that. We never asked for anything beyond that.

Lord O'BRIEN. Mr. Chairman, could I say one word? I wouldn't want the record to go forward without a reply from me to your very welcome remarks about the nature of your inquiry and what motivates it. I am quite sure it is not motivated by prejudice, and from my own observation it has been perfectly obvious it has been conducted with extreme diligence, both within the United States and in many countries abroad, which you have visited—and I am quite sure that you are attempting to find an answer, which does the things which need to be done for the U.S. authorities, while being fair to those to whom they are done and we are most grateful for that.

Mr. ST GERMAIN. In other words, we are trying to find medication that is as palatable as possible. We are getting the chocolate syrup and strawberry flavoring and everything that we can.

Mr. FABRE. Allow me to make a remark about equal national treatment with regard to affiliates. In the United States you have a divided banking system which separates banking and securities firms while in the countries of Europe, the banks have not this difficulty. The practical effect of applying this principle against the European banks would be to give free rein to U.S. banks and securities firms to compete very strongly in Europe in all areas—I can tell you in my country where at least we have more than 10 securities firms, and they are very, very active and very, very competitive—while telling our banks that they would not be allowed to compete in one or the other area here. This is really the point.

If one is barred from doing either banking or securities here, it is difficult for the European banks. This is the point I would like to make. So we think it is an essential issue. Moreover, with full respect for U.S. laws, which we want to abide by, we do not think that fair international competition should be excluded in order to preserve the regulatory soundness of the U.S. system to which we have committed our operation here.

Thank you, Mr. Chairman.

Mr. HYDE. Referring to what Mr. Wylie said, I think the major problem is trying to dissolve the essential conflict between reciprocity and national treatment. I think the banking industry and this Congress has to decide whether we are ready to operate under the restrictions that may well be placed on our overseas banking activities if we impose similar restrictions on foreign banks in this country.

I think we have to be fair to our domestic banking industry by not giving foreign banks privileges or liberties that are not available to them, but I think if we do that, we must be prepared for similar restrictions overseas. It is a matter of fine tuning and adjusting the rights and relationships between the various parties. I think America gains considerably by its foreign banking operations and I think domestically we gain considerably by having banks from foreign countries operate over here. I see no serious problem other than one of fine tuning the process, the benefits and advantages to each. I am confident this subcommittee will do that too.

Mr. WYLIE. Will the gentleman yield?

Mr. HYDE. I will be happy to yield.

Mr. WYLIE. Ancillary to that is an example of what my previous question was directed toward.

What role do the European banks play in channeling Arab oil money into the United States through investment banking and securities affiliates?

Dr. JAHN. Did I get your question correctly? The question is whether and to what extent European banks would channel petrodollars into the United States?

Mr. WYLIE. Not so much to what extent, but in what role. What role do you play? You play the role your customers dictate, of course.

Dr. JAHN. I think this is not a real factor. I think the bulk of the money which comes from petrodollars stays in the Euromarkets somewhere in Europe or in Asia and is used there widely, and all large American banks participate in relending, reorganizing, rechanelling this money. In fact, had it not been for that vast and fully functioning system, I think the recycling in 1973 would have been a catastrophe for the financial system of the world. It is only because of this enormous integrated system which exists that this sudden change could have been coped with. Most people hadn't expected that. You will remember the World Bank statistics on what would happen. Nothing of the kind has happened, regardless of how difficult the problem is. I don't think there is a great movement of funds. A bank wouldn't take funds from outside the United States if they don't need them for their actual lending business, possibly in lieu of insufficient deposits which they need for lending operations.

I think all this is very well known and very well controlled by the Fed—each and every dollar being moved around.

Mr. WYLIE. The big money in Europe right now is from the Arab countries and there is quite a bit of it going into European banks, of course. The apprehension in some circles is, of course, that some of this is channeled into the United States and is invested in operations in which domestic banks cannot participate.

Dr. JAHN. There is no support for that idea.

Lord O'BRIEN. Mr. Wylie, could I say a word about that?

Mr. WYLIE. Yes.

Lord O'BRIEN. Insofar as the dollars earned by oil exporters are concerned, that are invested long term in particular countries, I would expect that insofar as they are invested in the United States, it would be mainly through U.S. banks who are pretty powerful in the Middle East. Insofar as it is invested in other countries in Europe, for example, the National Banking system which also has contacts with the Arab world would be the intermediate, but I would be very surprised if foreign banks played a big part in channeling the investment of Arab and other oil dollars in this country.

Mr. WYLIE. So you see no need for concern in that regard?

Lord O'BRIEN. No, I don't.

Mr. FABRE. The experience of the securities affiliates of European banks is that they see a very, very small amount of this money and their experience is that this kind of money is going to the major American banks who are recognized as the experts so they send this money to major American banks.

Dr. JAHN. That is correct.

Lord O'BRIEN. And, of course, the Arabs have their own people in various countries, including the United States. I am, in fact, a director of a Saudi Arabian bank, a majority owned by Saudi Arabians with participation of other banks throughout the world, which is beginning to undertake this function.

Dr. JAHN. Perhaps some large American banks handle this money, but I am not sure it stays in this country. I believe most of the funds which have been created by the oil countries on the European markets will be used otherwise, floating around the European market—the Arab countries prefer to use an Arab bank. There is no evidence at all that major amounts have ever come to the United States and if they have, they are controlled by the Federal Reserve.

Mr. WYLIE. I am a cosponsor of the bill and through knowledge I gained from our hearings and from my trip to Europe, I feel if the United States has decided to force a separation between domestic banking and commerce, is it really unfair not to do so with respect to foreign banks? I think you have already answered that. Do you want to expand on your answer, Lord O'Brien?

Lord O'BRIEN. As to the future, if you so desire, Congressman, the foreign banks will have to live with it on the basis that they are treated equally with the domestic banks. All they ask is that previous arrangements established under present laws should not be terminated.

Dr. JAHN. I have never taken any other position than equal treatment with domestic banks. We have been operating at the State level and we wish to continue to do so. We do want to accept the FDIC philosophy that people who solicit small or regular deposits from everybody ought to be members. However, the wholesaler should be subject to a voluntary system. That would mean they would be insured by the FDIC if and when they ask to become members. I think our main point of trouble is section 8 of the bill.

That is the securities side—again quite small compared with your large investment community, and, as the Securities Act of 1975 stipulates, there should be vigorous competition. Without Continental Europeans, there cannot be foreign competition because there is nobody else in Europe who does securities business.

The other thing, of course, is the nonbanking activities of European banks which, under the present wording of the bill, the whole thing would be most troublesome to all of us. In fact, we couldn't continue. We would have either to close down our banks, or to prevent industries that might wish to come here from doing so. It would be an insoluble point if you don't find an equitable answer to that problem. I think section 8 is the main stumbling block.

Mr. WYLIE. If we tried to use as a standard equal treatment with the treatment received by American banks in foreign countries, there would be a real problem because we receive different treatment in different countries.

Dr. JAHN. I think the most liberal treatment is in our country and for that matter London.

Mr. WYLIE. That is true and probably the most conservative is Switzerland.

Dr. JAHN. Even so, there are many American banks.

Mr. WYLIE. But they receive different treatment in different countries?

Dr. JAHN. Not in Germany, France or England.

Lord O'BRIEN. I don't want to have a disagreement with you before this distinguished subcommittee, but we couldn't be more liberal than we are in London.

Mr. WYLIE. That is a good place for me to end, Mr. Chairman. Thank you.

Mr. ST GERMAIN. Gentlemen, I understand you had asked to go on early so you could all catch the Concorde back.

Lord O'BRIEN. If we may, Mr. Chairman.

Mr. ST GERMAIN. I want to point something up to you. The dilemma that you now face and that we face. The Concorde would like to be flying in and out of New York but the State of New York has said no to date. That is because the people in that area around the airport in New York vote for mayors and Governors and State representatives and State senators. Whereas out here the Federal Government is allowing the Concorde to land and to come in and out. So the dilemma that we face and that you face is the fact do you want State law or do you want Federal law in the United States?

Gentlemen, we want to thank you for your patience in the situation you faced last week. It is too bad you are taking the Concorde because that is a fast flight. I was hopeful on your flight back you might put your collective heads together and start to work on that paper for us with respect to insurance on deposits.

Lord O'BRIEN. I promise you, Mr. Chairman, we will as soon as we get back and, of course, we shall get back very quickly. I am pleased to see how many of my American friends are simply delighted with Concorde and maybe one day other American cities, if not New York, will take it.

May I, on behalf of my colleagues and myself, Mr. Chairman, thank you and your subcommittee most cordially for the courteous way in which you have received us and the freedom with which you have allowed us to express our views, and we hope that we have helped you in a little way to come to the best conclusion for us all.

Mr. ST GERMAIN. Very definitely.

Gentlemen, without objection we may be submitting additional questions that have not been asked because we have other panels and we want to also get you out to the airport on time, so we will be submitting additional questions we would ask you to answer for the record.

Lord O'BRIEN. Of course. Delighted.

Mr. ST GERMAIN. Our second panel consists of the Bankers' Association for Foreign Trade. The witness for this panel is Robert B. Palmer, vice president of the association. He is accompanied by James B. Sommers, chairman of their Committee on Foreign Banking in the United States, and Thomas L. Farmer, general counsel. You may proceed, Mr. Palmer.

STATEMENT OF ROBERT B. PALMER, VICE PRESIDENT, BANKERS' ASSOCIATION FOR FOREIGN TRADE; ACCOMPANIED BY JAMES B. SOMMERS, CHAIRMAN, COMMITTEE ON FOREIGN BANKING IN THE UNITED STATES; AND THOMAS L. FARMER, GENERAL COUNSEL

Mr. PALMER. I would like to thank you for allowing us to testify on what we feel to be a very important piece of legislation. This is a subject which we in the Bankers' Association for Foreign Trade (BAFT) have taken great and continuous interests in over the past 3 years and I believe we have been invited and have been willing to testify each time this type of legislation has been put to either House or Senate committees.

I would like to say something about what is the BAFT and what is our constituency. As you noted, sir, I am from the Philadelphia National Bank. My colleage, Jim Sommers, is the senior vice president of North Carolina National Bank and we are joined by our resident counsel in Washington, Thomas Farmer.

Our association constitutes 142 voting members. Our banks are represented in 56 cities and 32 States. We certainly do include the very largest banks in cities such as New York, Chicago, San Francisco, et cetera, which are very active in international banking, but we include also important regional banks in States such as the Carolinas, Louisiana, Nebraska, et cetera, which banks are important in financing exports and drawing foreign business into their locales, et cetera. We are a broadly based organization.

You have our written testimony, as you said, sir, so I will not read it.

I will take a few minutes to highlight what we feel are a few of the primary points.

Mr. St Germain. Without objection, the entire written statement, I think with one change, to-wit, that the clearinghouse people testified last week. You might want to make that one change in the statement, but it will be put in the record as submitted.

Mr. Palmer. There are a couple of different opinions on certain matters coming out of the members of our association.

I think that the goal of the BAFT, as I believe, is the goal of the sponsors of this legislation, is that we strongly believe that the domestic banking environment is one in which foreign banks should be encouraged to participate, to do so on a healthy and nondiscriminatory basis, and that this would foster competition among all institutions in this country and offer benefits to all the users of bank services.

At present, however, it would seem that there is no Federal or even uniform regulation throughout the United States on the activities of foreign banks in this country. In practice, out on the streets, where we all solicit our business, there is in fact quite a range of different opportunities available in relation to such areas as multi-State banking, securities, investment banking activities, the costs of reserve requirements, deposit insurance, et cetera.

As a result of this, the great majority of our members think that it is appropriate at this time to pass legislation that would make the regulation of such activities uniform, fair and easily understood for all parties, those who are here now, and those that are intending to come in the future.

After some thorough examination of your bill, sir, we are appreciative in that we think it is well thought out, and well researched. We are very much aware of your travels, your conversations with Central Banks around the world. The great majority of our members do support the passage of this legislation, although, as you will see, we do recommend a few significant changes.

I should mention that a small number of our members who do a significant amount of the international banking activities in this country, this group being headquartered primarily in New York, differ from the vast majority as to the need for legislation on this point at this time. I believe that you heard from them last week, from John Lee, and therefore I won't go into the specifics of their feeling other than to just recognize there is that opinion.

As we look at this legislation, we see it dividing roughly into three basic parts: the regulatory environment under which foreign banking activities would be carried on here; the range of permissible activities for those banks; and the locational question of where they may place facilities in this country.

I will approach the legislation on that basis. In terms of the regulatory environment, we believe that foreign banks should be able to operate in this country choosing State or Federal charters as they might choose, whichever they see best for the particular needs that they have.

We urge that FDIC insurance be made available to a foreign bank on an optional basis except that it should be required where we are talking about consumer deposits. We do not advocate mandatory Federal Reserve membership. We don't think this is appropriate. We don't think it is appropriate in terms of the dual banking system, et cetera, where American banks are not so required. We do, however, understand there might be some point in the size and scope of activities of foreign banks in this country at which point it would be necessary to have some form of reserve requirement both for the orderly conduct of monetary policy and also in relation to the fairness of competitive activities with other U.S. banks.

As you know, reserve requirements are a significant cost to U.S. banks, as they make their loans and we do think there is a size at which it would probably be appropriate for foreign banks in this country to come under essentially the same reserve requirements as our American banks.

As to the range of permissible activities, here again we would hope that foreign banks would be subject to essentially the same regulations for activities as is the case with the American banks. This is equal national treatment. We do, however, advocate full grandfathering of nonconforming activities. In practice what we are probably talking primarily about is the securities and investment banking business of our foreign banking friends and we would recommend full grandfathering of those activities. We would also suggest that the date for grandfathering be brought up to the present time as best you see fit.

In terms of locational boundaries—and now I think we are talking primarily about the multi-State branch and subsidiaries, et cetera—I want to emphasize that this is probably the issue that is most important to the majority of our members.

This is the area where they see their activities and the activities of the foreign banks meeting on the sidewalk in real life competition.

In practice, of course, we would suggest equal national treatment which would have the foreign banks operating in this country in terms of location on basically the same set of rules that the American banks currently operate. We do again, however, strongly advocate full grandfathering of those facilities which have already been created. The grandfathering is not just a matter of support of grandfathering—it is not just a matter of trying to appeal to foreign banks who are already here, and who are good banking friends—there is also a very solid principle behind it and that is the principle of a given government, whether it be our government or the government in the foreign country, not inviting foreign investment and then significantly changing the rules on that investment after it has arrived.

This investment, whether it be in multi-State branching as it has been allowed, or securities activity, was brought here with the very best of intentions. These banks have conducted themselves with the best interests of this country and its commerce in mind and we think it would be absolutely inappropriate to change the rules in that fashion after they have arrived here.

One very significant point is that we do urge the elimination of section 7(e) from your bill. We do not think that the Federal Reserve must have the power to approve or have the power to disapprove foreign banks who choose to go what we would call the "State route," who choose to take a State charter. Moreover, we just want to say that we urge that you leave unchanged the fact that agencies are not included in the prohibition against multi-State banking.

In summary, sir, I would just like to wind up by speaking a little bit about some of the comments we have heard in the last week which are criticisms of the bill by various parties. Criticisms we simply don't understand as we feel there is no rationale behind them.

No. 1, we have heard of retaliation from some parties. We don't think there should be any importance placed on retaliation.

First of all, we have never heard retaliation mentioned in a serious way by any official authorities. It seems that we hear that primarily only from those groups whose interests would be furthered if you all would believe that there would be such retaliation.

Mr. St Germain. If I could interrupt, I see you obviously don't have ESP because in answer to a question on that very point we were told last week some people get the feeling that there might be retaliation.

Mr. Palmer. I read that exchange and I can't dispute anyone's feelings. That is a personal thing. To our knowledge we do not hear official parties saying there will be retaliation.

Second, last August 31st, when this same group was testifying before the Senate Committee on this type of legislation, our good friend, Dr. Wolfgang Jahn, who just left this table, jumped up and said, "I want to disassociate myself and the German banking groups from that idea."

Who knows where that leads? "If you do this to us, then we do that do you." It is a very destructive road to start going down.

I would also suggest that responsible foreign bankers do not agree with the idea.

This is very important as we consider this legislation. I think there is no rationale for anyone to take such actions because in doing so they simply would not show an understanding of how, I believe, public policy is formed in this country. It doesn't matter whether we are talking about banking, public health, education or whatever. I think public policy is formed by the broad body politic of the country deciding what sort of banking structure they want to have in their country, or education, or whatever it may be. They choose, whether they choose wisely or unwisely, they choose to create a structure and then the various parties operating in that environment play by those rules.

Now, one person testifying last week said he saw no logic that a German bank should not be allowed to put branches in many States since an American bank could put branches in several German cities. I think there is no logic to say a foreign bank should be permitted in the future to put branches in various cities if in fact an American bank cannot put branches in those same locations. We are talking about the structure of banking in this country.

Whether we agree or disagree with the various acts, for example, McFadden, Glass-Steagall, et cetera, those are not at issue at this time. They may be valid issues to be taken up at some time, but those are not the issues at this time.

A second argument we have heard from some is that the legislation would be discriminatory. I think probably there are some very small bits of it which would possibly allow for slightly discriminatory regulation of foreign banks versus American banks, but frankly, Mr. Chairman, where we stand right now is that the discrimination is about 2 feet wide and I think this act, especially if you were to follow the few recommendations that we have made, such as taking out section 7(e), et cetera, would bring it down to a few inches.

I think you have to look at the trend line and that is a very positive thing indeed.

I think foreign banks who want to be tremendously active in this country have nothing to fear from this type of legislation. It allows a foreign bank to be active in this country through the bank holding company, through Edge Act corporations, through agencies, et cetera, in a way that will allow them to do commercial banking on as national an extent as is allowed to American banks.

Another comment is, "This would eliminate certain places from being financial centers." That is not the case. This legislation would open up Edge Act and agency opportunities for foreign banks to go into various locales and we have the proof of the active efforts of American banks under the Edge Act of going to such cities as Chicago, Miami, Houston, Los Angeles, and even New York, for non-New York banks and assisting very much in the development of those centers as international financial centers.

Moreover, the agencies are even permitted to make domestic loans, so it is not only a question of international financial centers, but international banks, to be active on the domestic sides under this legislation.

So, therefore, Mr. Chairman, on balance, with a few suggestions that we have made for change, the vast majority of the Bankers' Association for Foreign Trade supports this legislation.

Thank you.

[The prepared statement of Mr. Palmer, on behalf of the Bankers' Association for Foreign Trade, follows:]

STATEMENT OF
ROBERT B. PALMER
VICE PRESIDENT
BANKERS' ASSOCIATION FOR FOREIGN TRADE
ON H.R. 7325
BEFORE THE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
HOUSE COMMITTEE ON BANKING, CURRENCY AND HOUSING

My name is Robert B. Palmer, and I am the Vice President of the Bankers' Association for Foreign Trade. I am also Executive Vice President of the Philadelphia National Bank. I am accompanied by James B. Sommers, Chairman of the Association's Committee on Foreign Banking in the U.S., who is also Senior Vice President of the North Carolina National Bank, and by the Association's Counsel, Thomas L. Farmer, of the Washington law firm of Prather Seeger Doolittle Farmer & Ewing.

The Bankers' Association for Foreign Trade (BAFT) was founded in 1921. Today, BAFT's voting membership of 142 U.S. banks consists of banks in 56 cities located in 32 states, the District of Columbia and Puerto Rico, and includes almost every U.S. bank which has a significant international operation. The Association also provides non-voting membership to 78 foreign banks with operations in the United States.

Following World War II American industry set the pace in a tremendous expansion of world trade and investment. During this period the U.S. dollar established its role as the principal reserve currency and medium of exchange for international transactions, and American banks expanded overseas to meet the needs of their customers and to take advantage of new opportunities to finance foreign commerce and investment. They opened representative offices and branches, established specialized subsidiaries, associated themselves with overseas ventures and participated substantially in the Euro-currency market. Similarly, non-U.S. banks expanded their international operations, including the establishment of agencies, branches and subsidiaries in the United States. The worldwide activities of BAFT member banks, both U.S. and foreign, contributed greatly to the growth of international trade, the improvement of living standards throughout the world, and the maintenance of peace through an orderly interdependent world economy.

As the American banking community has expanded into foreign financial markets it has not asked for, nor received, preferential treatment. Our aim has been mutual non-discrimination among U.S. and foreign banks. To demand more would be unrealistic and not in the spirit of the free enterprise system; to accept less would be a disservice to the American business community and ultimately the American public.

BAFT members strongly believe that the domestic banking environment should be one in which foreign banks are encouraged to participate, and to do so on a healthy and non-discriminatory basis. This would foster competition among all institutions operating in this country and offer benefits to all users of bank services.

At present, there is virtually no Federal regulation of foreign banks. Foreign banks are subject almost exclusively to state laws. This has led to unevenness of treatment, particularly with respect to multi-state banking, securities and investment banking activity, reserve requirements, deposit insurance, and ease of entry into U.S. markets.

As a result, the vast majority of our members support the passage of legislation this year which would effectively equalize the operating environment for both foreign and domestic banking activities in the U.S. Such legislation should be based on the principle of equal national treatment. At the same time, these banks believe that the principle of grandfathering should be employed for those operations of foreign banks which have been established here in full accord with prevailing laws and regulations.

A careful examination of H.R. 7325 has led us to conclude that these principles are generally reflected in that legislation which we endorse, although we will recommend some significant amendments.

However, I want to advise the Committee that there is a group of about a dozen of our member banks who do not support this legislation. This group, consisting generally of the largest banks in the country domiciled principally in New York and accounting for a major share of this country's international banking activities, takes the position that the present regulatory environment is satisfactory, and that the proposed changes could lead to retaliation by foreign governments against overseas operations of American banks. The views of these banks have been presented in testimony last week by the New York Clearing House and therefore do not require elaboration from me.

To clarify the discussion of H.R. 7325 we have divided our testimony into three broad categories as follows:

1) Regulatory Environment
2) Range of Permissible Activities
3) Locational Boundaries

I. Regulatory Environment

With respect to the overall regulatory scheme for foreign banks operating in this country, we believe that the established principles of the dual banking system require that the American branches or operating subsidiaries of foreign banks be permitted to register or charter with the appropriate regulatory entity, state or Federal, as they might choose. To facilitate the operation of foreign banks as national banks and Edge Act corporations, we urge the elimination of the nationality restrictions for the directors of these corporations.

In addition, we urge that FDIC insurance be made available to any foreign bank that desires such insurance but that such coverage be required of a foreign bank only to the extent that such bank engages in retail activity.

Virtually all foreign banks operating in this country conduct a banking business which when carried on by U.S. banks makes non-membership in the Federal Reserve System a practical impossibility. Nevertheless, we do not advocate mandatory Fed membership for foreign banks since that would violate the principle of mutual non-discrimination. We do, however, recommend that the central bank have adequate powers relating to the activities of foreign banks operating here to assure the proper functioning of domestic monetary policy, including the power to impose reserve requirements where appropriate.

Reserve requirements are also important with respect to competitive equity. The cost considerations of reserve requirements are of crucial importance in the highly competitive market of wholesale banking. For example, the funding of a large commercial loan to an American borrower would be significantly more expensive to an American bank, which would have to maintain reserves under either Regulation D or M, than would be true for a foreign bank, which would have a lower requirement under Regulation D or no reserve requirement under Regulation M.

II. Range of Permissible Activities

Consistent with the principle of equal national treatment, we urge that the operations of foreign banks in this country be subject by law and practice to the same regulations regarding permissible activities as are American banks.

We are therefore pleased to note that H.R. 7325 grants important new operating authority to foreign banks by enabling them to carry out international banking activities in most of the major banking centers through the establishment of Edge Act corporations now available only to U.S. banks. The bill also establishes a valuable precedent by removing entirely the requirement that directors of Edge Act corporations be U.S. citizens. We urge that similarly Section 2 be broadened to remove the requirement that a national bank controlled by a foreign bank have a majority of its directors be U.S. citizens.

The BAFT has consistently favored full grandfathering of non-conforming activities on the part of foreign banks in the U.S., both with respect to multi-state banking activities and to bank-owned securities affiliates and has so testified in its previous appearances before the Senate and House Banking Committees. It is our belief that these questions should be viewed not in a narrow context, but should be seen as an important element of foreign investment generally. In our view the question before your Committee in considering Section 8 of this bill is not so much the future development of the Glass-Steagall Act as it is basic policy with respect to foreign investment.

The U.S. has for many years been the principal advocate of the benefits of foreign investment for both the recipient and the investing country. Many foreign countries have changed the rules for U.S. investment in their country after such investments have been in place, and invariably the U.S. has argued that changing the operating rules for foreign investment after the fact has been detrimental to foreign and domestic commerce, and has urged that such changes be kept to a minimum. This broad principle with respect to foreign investment is sound and should be followed in the treatment we accord foreign investments in the U.S.

We urge therefore that all securities and investment banking activities presently being carried on by foreign bank affiliates in accordance with presently effective U.S. laws and regulations, be grandfathered and that Section 8 of this bill be amended accordingly.

III. Locational Boundaries

Under present law foreign banks operating in the U.S. through direct branches or through a combination of branches and subsidiaries may, and do, engage in commercial banking functions in more than one state. On the other hand, domestic national banks and member banks may not engage in interstate branching, although domestic non-member banks under reciprocal state branching laws theoretically have this option. In practice this has resulted in a competitive disadvantage for American banks. Accordingly, we support the provision of the bill restricting interstate branching of foreign banks, but with an amendment to allow non-member foreign banks the interstate branching option available to domestic non-member banks under reciprocal state laws. At the same time we strongly support those provisions of the bill which provide for the permanent grandfathering of all agencies, branches, or subsidiaries of foreign banks that are already established in the United States as of a current date to be established by the Subcommittee. We assume, moreover, that the effective date for grandfathering presently in the bill will be moved forward and urge that the Committee designate the most liberal possible date.

Furthermore, we urge that H.R. 7325 be left unchanged so that agencies are not included in the prohibitions on multi-state banking. Agencies generally are not allowed to accept deposits and are thus not akin to multi-state branches of domestic banks.

In addition, we urge the elimination of Section 7(e) of H.R. 7325 granting to the Federal Reserve Board the power to disapprove the establishment by a foreign bank of a branch or agency pursuant to state law. The Federal Reserve Board does not have such authority with respect to domestic bank applicants, and to provide such veto power with respect to foreign applicants would run counter to the principle of national treatment, as well as unnecessarily interfering with state authority under the dual banking system.

In conclusion, Mr. Chairman, I want to say that while this legislation deals with a number of complex, technical issues, the central point is rather simple. For the health of the financial system it is important that the relevant laws and regulations place all participating institutions on an equal footing. The vast majority of our members after careful deliberation have concluded that the legislation before you represents a liberal and farsighted approach to a complex and very technical problem, and with the changes as outlined above, deserves the support of your Committee.

Mr. St Germain. Thank you, Mr. Palmer, for a very excellent presentation. We appreciate your support of the legislation and your constructive recommendations will be given thorough consideration, naturally.

One of your recommendations is that State chartering under section 7(e) be eliminated. You argue it interferes with State authority under the dual banking system.

However, almost all banking operations in the United States, unless they are noninsured State banks, are subject to veto at the Federal level. The vetoing of State charter operations can be done by FDIC. Since the insurance will not be given to foreigners, isn't it true the agencies would have a competitive advantage under your proposal in not being subjected to a Federal veto over chartering in any form?

Mr. Palmer. To some extent that is true. However, we see significant importance in the ability to take deposits which agencies are not permitted to do. We think the classical banking function of taking deposits in a given location is a primary criteria for classifying something as a banking entity and therefore we are not unduly troubled by more liberal treatment for agencies.

Mr. St Germain. It would seem that the oversight of approving charters would be useful.

If you don't favor a Federal veto, what other checks with regard to State banks would you suggest?

Mr. Palmer. It seems appropriate to us for a bank coming to this country to have the ability to create a branch or subsidiary in a State which would be, by taking a State charter, subject only to the desires of that State as to whether or not it should be located there on the assumption that it is choosing that State as its home State.

Mr. St Germain. With respect to the subsequent establishment of agencies in any number of other States, you don't feel as though there should be——

Mr. Palmer. We would not limit agencies.

Mr. St Germain. As you stated, agencies could accept deposits, but agencies are primarily loan-generating offices.

Mr. Palmer. That is right.

Mr. St Germain. That type of presence does have an effect or could very well have an effect, either salutary, or in some instances perhaps an adverse effect, on the State in which the agencies are established.

Mr. Palmer. I can conceive of situations in which it would although we do believe that while an agency is a very useful way of conducting a loan business on a more local basis, that in fact most loans in a given area could be made across State lines anyway by a branch in a different State.

Mr. St Germain. Mr. Wylie.

Mr. Wylie. Thank you, Mr. Chairman.

I want to compliment you, Mr. Palmer, for a very discerning statement. To me, you put the issue in succinct perspective, better than I. I was attempting to say it a little earlier, if you were here and heard my exchange with the other gentlemen.

What we are suggesting here is not too much different than what we did with our own domestic banks, through the One-Bank Holding Company Act and other laws, is it?

Mr. PALMER. I think it is really quite similar, although, as you know, we are recommending the grandfathering for the reasons I have outlined, but going forward essentially we believe that the regulation Y, the bank holding company laundry list, if you will, would be appropriate.

Mr. WYLIE. Would you grandfather forever?

We have a divestiture provision in the Bank Holding Company Law which requires divestiture of nonbank related activity by 1985. Do you think that is too restrictive for foreign banks?

Mr. PALMER. In terms of the securities business, we would grandfather permanently. In terms of relationships of foreign banks who have banking activities here and who through maybe investments that they have in their home country, in, say, a manufacturing company which then chooses to put a manufacturing company in the United States, we would think that at that point where the manufacturing activity in the United States became a strong, functioning organization and they would have a banking relationship with the foreign bank or possibly control, or significantly invested in that, it might be necessary to take some steps to see that they truly were at arm's length.

We would hope there is some appreciation or understanding, as Dr. Jahn and others explained today, of why that happens in those countries.

Mr. WYLIE. You have made an interesting suggestion on page 3 of your testimony that FDIC insurance should not be required of a foreign bank except to the extent that such bank engages in retail activity.

Do you foresee any undue difficulty there in making sure that it is only domestic retail deposits which are insured?

I think what you are saying is that FDIC should be required to provide insurance for foreign banks operating in this country or foreign banks should be required to have FDIC insurance to guard against loss for American citizens who make deposits in foreign banks operating here. Is that what you are suggesting?

Mr. PALMER. We mean to say individuals as citizens as opposed to corporations as citizens. We believe it should be required to the extent that they are taking deposits from individuals, not from corporations, in the CD market, large institutions, and so forth.

Mr. WYLIE. West German citizens? It is not as likely that deposits would come West German citizen?

Mr. PALMER. To be honest, I haven't thought that through.

Mr. FARMER. I don't think we would think that distinction to be on the basis of citizenship as much as on the basis of retail versus commercial business, which I think is the basic intent.

I would think any retail customer, whether he was foreign or domestic or whatever, would be insured, just the way an American bank would be. It is the nature of the banking business we are looking at rather than the citizenship of the individual conducting it.

Mr. WYLIE. Just deposits of retail customers in the United States. Do you think that the acceptance of foreign banks for FDIC insurance could cause an undue risk to the Federal Deposit Insurance Corporation?

Mr. PALMER. I don't believe so, sir. I am not an expert such that I could explain how that would have to be worked out, and I know that it would not be easy, but I believe that one would be able to work out a policy whereby the deposits in this country of foreign banking operations of simply individuals could be insured against. And there was a situation back in 1965—some of you may remember—the Intrabank, then the largest private bank in Lebanon, with a branch in New York, which did fail and it did have some individual deposits from residents of New York, et cetera, and there was some money loss by individuals.

I think there could have been a way in which FDIC could have insured those deposits, worked out an arrangement with the bank, with assets in this country sufficient to protect, to assure that there would be that——

Mr. WYLIE. My question is based on a statement made by Mr. George A. LeMaistre, Chairman of the Federal Deposit Insurance Corporation. He says,

> In the event of insolvency of a foreign bank, it is possible that: assets could be easily and quickly shifted from the U.S. branch and out of U.S. jurisdiction, while deposits could be shifted to the U.S. branch.

Then he says,

> Legal obstacles and transactions involving other offices of the foreign bank might prevent FDIC from obtaining the usual subrogation of claims that normally it gets from depositors in failed U.S. banks before making payments.

Would you comment on his statement?

Mr. PALMER. It would seem to me, not as an expert in the this area, but it would seem to me that there would be a way, such as the capitalization rules for foreign banking activities here, or the New York State 108-percent rule, or something of that nature, which would assure that funds would be in a local location, not out of that location.

Mr. WYLIE. Thank you, Mr. Chairman.

Mr. ST GERMAIN. Gentlemen, many of the witnesses who testified, some who will testify, about equal treatment, state, well, that is not really the case because bank holding companies now or domestic banks can operate in many States; but is there anything that precludes or prohibits foreign banks from establishing bank-holding companies and using that same modus operandi?

Is that not allowed a holding company in this country?

Mr. SOMMERS. Yes, sir, they have that availability.

If I may make make a distinguishing point, there is a vast difference in being able to go across State lines with the finance companies as opposed to the basic banking business where you are taking deposits, the deposits being the life blood of commercial banks, deposits that you gather in the marketplace being the most stable funds that a bank has to expand its operations within their own State.

Mr. ST GERMAIN. And this is why you subscribe to the establishment of agencies in other States?

Mr. SOMMERS. That is correct.

Mr. ST GERMAIN. One last question. In your testimony you note that agencies are not included in the prohibitions on multi-State branching in the present bill.

Would you agree to permitting agencies to operate in more than one State as a means by which States that do not now have substantial foreign banking operations can attract them in the future, which would say a foreign bank is less likely to enter a new State if it cannot establish a branch and can only establish an agency; and could you answer the question taking into account the fact of the existing situation in California and Georgia in which branches now are effectively prohibited?

Mr. PALMER. One could only surmise what people would do at a future time, but I would think if this legislation were passed allowing activity under the Edge Act and allowing multi-State agencies to the extent that the new host States would permit same, I would think that many, many foreign banking institutions who want to be active commercially in this country would utilize those channels and would spread activities across the United States and do a healthy banking business.

Mr. ST GERMAIN. Gentlemen, we want to thank you for your presentation. There will be additional questions from other members who couldn't be here this morning as well as from myself, because I want to move along here, presented to you, and we would ask that you answer them as expeditiously as possible. They are, I think, relatively easy to answer.

Mr. PALMER. Thank you, Mr. Chairman. We would be happy to do that and we repeat our thanks for inviting us to testify on this legislation.

Mr. ST GERMAIN. Now we will hear from our third panel, representing the regional stock exchanges: James E. Dowd, a neighbor from Massachusetts, I assume, because he is president, Boston Stock Exchange; Michael E. Tobin, president, Midwest Stock Exchange, Inc., and Hart Perry, president, SoGen-Swiss International Corp.

Gentlemen, we have your statements that were presented to us and we appreciate receiving them ahead of time so that we could have an opportunity to review them.

I would ask, since they are rather substantially put, all three of them together, that you attempt to summarize, because that will then give us a little more time for questioning. We would like to move right along.

So, at this point, without objection, we will put all three statements into the record in their entirety.

[The prepared statements of Mr. Dowd, on behalf of the Boston Stock Exchange, Inc.; Mr. Perry, on behalf of the SoGen-Swiss International Corp.; and Mr. Tobin (who was unavoidably detained and was represented at the hearing by Kenneth I. Rosenblum, senior vice president and general counsel of the Midwest Stock Exchange, Inc.), on behalf of the Midwest Stock Exchange, Inc., follow:]

BOSTON STOCK EXCHANGE, INC.
53 STATE STREET, BOSTON, MASSACHUSETTS

STATEMENT OF JAMES E. DOWD, PRESIDENT
OF THE BOSTON STOCK EXCHANGE, INC.
BEFORE THE SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
OF THE HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

We welcome this opportunity to express our views on the impact on regional stock exchanges from the provisions of Section 8 of H. R. 7325, the International Banking Act of 1977. As written, it would prohibit a foreign bank, or a person directly or indirectly associated with such a bank, which maintains a commercial banking presence in the United States, from engaging in securities activities in the United States unless that entity was engaged in those activities on or before December 3, 1974. "Grandfathered" firms could retain intact their investment banking arms in this country only until 1985. Thereafter, they would be required to restrict their investment banking activities to such a degree as to render them, for all practical purposes, incapacitated competitors in this country's securities industry.

We would like to demonstrate to the Subcommittee the severe impact these restrictions would have, particularly to regional stock exchanges, and how contrary they will be to the fostering of competition among market centers, which was one of the principal thrusts of the Amendments to the Securities Acts enacted by Congress in 1975.

To appreciate the impact of H. R. 7325 on regional exchanges, it may be helpful to the Subcommittee to understand the types of foreign members we now have. As is well known, the rules of the New York and American Stock Exchanges have not permitted, until very recently, foreign-controlled firms to become members of these exchanges, whereas the four major regional exchanges have allowed such memberships. These foreign-controlled members, all of which are registered as broker-dealers with the Securities and Exchange Commission and most of which are domestically chartered corporations, pay state and federal taxes and are subject to all of the requirements as a United States registered broker-dealer.

In general, our 22 foreign firms fall into three categories: those which are United States affiliates of foreign broker-dealers, from Japan or the United Kingdom, for example; those which are affiliates of a foreign bank which is <u>not</u> engaged in commercial banking in the United States; and those which <u>are</u> affiliates of one or more foreign banks, some of which are engaged in commercial banking in this country. It is this third category of foreign members on which the impact of the pending legislation is most severe, and because of their relative importance to the regional exchanges, these exchanges will suffer as well. Other speakers today will describe in more detail the wide range of services these firms provide to both domestic and foreign investors, but I would like to confine my comments to two of their activities-- those as dealer specialists on regional exchanges and as dealers for their own accounts and risk in international arbitrage, both of which activities would be prohibited by H. R. 7325.

Since ABD Securities Corporation was the first foreign-controlled firm to become a member of the Boston Stock Exchange in December, 1968, and subsequently acquired memberships on the Midwest and Pacific Exchanges, I will use it as an example. ABD is, and since 1969, has been on the Floor of the Boston Stock Exchange as a dealer specialist in 31 issues. It is also a dealer specialist on the Midwest Stock Exchange in 32 issues. Many of these issues are instantly recognizable, such as Boeing Corporation, Bank of America, International Telephone & Telegraph and Sperry Rand. It is the specialist in four New England based Big Board issues, as well as in one issue that is solely listed on the Boston Stock Exchange. It is one of 19 specialist units on the Boston Floor and holds six seats for its personnel. Its volume as a dealer specialist in 1975 and again in 1976 amounted to over 1 1/4 million shares, and in 1977 through June 30, to nearly 3/4 of a million shares. Its average equity for dealer activity on the Boston Floor is a half million dollars, which amounts to 11.8% of the total equity of all floor dealers combined. The firm, as of June 30, 1977, had net capital of seven million dollars, of which 2 to 2 1/2 million is earmarked for specialist activity on the Boston and Midwest Exchanges.

Having established itself on the Exchange Floor as a dealer specialist, ABD is thus permitted to act as a broker for other members who do not have their own personnel on the Floor. This is a substantial segment of its business. It maintains a highly professional block trading staff, and in connection therewith, is sometimes forced to take into position, and at risk, substantial blocks of securities pending location of buyers or sellers. Its international arbitrage activity, by its nature a dealer or principal function, has also been substantial and through it, helps to make more liquid markets in the more popular internationally known issues.

Obviously, with an average daily settlement of over eight million dollars in its own and its parents' accounts in Boston banks, to say nothing of its Chicago and West Coast settlements, this is not an insignificant operation.

The Exchange and its subsidiaries offer a number of services to brokers and their customers, both domestic and foreign. Among these are full backoffice accounting through our Service Corporation and full custodianship of United States issues owned by customers of the parent banks of ABD and other foreign members, a service which is handled by our subsidiary, the newly-chartered New England Securities Depository Trust Company. This limited-purpose trust company acts as the New England link to the national depository system. Last last Fall, we received a substantial deposit of issues by the Auslandskassenverein of Frankfurt, Germany, which is the principal clearing and depository agency for German banks for shares held outside Germany. There is no question in my mind that we would not have attracted this account to Boston were it not for the track record of the custodian service designed for the Dresdner Bank, one of ABD's parents, and its powerful assistance. The presence of this and similar custodianship accounts in Boston also brings substantial deposits of funds for banks in Boston, thereby benefiting the city's and the region's banking position.

To say that ABD's presence on the Floor of the Boston Stock Exchange is important would be a gross understatement. Indeed, ABD and two other foreign-controlled member firms, Sogen Swiss and UBS/DB, who would also be impacted by the Bill as written, paid in 1975 and 1976 to the Exchange in net commission income assessments $95,350 or 21% of the total, and for 1977's first five months, $12,642 or 16%. They paid to our Clearing Corporation, for clearing and processing services, $821,527 or 24% of total revenues in 1975 and 1976, and $159,239 or 17% for the first five months of the current year. Custodial fees paid by these members amounted to $782,350 or 98.9% in 1975 and 1976, and $182,675 or 99% in the first five months of this year. These firms are currently paying about 36% of the total revenues for all functions of our Clearing Corporation. ABD also uses the backoffice accounting services of our Service Corporation and presently accounts for 7% of the revenues for this entity. In total, of all of the entities combined in all functions, the impacted firms' payments accounted for 21.8% in 1975, 23.9% in 1976, and 22.5% in the first five months of 1977.

Less easily identified are the charges paid by other members who brought business to the Boston Floor because of ABD's presence, either as the other side of a block trade or to use its service as floor broker. The foregoing figures demonstrate the high percentage of the Exchange entities' income resulting from the presence of these potentially impacted firms, which income has permitted the Exchange and its subsidiaries to continue to provide an active, viable and competitive marketplace for the 203 Exchange members, about one-half of whom are not members of any other exchanges.

What would be the perceived consequences to the Boston Exchange were H. R. 7325 to be passed by the House and the Senate and enacted into law?

First. The loss of specialist capital for the marketmaking activity in 31 issues traded on the Exchange, and if replacement capital were not located and committed, Boston only members would be forced to give over their customers' orders in these issues to some New York Stock Exchange member firm and hope to negotiate a commission rate sufficient to enable them to earn some measure of profit on such a trade.

Second. It would result in the immediate loss of a highly professional staff of block traders and arbitrageurs, whose activity most definitely contributes to the liquidity and depth of our markets.

Third. Should such firms be prohibited from all dealer activity, they might well find it unattractive to remain as Exchange members or brokers in the United States at all. The taxes they pay to the various states and to the Federal government might well persuade them that their parents' agency business could be executed by a New York Stock Exchange member firm on the New York Exchange at negotiated rates of commission that would make neither a United States brokerage subsidary or an exchange membership of any United States exchange any longer attractive.

Fourth. If such firms withdraw completely from the exchange community, the revenues of the exchanges would be severely and adversely affected, and the ability to provide the only exchange marketplace for the 86 issues solely traded on Boston would be questionable. Incidentally, these issuers are, for the most part, located in New England and upstate New York, and as newer and emerging companies, they are not yet eligible for listing and trading on the New York or American Exchanges.

Fifth. Without these revenues, the wide variety of trading, accounting, clearing and depository services that are available to regional members, might not be provided, and regional members might not find it sufficiently attractive to attempt to survive under negotiated rates with little, if any, competition being given to the larger national wirehouses.

In their consideration of the Securities Acts Amendments of 1975, the House Commerce Committee and the Senate Banking Committee concluded that affiliates of foreign banks ought not be prohibited from membership on the nation's securities exchanges or from related securities activities. In its desire to maximize competition in the securities industry, Congress adopted a policy of open membership, and under that policy, a firm may be denied membership only if minimum capital or competency requirements are not met, or if the applicant has a statutory disqualification. Parentage of a foreign bank is not a statutory disqualification.

If the resolution of this issue by Congress in 1975 might appear to allow a foreign bank or its subsidiary to do something which some domestic banks or their affiliates may not do, I suggest that the anomaly can be explained by reference to how foreign governments treat entities which provide commercial and investment banking services. Unlike the United States, banking policies in most of our major European trading partners permit one entity or its subsidiaries to engage in both banking functions. In those countries, banks traditionally have been the entities which provided commercial and investment banking services. Thus, when a European entity expands its securities operations to this country, it is generally a bank which does so.

Another apparent anomaly is that we allow domestic banks, through their Edge Act affiliates, to engage in securities activities abroad. In terms of international relations, we have permitted foreign banks to engage in securities activities, although domestic banks are limited in this regard. Our trading partners have permitted United

States banks to engage in securities activities, although those activities might not be legal in this country. Requiring foreign banks to divide their banking function in this country is not likely to change their respective governments' internal banking policies. However, such a requirement may prompt a change in how foreign governments treat United States multinational banks and securities firms. It would indeed be inconsistent if we were to prohibit foreign banks from doing in this country what we permit United States banks to do abroad.

It would be equally inconsistent for Congress, on the one hand, to prohibit a United States securities exchange from discriminating against a securities firm of foreign bank parentage, and on the other hand, to forbid a securities firm of foreign bank parentage with a commercial banking presence in this country from being a specialist member of a United States stock exchange pursuant to the International Banking Act of 1977 as it is drafted. Enactment of Section 8 as written would do just that.

The primary purpose of the 1975 Securities Acts Amendments was to maximize competition in our securities marketplaces by removing unnecessary regulatory restrictions and other impediments to competition. Equally important is the statutory objective of developing the National Market System through the interplay of competitive forces whereby brokers and dealers, exchange markets, and markets otherwise than on exchanges would compete fairly and be linked together through communication and data processing facilities.

One of the most important ways in which the National Market System will maintain strong, effective and efficient markets is by opening up the function of marketmaking to competition. Dealers who stand ready and willing to buy or sell in certain stocks compete by narrowing the spread between bid and asked quotations. Increasing the number of dealers making markets in given stocks also will improve the depth and liquidity of the securities marketplaces. Narrowing spreads and building greater depth and liquidity are essential for bolstering sagging public, particularly small investor, confidence.

What competition there is today in making markets in New York Stock Exchange listed stocks comes from specialists on regional stock exchanges and from the Third Market. If the number of marketmakers and the amount of capital committed to the marketmaking function are reduced, how can the regional exchanges compete fairly with the New York Stock Exchange? Likewise, regional exchanges would be at a disadvantage in competing with third marketmakers. Both of these expected results would be contrary to the letter and spirit of the law which directs the SEC, in facilitating the rapid development of the National Market System, to assure fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets otherwise than exchange markets.

Another element essential to good marketmaking is order flow. In fact, marketmaking cannot be sustained without sufficient order flow. Thus, reducing the number of member firms on an exchange, even though the member firm is not a marketmaker, would be detrimental to that exchange's efforts to compete with marketmakers on other exchanges and third marketmakers. Foreign members on the Boston Stock Exchange account for about 13% of total membership; on the Midwest Stock Exchange, foreign members are 8% of the total; on the Philadelphia, 6%; and on the Pacific, they are 5%. It can be reasonably expected that many of these members will be affected by Section 8.

Although the percentages are small, they are significant. Since the total number of competitors is small, eliminating even a few of them could be expected to reduce order flow significantly and to decrease competition drastically.

Another way to evaluate the effect on competition is to identify the beneficiaries of the Section 8 prohibitions. Since the primary market is the New York Stock Exchange, which accounts for approximately 85% of this nation's equity trades in terms of volume, any reduction in the regional exchanges' order flow, number of marketmakers, and amount of capital committed to marketmaking would redound in two significant ways to the benefit of New York Stock Exchange member firms.

First, it would tend to make the regionals, in terms of retail trading activity, marketmaking and quality of markets, less competitive relative to the New York Stock Exchange. Second, it would have the effect of forcing foreign securities firms and other foreign interests to channel their transactions in United States securities marketplaces through many of these same New York Stock Exchange firms which do a profitable foreign securities business. Since these firms are New York Stock Exchange members, it is almost certain that the increased order flow received by them would be transacted on the Big Board, placing both regional exchanges and very possibly third marketmakers at an even greater competitive disadvantage.

We suggest to the Subcommittee that, in addition to the grandfathering until December, 1985, of all current activities of foreign bank affiliates, it give serious consideration to amending H. R. 7325 to provide for the specific exemption of the dealer specialist and bona fide arbitrage functions that are clearly delineated and permitted in Section 11(a) of the Securities and Exchange Act as amended in 1975.

I appreciate most sincerely this opportunity to present our views.

STATEMENT OF HART PERRY

PRESIDENT OF SOGEN-SWISS INTERNATIONAL CORPORATION

BEFORE

THE SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION,

REGULATION AND INSURANCE

OF

THE COMMITTEE ON BANKING, HOUSING,

FINANCE AND URBAN AFFAIRS

UNITED STATES HOUSE OF REPRESENTATIVES

ON H.R. 7325

My name is Hart Perry. I am President of SoGen-Swiss International Corporation, the oldest foreign-owned investment banking firm in the United States. I am accompanied by our Washington counsel, Albert J. Beveridge, III, of the firm of Beveridge, Fairbanks & Diamond. I greatly appreciate the opportunity to appear before this Subcommittee today to express my views on H.R. 7325. The Bill as presently drafted would prohibit certain foreign-owned securities affiliates from distributing or selling securities in the U.S. after a grace period of less than nine years. It would permit them to underwrite securities but limits their distribution to foreign countries. In its present form we believe the Bill would effectively put us out of business and may be based on a lack of understanding of how firms such as ours operate as well as the realities of the international financial markets.

I. History

SoGen-Swiss is the largest exclusively foreign-owned investment banking firm in the U.S. with capital of approximately $15 million and about 110 employees. We have offices in New York, Los Angeles, San Francisco, Paris and Brussels. In 1976, we were ranked 52nd out of 300 investment banking firms in the U.S. on the basis of total capital, far behind such giants as Merrill Lynch ($632 million) and Salomon Brothers ($175 million), but nevertheless a significant firm in terms of the total industry.

SoGen-Swiss is the result of the merger on July 1, 1973, of two existing foreign-owned U.S. securities firms - Swiss American Corporation, founded in 1939 as a wholly owned subsidiary of Credit Suisse in Zurich, and SoGen International Corporation, founded in 1968 as a wholly owned subsidiary of Societe Generale in Paris. Our history in the United States, therefore, goes back 38 years.

At the time of the merger, the Swiss and French owners were joined by the Amsterdam-Rotterdam Bank N.V. (Amro), the Societe Generale de Banque (Brussels), SOFINA (a large Belgian investment company), and Societe Generale Alsacienne de Banque (Strasbourg). Our owners, therefore, come from four different countries and include some of the larger international banks which operate on a worldwide basis.

1. Our Firm's Operations

SoGen-Swiss offers to corporate and individual clients a complete range of investment banking services. Our services include: stock brokerage for U.S. and European institutions; primary distribution, principally in the U.S., of both fixed income and equity securities; secondary market activities in corporate and municipal bonds; market-making in money market instruments; investment advisory services; institutional research; mergers and acquisitions for U.S. and European clients; management of both private placements and public securities issues for U.S. and European clients. We execute most of our brokerage business on regional stock exchanges, i.e., the Boston, PBW, Midwest and Pacific Coast exchanges. On the latter exchange we act as a specialist market-maker.

We are fully regulated on three levels. We are regulated first at the federal level by the SEC as a broker-dealer under the provisions of the Securities Exchange Act of 1934; second, at the state level by the State Securities Commissions; and third, by various self-regulatory bodies such as the NASD and the regional stock exchanges.

2. Our Shareholders' Banking Activities

All of our owners have interests in commercial banking operations in the United States. The commercial banking activities of Credit Suisse in the United States are carried out through a branch in New York and agencies in Los Angeles and Atlanta. Amro, Societe Generale and Societe Generale de

Banque have no branches or agencies in this country but do own stock in European-American Bank and Trust Co., which has three additional European bank owners as well. All of these commercial banking activities are completely separate and apart from our operations. These commercial banking activities are closely supervised and are regulated by federal or state banking authorities. Credit Suisse offices are regulated by state banking authorities, and European-American Bank and Trust Company is a New York State Bank and a member of the Federal Reserve System.

3. Other Foreign-Owned Securities Affiliates

With minor variation, the above description of my own firm applies also to several other firms similarly situated, including ABD Securities, EuroPartners Securities Corporation, UBS-DB and others. At least two of those firms, ABD and EuroPartners are submitting written comments for the record. These two firms have asked that I also call the attention of the Subcommittee to the separate written statements they are submitting for the record of these hearings.

II. The Identity of SoGen-Swiss as an Independent U.S. Securities Firm

As the Committee is no doubt aware, the structure of the European banking system is different from that of the United States. As is customary in Europe, our bank stockholders, as "universal" banking institutions, perform multiple functions in their own markets. They provide deposit and lending services of the type offered by commercial banks in the United States. They also offer securities brokerage and distribution services normally provided in this country by investment banking firms. United States banks operating in Europe also engage through subsidiaries in securities brokerage and distribution activities, although they are prohibited from doing so in the U.S. under domestic law.

The predecessor firms of SoGen-Swiss were formed primarily to ensure that customers of our shareholders could receive the same services from them in the United States securities market which they were accustomed to receiving in Europe. This interest continues to be the primary reason for our existence. To serve these clients adequately we must be a "full service" firm. These are the same reasons U.S. banks have entered foreign banking and securities markets.

SoGen-Swiss engages in no commercial banking activities. We do not take deposits; we make no loans. We are exclusively involved in traditional investment banking matters. Our operations are distinct from and not related to the commercial banking activities of our shareholders. Each of the commercial banking operations of our shareholders in the United States has its own management; we have our own; there is no common management. The several operations are also separately capitalized and have their own profit and loss responsibility.

In the daily conduct of our business we maintain arm's length relationships with the branch and agencies of Credit Suisse and with any banking facility of European-American. These relationships are no different than the ones we enjoy with such U.S.-owned banks as the Morgan Guaranty Trust Company of New York, the Harris Trust Company (Chicago), and the Bank of America, just to mention a few. For example, since the formation of SoGen-Swiss, the firm has participated as an underwriter in more than 1060 public issues; it has sold none of such issues to European-American and only nine to the New York branch of Credit Suisse. During that same period, we estimate we have completed more than 10,500 transactions in the secondary bond market of which none were with European-American and only five with the New York branch of Credit Suisse.

Let me emphasize, that even though we are owned by foreign banks, we are an American firm with an American management and a staff which is 90% American. Although our clientele is international in nature, we sell to and trade securities principally with U.S. institutional clients. Just as American institutions are offering a healthy competition in the European markets, so are the European affiliates increasing the competition in the U.S. markets.

III. Contribution to the U.S. Securities Market

While the expansion of our firm resulted primarily from our shareholders' wish to better serve their customers, our growing activity, together with that of the other foreign affiliates, has been important to the U.S. securities industry as a whole. In 1973 and 1974, you will recall, the securities industries faced a severe crisis. Many securities firms, both large and small, suffered simultaneously a loss of business and disinvestment by their owners. NYSE member firms' total capital shrank by $438 million, due to withdrawals, losses and failures during the period from mid-1969 to the end of 1974. During that same period, the public financing requirements of American industry increased 50%, aggravating the impact of the capital loss in the investment banking industry. The foreign firms which brought permanent capital to our industry during that period were among the few sources of new capital to offset the contraction of its capital base. We submit that the capital so provided continues to be needed by the securities industry, and its withdrawal would make it more difficult for American industry to meet its financing requirements in the future.

Nor should our shareholder's investment in the American securities business be seen as passive. SoGen-Swiss and other foreign-owned firms have used their capital, side-by-side with those domestic investment banking firms to help smooth out fluctuations in the markets - for example, by participating, at a predictable loss I should add, in the extremely difficult competitive bidding market in 1974, when it was either difficult or impossible for all except blue chip utility companies to come to that market.

Although we believe our contributions have been important, it should be recognized that the industry has been and will continue to be dominated by the larger U.S.-owned firms such as Morgan Stanley, First Boston, Merrill Lynch, and Salomon Brothers, to mention a few.

In addition, our shareholders' investment provides an additional channel for direct investment in the U.S. Many customers of our shareholders prefer to deal with their own bankers in direct investment as well as portfolio investment transactions, just as many U.S. corporations prefer to deal with U.S. banks and investment banking firms abroad. They view SoGen-Swiss and other foreign-owned firms as their bankers' U.S. representatives. Without the comfort derived from this relationship, I believe that some foreign investors might be reluctant to make direct investment in the U.S. This foreign investment continues to grow and has become a significant factor in expanding the capital base of American industry which has contributed to increasing employment within the U.S.

Finally, we are contributing to the developing of decentralized securities markets in the United States. In our capacity as a specialist on the Pacific Coast Stock Exchange during the 18 months ending June 1977, SoGen-Swiss handled approximately 16.5 million shares or 3.5% of the total volume on the Exchange for that period. The firm also executed as broker an additional 8.2 million shares or 1.8% of the total for the Exchange. Other securities affiliates are even more important factors in the regional exchanges. For example, ABD plays a major role in the Boston Stock Exchange, and ABD's chief executive officer is currently the Chairman of the Exchange. In addition it acts as a specialist on the Midwest and Pacific Exchanges. During 1976 ABD handled 1.9 million shares and during the first six months of this year 1.2 million shares on the Boston Exchange. During those same periods it handled 10.1 million and 8.2 million shares respectively on the Midwest Exchange. On the latter exchange it is among the top three specialist firms in terms of total volume handled.

A strong indication of the overall significance of foreign-owned securities affiliates to the regional exchanges appears in membership statistics aired by Congressman Moss in last year's floor debate on H.R. 13876, the predecessor of H.R. 7325. In 1976, according to Congressman Moss, foreign members accounted for 13% of the total membership on the Boston Stock Exchange; 8% on the Midwest Stock Exchange; 6% on the Philadelphia Stock Exchange; and 5% on the Pacific Coast Stock Exchange. Disappearance of these members would have obvious adverse impact on the standing and liquidity of these markets.

IV. Impact of H.R. 7325 on SoGen-Swiss

Section 8 of H.R. 7325 would exclude from those nonbanking activities of foreign banks qualifying for permanent grandfather treatment "the business of underwriting, distributing, or otherwise buying or selling stocks, bonds and other securities in the United States." This special category of securities activities would be required to be terminated or divested by foreign banks by December 31, 1985, to the extent that such activities exceed the bounds of permissible activities for national banks (principally, underwriting of Government securities and general municipal obligations), with one limited exception discussed below.

It should be clearly recognized that H.R. 7325 would substantially alter the legal environment in which SoGen-Swiss and other securities affiliates of foreign banks operate and would inevitably diminish competition in the U.S. securities markets. It is the essence of investment banking to buy and sell securities for one's own account, both in the course of underwriting securities to be distributed in the primary market and in the course of distributing or making a market in securities in the secondary market. Thus H.R. 7325 in its present form would prohibit the securities affiliates of foreign banks from performing after December 31, 1985, their customary functions as broker-dealers, underwriters of securities and specialists on exchanges.

In a limited exception, the Bill would permit securities affiliates of foreign banks to continue to participate in domestic underwritings, so long as their distribution is effected only outside the United States. This is not a practical option. A franchise to underwrite U.S. securities, but to sell only outside the United States is no franchise at all because the primary and secondary markets are inextricably interrelated.

Even if the selling efforts of SoGen-Swiss were directed entirely outside the United States, it would be confronted, upon the failure of an offering to be fully placed, with the need for access to the secondary market to distribute the unsold securities in the customary manner. The secondary market for securities underwritten in the United States will almost always be the United States. Most managing underwriters would be reluctant to include in their syndicates foreign-owned firms which have such severe restrictions on their distribution. In any event, since U.S. issues are structured and priced for the U.S. market for which the underwriting risk is calculated, SoGen-Swiss, as an underwriter, would incur an undue risk if it were required to distribute securities exclusively outside the United States.

These difficulties are exacerbated by severe limitations on the market for U.S. securities abroad. Due to withholding tax considerations, foreign investors rarely participate in the U.S. corporate bond market and the interest in new equity issues is at best sporadic. The volume of foreign investment in new issues in the U.S. has been relatively small, and therefore the authority granted by the Bill to underwrite in the U.S. but sell only abroad is of no real use.

It is argued that the nine-year grace period offered in the Bill would allow firms such as SoGen-Swiss and their owners ample time to restructure both their activities and relationships in the U.S. securities markets. The presumed time advantage is more hollow than real. We know of no way in which our shareholders could restructure their activities to gain direct access to the securities markets of the U.S. The elimination of our essential securities distribution activities in the U.S. would so undermine our profitability as to cast doubt on our continued viability as a competitor.

The effect of the legislation on us would be immediate. It is impossible to build or maintain a dynamic organization if the principal activities of that organization are to be taken away from it at a specific date. The Bill would create severe morale problems among existing employees and could make the recruiting of additional or replacement staff virtually impossible. Furthermore, customers would not be interested in the services of a firm which they could not look to for assistance in the future.

V. Public Policy Considerations

We believe this Committee and the House should take into account other important and relevant public policy considerations in addition to purely domestic banking policy objectives.

In 1975, Congress enacted the Securities Act Amendments, premised on the need for increased competition and economic efficiency in the country's securities markets. Among other things, that legislation opened markets to all qualified applicants, including foreign-owned firms, which had been excluded from membership on the New York and American Stock Exchanges. It did away with fixed fee schedules unrelated to costs. The adverse impact of H.R. 7325 on competition in the securities markets must be weighed against the objectives of this most recent legislation. The seriousness of ignoring national policy with respect to the securities markets is detailed in a letter dated July 16, 1976, from Congressman Moss to Chairman Reuss of the House Banking Committee, a copy of which is attached to this statement so that it will be included in the record.

The anticompetitive effects of H.R. 7325 cannot be justified by reference to the purpose for which the Glass-Steagall prohibition was initially imposed: The protection of depositors and the elimination of conflicts of interest arising through affiliations between commercial banking and investment banking. No abuses involving a securities affilate of a foreign bank have been cited. The potential for abuse has been substantially reduced by improvement in banking supervision and more comprehensive U.S. securities laws which have been administered with increasing sophistication in recent years.

93-031 O - 77 - 27

In addition, federal banking policy is able to allow deviations from Glass-Steagall when it is deemed consistent with the national interest to do so. Thus, despite all the arguments which were advanced for enacting Glass-Steagall in the first place, the Act has not been carried over to the foreign activities of U.S. banks through affiliates abroad. They are even permitted to underwrite securities of U.S. corporations whose deposits they hold. We understand this to reflect a policy decision favoring the accommodation of these securities activities to facilitate competition by U.S. banks with foreign banks in both banking and securities markets abroad. I believe this to have been a healthy development. Similar considerations should lead to an accommodation of the banking and securities activities of foreign banks and securities affiliates in this country to promote competition. Moreover, there is an additional reason, encouraging capital formation, which favors such a policy.

In the absence of a traditional Glass-Steagall rationale, it has also been argued that, since foreign banks enjoy a power not shared by domestic banks, they must necessarily enjoy an unfair competitive advantage. It seems to us that this supposed competitive advantage is being distorted out of all proportion to the underlying realities of the market place. To our knowledge, no industry group nor any study has suggested that the affiliation of a limited number of foreign banks with securities affiliates has produced any competitive imbalance in the banking industry. In fact, Mr. John F. Lee, who testified on behalf of the New York Clearing House, said that in his opinion quite the opposite was true in that the presence of such foreign banks in the U.S. helped U.S. banks gain access to markets abroad.

Existing legislation already limits the competitive position of foreign banks vis-a-vis domestic ones. A foreign bank may not, on its own, maintain an investment banking affiliate and also engage competitively in the retail banking business in this country. If a foreign bank merely has a branch or an agency in the U.S., it is permitted to maintain an investment banking affiliate, but its deposits may not be insured by the FDIC, and therefore it cannot compete at the retail bank level with the attendant benefits of a broad customer base. On the other hand, if the foreign bank were to establish a banking subsidiary, it would be required to obtain FDIC insurance, which would permit it to engage in retail banking, but it could not maintain an investment banking affiliate, since the Bank Holding Company Act would then be applicable. These legislative restrictions are sufficient to preclude any competitive disadvantage to U.S. commercial banks.

Let me also stress that this problem cannot be considered outside its international framework. In Europe, commercial banks are often the dominant force in the securities markets and their customers expect a broader range of services. Thus, when they expanded to the American market, foreign banks were already a part of the securities industry outside the U.S. and were logical new entrants into the U.S. securities markets. From this same perspective, if this Bill is enacted in its present form it will produce a curious competitive structure. In their home countries European banks will face competition from other European banks, from a large number of U.S. commercial banks and from about 25 major United States securities firms. Those same European banks, who will be forced by this legislation to choose between existing commercial banking operations and existing securities affiliates, will be prevented from competing fully in this country against the same firms who are competing against them at home. We know that there is no discriminatory intent in this legislation, but it is understandable that some might draw a different conclusion about the effects of the Bill.

VI. Alternatives

As we view it, Congress has at least two alternatives to H.R. 7325: (1) no legislation at all with respect to securities firms owned by foreign banks in this country; and (2) a flexible permanent grandfathering arrangement of the activities of existing affiliates subject to a review of their activities by an administrative body or bodies under appropriate legislative standards to prevent possible future abuses.

We favor the first alternative of no legislation. None is necessary because no abuses have been shown. No significant potential for abuse exists. There is no imbalance in the competition between domestic and foreign banks in this country by virtue of the present ability of foreign banks to own securities affiliates under certain limited conditions.

However, if Congress feels it must take some precautionary action, the second alternative, permanent and full grandfathering, offers less drastic measures than those imposed by the House Bill. It will protect the public interest, while at the same time preserving the recognized contribution which firms like SoGen-Swiss and similarly situated foreign-bank-owned securities firms make to the U.S. securities markets so long as there are no abuses. This is the basic approach supported by the Federal Reserve Board, the Treasury, the State Department, and virtually every other witness who has discussed the issue before this Committee. This would assure the continued viability of existing firms as vital competitive forces, as H.R. 7325 does not, and it would avoid the international complications which might arise from forcing divestiture of these firms.

Full grandfathering is also a matter of simply equity. If Congress wants to change the rules, it may do so, but it should not penalize those who have established businesses in this country in good faith and in conformity with all applicable laws. Under the well established rules and principles of the dual banking system, Credit Suisse chose to submit its activities to regulation by the State of New York. The banking activities of our other shareholders are federally regulated and their investment in us complies with the Glass-Steagall Act and was specifically approved by the Superintendent of Banks of New York.

In the Bank Holding Company Act Amendments of 1970, Congress consciously chose to exclude foreign banks with branches from the coverage of the Act. But if Congress considers grandfathering at this time, it surely will perceive that the equities of our shareholders are certainly as strong as those of the domestic one-bank holding companies grandfathered in 1970.

I am struck by the analogy of zoning laws. When a community imposes a new zoning code, it does not tear down existing buildings but permits prior inconsistent uses to continue. This well recognized policy is based both on principles of equity and on the recognition that it is economically wasteful to make all structures meet the new standard. Those same considerations are applicable here, where changes are proposed in laws which fostered substantial investments and commitments of manpower by the shareholders of SoGen-Swiss and other securities affiliates.

Credit Suisse is no late entry into the securities or commercial banking business in the United States. It has been affiliated with our company since 1939, and it opened its commercial bank branch in New York City in April 1940. Our other shareholders and the principal shareholders of other major foreign securities affiliates have been active in this business for 4 to 10 years.

Today, Credit Suisse has been operating in the commercial and investment banking fields in the United States in good faith and in conformity with applicable law for a period of more than 35 years. Under the circumstances, it appears unduly harsh to deny it grandfather treatment.

Although we believe that existing securities affiliates should at the very least be permanently grandfathered, we urge this Committee to give serious consideration to permitting additional foreign banks to engage in U.S. securities activities under appropriate legislative safeguards. This is a complex question which I will not discuss further at this time. However, I call the attention of the Committee to the suggestions contained in the statement of the Institute of Foreign Bankers to extend to securities affiliates the exemption which the Federal Reserve Board has recommended be granted to other non-banking affiliates. We believe this to be a useful suggestion which should be further explored.

I wish to thank you once again for the opportunity to present our views.

ATTACHMENT

NINETY-FOURTH CONGRESS

JOHN E. MOSS, CALIF., CHAIRMAN

[illegible], N.Y. — JAMES M. COLLINS, TEX.
[illegible] KRUEGER, TEX. — NORMAN F. LENT, N.Y.
[illegible] MOFFETT, CONN. — MATTHEW J. RINALDO, N.J.
[illegible], N.Y. — W. HENSON MOORE, LA.
W. S. (BILL) STUCKEY, GA. — SAMUEL L. DEVINE, OHIO (EX OFFICIO)
JAMES H. SCHEUER, N.Y.
HENRY A. WAXMAN, CALIF.
PHILIP R. SHARP, IND.
ANDREW MAGUIRE, N.J.
HARLEY O. STAGGERS, W. VA. (EX OFFICIO)

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. 20515

ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

MICHAEL R. LEMOV
CHIEF COUNSEL

J. THOMAS GREENE
COUNSEL TO THE CHAIRMAN

July 16, 1976

Honorable Henry S. Reuss
Chairman
Committee on Banking, Currency,
and Housing
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

The prohibitions on domestic securities activities of foreign banks, or firms associated directly or indirectly with foreign banks, which have a commercial presence in this country give me great pause. I hope you will find the concerns raised in this letter worthy of your usual thoughtful consideration.

As I read section 8 of H.R. 13876, the International Banking Act of 1976, and the accompanying committee report (Report No. 94-1193), it would prohibit a foreign bank or a person directly or indirectly associated with such a bank which maintains a commercial banking presence in the United States from engaging in securities activities in the United States, directly or indirectly, unless that entity was engaged in those activities on or before December 3, 1974. "Grandfathered" firms could retain unchanged their investment banking arms in the United States only until 1985. Thereafter, they would be required to restrict their United States investment banking activities to such a degree as to render them, for all practical purposes, incapacitated competitors in the United States securities industry. If a foreign bank were to surrender its commercial banking presence in the United States, then, and only then, could it remain in the United States securities business. I understand, however, that surrendering commercial activities would be impracticable for an international banking organization.

Given my responsibilities as Chairman of the Interstate and Foreign Commerce Committee's Subcommittee on Oversight and Investigations and given my role as former Chairman of the Consumer Protection and Finance Subcommittee which extensively considered securities issues addressed in the comprehensive Securities Acts Amendments of 1975 (P. L. 94-29), those grandfather and prospective prohibition provisions raise two major concerns. First, they appear to represent a policy totally inconsistent with the 1975 Securities Acts Amendments. Second, they could initiate a rapid deterioration of United States economic relations with governments which currently permit United States commercial and investment banking firms to operate in their respective countries.

Apparently, the issue which the House Banking Committee perceived it faced was: the extent to which a foreign bank or its securities affiliate operating in the United States should be subject to the same limitations on its securities activities as are applicable to national banks. When this same issue was before the House Commerce and the Senate Banking committees during consideration of the securities legislation which ultimately became the 1975 Securities Acts Amendments, the New York Stock Exchange and the Securities Industry Association argued that a foreign bank or its subsidiary ought to be prohibited from exchange membership and related securities activities, because to do so would violate national policy, embodied in the Glass-Steagall Act of 1933, excluding national banks from engaging in investment banking activities.

This reasoning was rejected by both the House and the Senate. Indeed, an exactly contrary conclusion was reached in light of the Congress' desire to maximize competition in the securities industry. With respect to exchange membership, the Congress adopted a policy of open membership. A firm may be denied membership only if minimum capital or competency requirements are not met or if the person is otherwise statutorily disqualified. Foreign bank parentage is not a statutory disqualification. (Section 6(b)(2) and Section 6(c)(3) of the Securities Exchange Act of 1934, 15 U.S.C. 78f(b)(2) and 78f(c)(3)).

The situation resulting from the Congress' resolution of this issue in the 1975 Securities Acts Amendments may appear on the surface to allow a foreign bank or its subsidiary to do something which at least some domestic banks or affiliates thereof may not do. This apparent anomaly is explained, however, by examining how foreign governments treat entities which provide commercial and investment banking services. Unlike the United States, banking policies of most of our major European trading partners permit one entity or its subsidiaries to engage in both banking functions. In those countries, banks traditionally have been the entities which provided commercial and investment banking services. Thus, when a European entity expands its securities operations to this country, it is generally a bank which does so.

Another apparent anomaly is that we allow domestic banks through their Edge Act affiliates to engage in the securities business abroad. In terms of international relations, we have permitted foreign banks to engage in securities activities, although domestic banks are limited in that regard; our trading partners have permitted United States banks to engage in securities activities, although it may not be legal in this country. Requiring foreign banks to split their banking functions in this country is unlikely to change their respective governments' internal banking policies. Such a requirement, however, may change how foreign governments treat United States multinational banks and securities firms. After all, it would be indeed inconsistent if we were to prohibit foreign banks from doing in this country what we permit United States banks to do abroad.

It would be equally inconsistent for the Congress, on one hand, to prohibit a United States stock exchange from discriminating against a securities firm of foreign bank parentage pursuant to the 1975 Securities Acts Amendments and, on the other, to forbid a securities firm of foreign bank parentage with a commercial presence in this country from being a member of a United States stock exchange pursuant to the International Banking Act of 1976 as it is drafted. Enactment of section 8 certainly would give the Congress the image of not knowing what we are doing.

It would be most unfortunate for this to occur, because we did know what we were doing when we considered the problem of foreign exchange members owned or associated with foreign banks. Fearing that I might be impinging, at least partially, upon the jurisdiction of the Banking Committee, I maintained the closest of liaison with the former distinguished chairman of the Banking Committee, the late Honorable Wright Patman of Texas, throughout our consideration of the foreign exchange member provisions of the securities legislation which became the Securities Acts Amendments of 1975. Having done so, he voiced no dissent when the matter came before the full House in 1974.

The primary purpose of the 1975 Securities Acts Amendments is to maximize competition in our securities marketplaces by removing unnecessary regulatory restrictions and other impediments to competition. Equally important is the statutory objective of developing the national market system through the interplay of competitive forces whereby brokers and dealers, exchange markets, and markets otherwise than on exchanges would compete fairly and be linked together through communication and data processing facilities. In summary,

> The rapid attainment of a national market system as envisaged by this bill is important, therefore, not simply to provide greater investor confidence but also to assure that the country maintains a strong, effective and efficient capital raising and capital allocating system in the years ahead. (Conference Report, Securities Acts Amendments of 1975, No. 94-229, May 19, 1975, p. 91.)

One of the most important ways in which the national market system will maintain strong, effective, and efficient markets is by opening up the function of marketmaking to competition. Dealers who stand ready and willing to buy or sell in certain stocks compete by narrowing the spread between bid and asked quotations. Increasing the number of dealers making markets in a given stock also will improve the depth and liquidity of the securities marketplaces. Narrowing spreads and building greater depth and liquidity are essential for bolstering sagging public, particularly small investor, confidence.

What competition there is today in making markets in New York Stock Exchange listed stocks comes from third market makers and specialists on regional stock exchanges. To provide an idea of the anti-competitive impact of the section 8 prohibitions, consider the fact that one foreign securities firm associated with a foreign bank having a commercial presence is a member of three regional exchanges and makes markets in about 55 stocks, most of which are major stocks. If the number of market makers and the amount of capital committed to the market making function are reduced, how can the regional exchanges compete fairly with the NYSE? Likewise, regional exchanges would be at a disadvantage in competing with third market makers. Both of these expected results would be contrary to the letter and spirit of the law which directs the SEC in facilitating the rapid development of the national market system, to assure "fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets." (Section 11A(a)(1)(c)(ii), Securities Exchange Act of 1934.)

Another element essential to good market making is order flow. In fact, market making cannot be sustained without sufficient order flow. Thus, reducing the number of member firms on an exchange, even though the member firm is not a market maker, would be detrimental to that exchange's efforts to compete with market makers on other exchanges and third market makers. Foreign members on the Boston Stock Exchange account for about 13 percent of total membership; on the Midwest Stock Exchange, foreign members are 8 percent of the total; on the Philadelphia, 6 percent, and on the Pacific they are 5 percent. It can be reasonably expected that many, if not most, of these members will be affected by section 8. Although the percentages are small, they are significant. Since the total member of competitors is small, eliminating even a few of them could be expected to reduce order flow significantly and to decrease competition drastically.

Another way to evaluate the effect on competition is to identify the beneficiaries of the section 8 prohibitions. Since the primary market is the NYSE, which accounts for approximately 85 percent of this Nation's equity trades in terms of volume, any reduction in the regional exchanges' order flow, number of market makers, and amount of capital committed to market making would redound in two significant ways to the benefit of NYSE members firms, most of which, not surprisingly, support section 8.

First, it would tend to make the regionals in terms of retail trading activity, market making, and quality of markets less competitive relative to the NYSE. Second, it would have the effect of forcing foreign securities firms and other foreign interests to channel their transactions in United States securities marketplaces through many of these same NYSE firms which do a profitable foreign securities business. Since these firms are NYSE members, it is almost certain that the increased order flow received by them would be transacted on the Big Board, placing both regional exchanges and very possibly third market makers at an even greater competitive disadvantage.

Competition with the big NYSE member firms would be reduced further in the arbitrage function. Many foreign and domestic securities firms risk their own capital after United States markets close by offering blocks of United States stocks to institutional investors abroad at a price in relation to the NYSE close in that stock. If the firm succeeds, not only can it be a very profitable business, but also United States markets benefit in terms of heightening interest in our securities marketplaces, improving our markets' depth and liquidity, and ultimately making our markets better for all public investors. By prohibiting foreign securities firms associated with foreign banks from engaging in this arbitrage business, United States securities firms gain a larger share, if not all, of this foreign business.

When foreign securities firms and their parent banks see their United States-directed securities business dry up, not because of competition by superior American securities firms, but because of protectionist laws, we invite retaliation and risk lessening foreign participation in our securities marketplaces to the detriment of our public investors in the short run and our economy in the long run.

It is for the reasons set forth above that I strongly oppose section 8 of the International Banking Act of 1976. At the very least, I suggest that this matter has not been adequately heard in regard to its impact on competition in our securities marketplaces, the development of the national market system as envisioned by the 1975 Securities Acts Amendments, and its inconsistency with respect to that statute's mandate for open membership on United States stock exchanges. Therefore, I urge you to seek referral of this matter to the Interstate and Foreign Commerce Committee.

Sincerely,

JOHN E. MOSS
Chairman
Oversight and
Investigations Subcommittee

STATEMENT OF MICHAEL E. TOBIN
PRESIDENT, MIDWEST STOCK EXCHANGE, INCORPORATED
ON H.R. 7325
INTERNATIONAL BANKING ACT OF 1977
BEFORE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION, REGULATION AND INSURANCE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

My name is Michael E. Tobin. I am President of the Midwest Stock Exchange, Incorporated. I am accompanied today by Mr. Kenneth I. Rosenblum, Senior Vice President and General Counsel of the Exchange. We are pleased to have this opportunity to comment on H.R. 7325.

This bill is addressed to a large number of important and difficult questions. Most of the provisions concern banking activities that do not affect Midwest or its members, and I will not comment on them. Section 8 of the bill, however, would regulate or prohibit the securities activities of firms affiliated with foreign banks. A number of these firms are members of Midwest and, therefore, this section of the bill does concern us. My statement will be brief and limited to the reasons we believe Section 8 of the pending legislation is unnecessary and inappropriate.

By way of background, the Midwest Stock Exchange is the second largest stock exchange in the United States measured by dollar value. During 1976, the trading volume on Midwest was approximately 282.7 million shares with a total dollar volume of $9.3 billion dollars. Through June 30 of this year, the volume on Midwest has been 142.9 million shares with a dollar volume of $4.6 billion.

Midwest has 310 member firms doing business with the public. Of these, 150 are not members of the New York Stock Exchange. Approximately 30 of our members are affiliated with foreign banks or securities firms. Ten of our members are affiliated with foreign banks that maintain branches or agencies in the United States and thus would be affected by this legislation. (I will refer to these firms as foreign members.)

With respect to market making or specialist activities on Midwest, we presently have 25 specialist units making active markets in approximately 400 securities. Three of the foreign members act as specialists on our floor or supply capital for specialists. These firms are responsible for market making in 41 securities or approximately 10% of all securities traded on the Exchange.

In terms of order flow, during 1976, 736,694 transactions were effected on Midwest. Of this number, a foreign member was on one side or another of approximately 6%.

My purpose in recounting this information is to make clear that our foreign members are substantial and important members of our Exchange. They are a significant source of order flow to our market and represent an important and growing source of market making capital and expertise. Obviously, Midwest is not dependent on foreign members for the viability of its market. But, the loss of order flow and market making commitments from the affected firms would, unquestionably, adversely affect the liquidity of that market to some degree. Such a loss of liquidity might lead in turn to the redirection of other orders to other markets and thus a further weakening of our Exchange. As we work toward a national market system, it is important--as was so forcefully argued by both Houses of Congress in their Reports on the bill that became the Securities Acts Amendments of 1975 (the "Act")--to strengthen, not weaken, the regional stock exchanges as competitive trading centers. Midwest is concerned that Section 8 of H.R. 7325 would work against that objective.

Given the fair field for competition mandated by the Act, we expect that the regional exchanges will play a much more important role in the developing national market system. We emphatically believe that passage of the Bill in its present form would severely reduce our ability to compete effectively.

Apart from the adverse consequences that Section 8 would have on the Midwest market, we believe there are two further considerations that argue against the enactment of this legislation.

First, there does not appear to be any demonstrated regulatory need for a prohibition on foreign securities activities in the United States. The foreign members on our Exchange have been good "regulatory" citizens. Their capital is strong and their trading activity contributes to the maintenance of fair and orderly markets. Indeed, during the nine years that we have had foreign members, not one disciplinary proceeding has been instituted against such a firm.

Our view as to the absence of demonstrated abuses or regulatory needs as to the securities activities of these foreign firms appears also to be true as to their banking activities. For example, last year in the Senate hearings on a similar bill in response to a series of questions from Senator McIntyre, Arthur Burns, Chairman of the Federal Reserve Board, stated:

"There is nothing to indicate that foreign banks are 'abusing' their powers in the sense that they are using the opportunities available to them under the present system to engage in any improper or unsound banking practices. On the contrary it has been the experience of the Board that foreign banks operating in the United States have scrupulously complied with existing U.S. laws and regulations and have been generally cooperative in their dealings with the Board."

We are pleased that the Federal Reserve Board Vice Chairman Stephen Gardner, in his testimony before this Subcommittee last week, proposed amending Section 8 of H.R. 7325 to allow foreign owned banks, which buy and sell stocks and bonds for their customers through U.S. securities affiliations, to continue in business after 1985.

In the absence of a demonstrated need for action at this time--either because of the banking activities or the securities activities of foreign banks--we find it difficult to understand the need for hasty legislative action. The questions concerning the appropriate role and regulation of foreign affiliated broker-dealers in the United States markets are complex. What is needed, therefore, is not hasty, broad-brush action from the Congress, but a thorough study of the activities of foreign firms. This involves a careful balancing of the benefits these firms provide for our domestic markets against the potential dangers--competitive and regulatory. The study should, in addition cover the long-range implications of a bill such as this for the overseas activities of United States securities firms. We believe the Congress and the industry should be doing everything possible to enhance the opportunities for domestic firms to compete abroad. H.R. 7325 may run counter to this objective.

In a broader sense, all of us should be working to strengthen the international capital markets--rather than building obstacles to their operation. The growing interdependence of the world's economies has led to an increasing need for integrated financial markets. The presence of foreign firms in the United States and of domestic firms abroad is a clear sign that multinational securities firms are necessary for the capital markets of the future. The Midwest Stock Exchange is opposed to any legislation that would have a restrictive effect on such international development.

The second reason for postponing action on this legislation is the studies of banks' securities activities that have recently been concluded and are now in progress. I think we all agree that the securities activities of foreign banks present only a small part--a very small part indeed--of the overall question of regulatory and competitive fairness in the United States securities markets. We have encouraged and supported the studies of bank securities activities by the Senate and the Securities and Exchange Commission. It is our understanding that the Securities and Exchange Commission has recently forwarded its final reports to the Congress and that the Senate study will be completed this year. There have been and undoubtedly will be, numerous recommendations exposed for public comment and debate. When that occurs, I am sure we will all be back here discussing much the same issues as are under consideration today. The difference, however, is that we will then have much greater knowledge about the entire phenomenon of bank security activity and it will be possible to place the issue of foreign bank participation in our securities markets in its proper context. We agree with the former Comptroller of the Currency that "the wise course would seem to be to permit these current reviews of 1930's policies [the Glass-Steagal studies] to be completed before concluding action on this proposed legislation."

In closing, I want to emphasize that the Midwest Stock Exchange is committed to the principles of open competition embodied in the Securities Acts Amendments of 1975. In our view, our foreign members have contributed to the competitiveness of our marketplace and the vitality of the United States securities markets generally. Because of the absence of demonstrated abuses and in light of the ongoing studies of the entire subject of bank securities activities, we believe the constructive, competitive securities activities of our foreign members should be allowed to continue. Therefore, while we express no view on the other parts of H.R. 7325, we urge that Section 8 in its entirety be rejected.

Thank you.

Mr. St Germain. You may now proceed.

STATEMENT OF JAMES E. DOWD, PRESIDENT, BOSTON STOCK EXCHANGE, INC.

Mr. Dowd. Thank you, Mr. Chairman.

There is one change in the constitution of the panel this morning. On my right is Kenneth I. Rosenblum, senior vice president and general counsel of the Midwest Stock Exchange, representing Michael E. Tobin, who was unavoidably detained in Chicago.

On my left is Hart Perry, the President of SoGen-Swiss International Corp., as published.

We welcome this opportunity to express our views on the impact on regional stock exchanges from the provisions of section 8 of H.R. 7325, the International Banking Act of 1977. As written, it would prohibit a foreign bank, or a person directly or indirectly associated with such a bank, which maintains a commercial banking presence in the United States, from engaging in securities activities——

Mr. St Germain. Mr. Dowd, in view of the fact that I just consulted with Mr. Wylie, and he and I both had an opportunity to read your entire statements—as a matter of fact, we read them and we analyzed them as well——since we put your statements in the record in their entirety, if you don't mind, what we would like to do now is ask you a few questions based on these statements.

Mr. Dowd. Certainly.

Mr. St Germain. Mr. Dowd, in the conclusion of your statement I have a problem. The way I read it, you are not asking that section 8 be deleted or that it permit permanent grandfathering.

You seem to be asking that it be amended to provide specific exemption for the dealer specialist and bona fide arbitrage funds. Is that a correct analysis, and in your view would that take care of the problem?

Mr. Dowd. From my personal view, the grandfathering is only a part because I think if there is a definite date for the cutoff of grandfathering you will immediately lose capable people in these houses. Even though 1985 is somewhat down the road, I think the prospect of a limited or definite termination of some very capable block traders and arbitraguers will have them immediately looking elsewhere.

The principal argument that I have, however, sir, is that in 1975 the Congress did specify certain permitted dealer activity which they found to be necessary to the functioning of securities markets, and No. 1 on that list was bona fide dealer activity. Another one was bona fide arbitrage; and it would seem to me that if we incorporated the exemptions that were specified in the Securities Act Amendments of 1975—it is a complex issue, but this Congress did get through it and carved out those exemptions on permitted activities in 1975—that at least to me, to that extent this International Banking Act should provide a similar exemption for the foreign-affiliated firms.

Mr. St Germain. But you really haven't answered the question.

If that recommendation were to be accepted, would that, in your view, answer the arguments as far as grandfathering is concerned?

Mr. DOWD. As long as it was a full grandfathering of dealer and arbitrage activity, I would.

Mr. Perry may have some different views, and Mr. Rosenblum may have some different views.

Mr. ST GERMAIN. Why don't we hear from the other two?

Mr. Perry?

STATEMENT OF HART PERRY, PRESIDENT, SOGEN-SWISS INTERNATIONAL CORP.

Mr. PERRY. As previous witnesses have indicated, the reason for our being established in the United States is to be able to serve the domestic, that is European customers principally of our foreign shareholders, and while what Mr. Dowd speaks of as an important activity—and we do undertake it on the Pacific coast—we feel we cannot really give the kind of service to our clients from our shareholder banks and others unless we are permitted to engage in the broad range of investment banking activities.

As I say, we are a specialist but it is only a small part of the type of business that we do. We do have to be fully involved in the securities business in order to give the kind of service that is required.

Thank you.

Mr. ST GERMAIN. Mr. Rosenblum?

STATEMENT OF KENNETH I. ROSENBLUM, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, MIDWEST STOCK EXCHANGE, INC.

Mr. ROSENBLUM. Yes, Mr. Chairman. From the perspective of Midwest, we have the concern that Mr. Perry is reciting, that the firms that we are depending upon for dealer activity may well determine that it is not sufficient for them to just be in that activity, so that our concern is that by carving out a piece like Mr. Dowd is suggesting, that that really would not do the job.

Again, from our perspective—I can understand the reason for Mr. Dowd's recommendation because it is similar to our situation—if you look at the direct importance of the foreign affiliates or the U.S. affiliates of the foreign banks and what they add to exchange liquidity, the easiest thing to perceive is their dealer activities and the liquidity that adds to the exchange; so I think that as a fallback position, what Mr. Dowd suggests would be considerably better to us than the way the section reads, but our own opinion is that it should be a full grandfather for all activities.

Mr. ST GERMAIN. If grandfathering were to be permanent, what would your reaction be to the suggestion that I made to Governor Gardner of the Fed last week, that jurisdiction over securities affiliates be jointly shared by both the Fed and the ISEC?

Mr. PERRY. We have no problem with that, sir.

Mr. DOWD. I don't think we would have any problem with that either. I think it is an excellent suggestion.

Mr. ST GERMAIN. Do you think it is a constructive suggestion in view of the fact that the SEC is more, I feel, with all due deference and all respect for the Fed, nonetheless more knowledgeable in this area?

Mr. PERRY. I agree, sir.

Mr. DOWD. I do too, sir.

Mr. ROSENBLUM. I think there is a pattern for that in the 1975 Act amendments in the clearing and transfer area. I think if it is working, there is no reason why the same suggestion could not work that you are offering.

Mr. ST GERMAIN. Thank you.

Mr. Perry, to what degree would it be practicable to permit U.S. investment and commercial banks full or equal participation in the domestic securities markets of the countries represented by the parent banks of SoGen-Swiss?

We are aware as a result of our studies, our travels, that there have been limitations on the banking operations of foreign banks, including U.S. banks in Switzerland, since the late 1960's as a result of a policy decision to protect the Swiss economy against overbanking.

To what extent has this occurred or might it occur with respect to domestic securities businesses in these countries in view of the limited size of the economies involved?

Mr. PERRY. Could you repeat that again, sir?

Mr. ST GERMAIN. All right. To what degree would it be practical to permit U.S. commercial investment banks full or equal participation in the domestic securities markets of the countries represented by the parents of SoGen-Swiss, keeping in mind the fact that there have been limitations on the operations of foreign banks including U.S. banks since the late 1960's in Switzerland because of a policy decision at that time to protect the Swiss economy against overbanking?

Now, to what extent has this occurred or might it occur with respect to domestic securities businesses in the countries that are participants of SoGen-Swiss in view of the limited size of some of the economies involved? Start with Switzerland.

Mr. PERRY. I cannot really discuss the commercial banking situation because I am not familiar with it. I do know we made a brief analysis—I believe it was sent to the Treasury Department some months ago—about the nature of the restrictions in the securities markets in the other countries. I would be very happy to submit that for the record. It is rather long. It varies from country to country and I don't have the information with me here, but I would be happy to submit it.

Mr. ST GERMAIN. If you would submit it to the subcommittee, then we could have our very competent staff analyze it for us.

Mr. PERRY. Very good, sir.

[The following information regarding access to European stock exchange was submitted by Mr. Perry for inclusion in the record:]

STATEMENT BY HART PERRY
PRESIDENT OF SOGEN-SWISS INTERNATIONAL CORP.
ON
ACCESS TO EUROPEAN STOCK EXCHANGES

At present only two important European stock exchanges are not open directly for U.S. membership as a member has to have the local nationality, i.e., Brussels and Paris. However, in both countries the role of a stockbroker cannot be compared with the status that the U.S. broker-dealers enjoy in this country. The French and Belgian broker-dealers - the so-called agents de change - engage in no activity other than the pure execution of orders. They will generally not provide the full range of investment banking activities - including dealings as principals - as is usual in the case of most U.S. broker-dealers. The latter type of activities are fulfilled by investment or commercial banks, which have no overriding impediments against foreign ownership or participation and which enjoy, in case of a foreign ownership, the same rights and discounts on broker commissions as their local national equivalents. Besides, in Belgium, all transactions with a market value exceeding the counter value in Belgian Francs of U.S. $280,000 can be executed off the exchange and foreign brokers can therefore trade blocks directly with Belgian institutions.

It has been asserted that U.S. broker-dealers would be seriously restricted in their potential business with French nationals by the regulation, that French citizens have to deposit their securities with a registered financial institution or so-called "intermediaire agrée," for which classification a U.S. broker-dealer could not qualify. However, we have been advised by our French shareholder, the Société Générale, that U.S. broker-dealers can in principle be registered as financial institutions with the right to act as custodian. In practice it will be an easier solution to take a participation in or to acquire an existing registered financial institution, which will give U.S. broker-dealers the indirect possibility to act as custodians.

The remaining major European continental stock exchanges - Amsterdam, Frankfurt and Zurich - all have examples of foreign owned firms as full members of the stock exchange. In the case of Switzerland one A licensed securities dealer is owned by a large U.K. commercial bank. In Holland and Germany foreign owners of local stock exchanges' member firms include U.K. merchant banks, which are more or less comparable with U.S. investment banks as far as capital strength, activities and legal structure are concerned. If the U.K. merchant banks have been able to comply with the various rules in those countries, there is no reason to doubt that the larger U.S. broker-dealers could comply with those rules.

As far as London is concerned, the present rules would appear to make it difficult for a foreign broker-dealer to become a full exchange member.

I have been less explicit about the regulations on the London stock exchange since our shareholders are all continental Europeans. We feel ourselves better qualified to comment on the exchanges situated on the continent.

To summarize, out of six exchanges investigated, only two - Paris and Brussels - officially bar foreign membership because of the nationality requirement. However, in the case of Paris and Brussels the role of a broker is extremely limited since in France a broker cannot act as a principal and in Belgium a block with a value of over $280,000 can be traded off the floor. In three countries - Germany, Holland and Switzerland - foreign owned members of the local exchanges do exist and is therefore a possibility for U.S. broker-dealers. Finally, in one country - U.K. - there exists a theoretical possibility for foreigners to acquire or become a member of the exchange, but in practice this is hard to realize.

Mr. St Germain. Mr. Wylie?

Mr. Wylie. Thank you, Mr. Chairman.

I would point out Switzerland did take this action as far as commercial banking is concerned in the late 1960's and it is still in effect.

Mr. Perry. I do think one should look at the international markets, however, particularly where the American commercial banks are permitted by the U.S. authorities to engage in investment banking operations, where the principle lying behind the Glass-Steagall Act appears to us to have been waived in accordance with a legitimate U.S. national objective, and permit the commercial banks to actually underwrite the securities of companies with whom they maintain deposit relationships in the United States and, in addition, they do participate in the Eurobond market, which is a completely unregulated market.

Mr. St Germain. I am still repeating that Switzerland did take this action in the late 1960's and that is what we want to be reassured of. I hope your paper will shed some light on this.

Thank you.

Mr. Wylie?

Mr. Wylie. Thank you, Mr. Chairman.

Mr. Perry, in your statement on page 6 you say there is no common management between your organization and the bank which owns you, so that in effect you say you hardly do any business with them. Is that a fair analysis of what you say?

Mr. Perry. Yes, that is a fair analysis. I could cite one example. Recently, where we helped a foreign client in acquisition in the United States, they were looking for term loans in order to finance the acquisition, we exposed them to at least a half dozen or more of the U.S. banks as well as European-American banks.

Mr. Wylie. So the policy of the Glass-Steagall Act for domestic companies is in effect being carried out?

Mr. Perry. That is right.

Mr. Wylie. So what is the harm in putting it in the statute?

Mr. Perry. You put it in a statute in a way it would put us out of business.

Mr. Wylie. You mean you don't think your securities business could be maintained as a separate entity?

Mr. Perry. No, we would not because our basic business is investment banking and that includes the very important activities such as underwriting and selling securities in the United States, being a specialist here, et cetera, and those we would no longer be permitted to undertake.

Mr. Wylie. Although there might be a transfer of ownership, do you honestly think that you would be put out of business as a securities dealer?

Mr. Perry. Oh, absolutely.

Mr. Wylie. What do you think of a recent announcement which was made from Columbus, Ohio, which is my own hometown, wherein the City National Bank in concert with Merrill, Lynch has proposed to implement a program which would combine brokerage services with the payment of interest on demand deposit and credit card services? Would you be likely to branch off into that area with your parent bank?

Mr. PERRY. No; we are a completely different kind of bank. In the investment banking community you have the large retail firms such as Merrill, Lynch who operate nationwide. We are strictly a wholesale bank. Our clients are all the large, major trust institutions, insurance companies. Those are the ones to whom we sell fixed-income securities, for example.

Our clients to the extent that we have them in the United States are all large corporate kinds of clients.

Mr. WYLIE. So you would not become involved with retail customers and you envision this arrangement between Merrill, Lynch and City National, as being a retail arrangement?

Mr. PERRY. Right.

Mr. WYLIE. Would you care to comment, Mr. Dowd?

Mr. DOWD. I do not see SoGen-Swiss as being even a junior-grade Merrill, Lynch because, as Mr. Perry has described, Merrill, Lynch has many customers with substantial retail credit balances and it would be through the use of these credit balances, as I understand the proposition, that this credit card arrangement could be operated. I don't see SoGen-Swiss either with the incentive or with the credit balances with which to work that type of arrangement.

Mr. WYLIE. You don't. You don't envision it as a development which you might look into as a possibility for your operation?

Mr. DOWD. From an exchange standpoint, there are very few Merrill, Lynches on this earth. What might be possible for Merrill, Lynch as an incentive would probably not be possible for many others in this world.

Mr. WYLIE. Mr. Rosenblum, do you want to comment on that?

Mr. ROSENBLUM. I have nothing to add to that, sir.

Mr. WYLIE. Thank you, Mr. Chairman.

Mr. ST GERMAIN. Mr. Dowd, on page 8 you state:

It would indeed be inconsistent if we were to prohibit foreign banks from doing in this country what we permit U.S. banks to do abroad.

This appears to support the argument for reciprocity which I feel Under Secretary of the Treasury Solomon to have repudiated very effectively in his testimony last week, but let me now take you for a little walk.

If we permit foreign banks to do in this country what the U.S. banks do abroad, would it not be inconsisent to prohibit U.S. banks from doing in this country what foreign banks can do and what the same U.S. banks can do abroad? That being the case, if that were in the affirmative, would this not be a case for repealing the Glass-Steagall Act and allowing U.S. banks to underwrite and sell securities here in the United States?

Mr. DOWD. I think you would have inconsistency upon inconsistency and you could go down the road indefinitely, one offsetting the other. I can foresee some real problems. I agree with you, sir.

Mr. ST GERMAIN. So you see a problem with the State?

Mr. DOWD. I do indeed. I do indeed.

Mr. ST GERMAIN. Because I don't think that the Boston Exchange and Mr. Down are prepared to come and testify in behalf of repeal of Glass-Steagall.

Mr. DOWD. No, indeed.

Mr. ST GERMAIN. I don't think so.

Mr. Rosenblum?

Mr. ROSENBLUM. Mr. Chairman, there are obviously inconsistencies no matter what, I am afraid, your committee ends up doing. I think though that the main difference between the kind of things we are talking about is that when you start talking about amending the Glass-Steagall to permit domestic banks to do some of the same things, you have a whole series of different questions relating to relative power and what the strength of these domestic banks might be in the U.S. securities markets compared to what the U.S. affiliates of foreign banks can do in the U.S. securities business.

I certainly recognize the inconsistency that you pointed out.

Mr. ST GERMAIN. You are not telling me that the securities firms that are affiliates of foreign banks are affiliates of banks that are without substantial assets, are you?

Mr. ROSENBLUM. No, but I am saying that——

Mr. ST GERMAIN. They are pretty comfortable, aren't they?

Mr. ROSENBLUM. The key thing you would be looking to regulate in terms of a foreign bank that is operating in the United States would be its banking activity, not the minor securities activity that it might be doing in the United States.

Mr. ST GERMAIN. I guess it boils down to whose ox is being gored, doesn't it? But you have to understand that you may be in a position where you cannot have it both ways.

Gentlemen, we will have additional questions to submit to you in writing. I would ask that you assist the subcommittee in that manner because there are members who have conflicting meetings and couldn't be here this morning.

Mr. ST GERMAIN. I want to thank you for your presentation. We are certainly grateful to you for your replies as far as joint jurisdiction is concerned should there be a decision for permanent grandfathering.

Mr. PERRY. Mr. Chairman, I wonder if I could ask that my comments that I prepared for oral presentation, which were not delivered, be also included in the record?

Mr. ST GERMAIN. Absolutely. Without objection.

[Prepared testimony for oral delivery by Mr. Perry follows:]

TESTIMONY OF HART PERRY

PRESIDENT OF SOGEN-SWISS INTERNATIONAL CORPORATION

My name is Hart Perry. I am President of SoGen-Swiss International, a New York corporation, which is the oldest foreign-owned investment banking firm in the United States. I appreciate very much the opportunity to appear before this Subcommittee.

In my testimony I will describe the activities of my firm and how the proposed legislation would effect it. I will examine the need for legislation and will make certain recommendations.

Our company is jointly owned by a group of foreign banks and companies. It is the product of a merger in 1973 between securities affiliates of two foreign banks, Credit Suisse and Societe Generale, joined at that time by additional foreign shareholders. Under the "universal" banking system in Europe, our shareholders provide both investment and commercial banking services to their clients. We were established to service the investment banking needs of those clients. Credit Suisse has separate commercial banking offices in the United States while our other bank shareholders are participants in the European-American banking group.

Our company has been serving the U.S. securities markets for a period of 38 years as an affiliate of Credit Suisse. The prospect of legislation which could terminate this relationship of many years naturally disturbs us. We are proud of our achievements and would like to familiarize this Subcommittee with our role in the country's securities markets.

We have no common management with any of the commercial banking offices of our shareholders. We operate wholly independently of them. Our dealings with their offices will measure up to scrutiny as arms-length transactions no different than our relationship with many U.S. banks with whom we do business. For example, since 1973 of the 1060 public issues we have participated in as an underwriter, we have sold none of such issues to European-American and only nine to the New York branch of Credit Suisse.

SoGen-Swiss makes no loans and takes no deposits. Its largely American staff offers a full range of investment banking services to institutional and corporate but not retail clients. We engage in both primary distribution and secondary market activities, furnish investment advice, institutional research, arrange private placements, and advise on mergers and acquisitions.

Our activity, together with that of other foreign-owned affiliates like ABD, and EuroPartners, who are not testifying today, but who will submit statements for the record, has been important to the U.S. securities industry. In the crisis which the industry faced in 1973 and 1974, we were among the few sources of new capital to offset the contraction of the industry's capital base. We have also used our capital, side-by-side with domestic firms, to help overcome the difficult market conditions of that period, such as the competitive bidding markets.

SoGen-Swiss and the other foreign securities affiliates have contributed importantly to the regional stock exchanges. ABD, for example, is the third largest specialist on the Midwest Stock Exchange in terms of volume. Most of our business is transacted on the regional exchanges.

H.R. 7325 would compel our company after nine years to terminate vital segments of our business. For example, we could not act as specialists on the regional stock exchanges or underwrite securities for distribution in the U.S.

The Bill would permit us to sell underwritten securities abroad. This is not a practical solution. For example, because of the interest withholding tax, virtually no U.S. issued debt securities are sold abroad. No managing underwriter would include us in syndicate participations because we would not be able to sell into the only meaningful market for such underwritten U.S. securities.

These drastic restrictions would diminish competition by restricting access to the securities markets in a manner that seems wholly out of character with the Securities Act Amendments of 1975, which promised open access to all qualified applicants. The effect on our operations would be immediate. With a death sentence hanging over our head, it would be impossible to keep or recruit qualified personnel to carry out our activities.

Let me turn now to the need for legislation. We are puzzled as to why securities affiliates have become an issue.

It appears to us that we have been included in the legislation almost as an historical accident since the major economic issues lie in other sections of the Bill.

In most cases legislation is introduced because there is an existing problem or clear evidence that a problem will arise. But what is the situation here?

We know of no abuses and none have been cited. On the contrary, securities affiliates have contributed to the smooth functioning of the securities market and have enhanced competition.

Do our shareholders enjoy a competitive edge in commercial banking in the U.S.? Mr. Lee of the Clearing House Banks says "no".

Do we have an unfair competitive advantage over U.S. securities firms because we compete with them? I know that the SIA has spoken in favor of the legislation, but I can't believe that in New York, where we compete, such large firms as Merrill Lynch, Salomon Brothers or Morgan Stanley believe that the foreign affiliates, with a total market share of less than 4% in underwriting, are a threat or have a competitive advantage.

Is there a need for perfect symmetry in the separation between investment banking activities and commercial banking activities? Are there no exceptions to the principles which lie behind the Glass-Steagall Act? I would ask the committee to examine the legislation in a way that a continental European would.

The main purpose of the Glass-Steagall Act, as explained to him, is to protect depositors of U.S. banks from the risks of the securities business and to eliminate conflicts of interests which could undermine sound banking practices. It is hard for him to understand why these same policies are not being followed abroad where U.S. commercial banks through affiliates are permitted by U.S. authorities to engage in securities activities which are denied to them in the U.S. Indeed, abroad U.S. banks can underwrite securities issues of U.S. clients with whom they have deposit relationships and participate broadly in the securities markets including the Eurobond market which is completely unregulated. He could only conclude that other national objectives can override the basic policies of the Glass-Steagall Act.

Is it not reasonable then for him to suggest that in the present situation there are compelling arguments that other U.S. economic policy objectives, such as capital infusion and competition in the securities industry as affirmed by the Congress in 1975, outweigh the rigid application of Glass-Steagall to foreign securities affiliates particularly in light of this nation's consistent post war policy of encouraging free capital movement among nations.

For all of these reasons, there appears to be no need for new federal legislation with respect to the activities of foreign-owned securities affiliates. Certainly, H.R. 7325 in its present form does significant harm without achieving any tangible benefits.

Divestiture is a very harsh remedy. It is justifiable only when there is evidence of widespread abuse or threat of competitive dominance. That is not the case here.

At the very least the Bill should permanently grandfather existing securities affiliates. This is a matter of equity. We have followed the rules of the game. The investments of our bank shareholders have been specifically approved by the New York Superintendent of Banks under provisions of the New York Banking Law parallel to the Glass-Steagall Act. The election of our controlling shareholder to operate exclusively under State banking law is in our well established dual banking tradition. In addition, SoGen-Swiss is governed by the rules and regulations of the SEC, NASD, and regional exchanges.

Grandfathering is supported by the Federal Reserve Board, the Treasury and the State Department and virtually every witness who has testified before this Committee. We believe the case for grandfathering SoGen-Swiss and the other securities affiliates who have been operating for many years in the U.S. is compelling.

Thank you very much.

Mr. DOWD. Thank you, Mr. Chairman, on behalf of the panel for your courtesy and for the attention of the subcommittee.

Mr. ST GERMAIN. As I said, it is always good to have a neighbor from Massachusetts.

Mr. PERRY. Thank you very much, Mr. Chairman.

Mr. WYLIE. Mr. Chairman, I wonder if I might ask them to comment a little more fully on my question which relates to their ownership by foreign banks?

The suggestion was made if this bill passes they are out of business, that they have no value beyond being an affiliate of a foreign bank; and I would like for you just to expand a little bit as to why you say that for the record.

Mr. PERRY. I am sure that if my shareholders were given the alternative of operating in the commercial banking field or investment banking field, which this legislation appears to do, they would wish to withdraw the capital they have put in our firm. Whether any other buyers would come along to buy them out, I haven't any idea. The history for the last 10 years or so has been one of a steady contraction of capital in the securities industry and more and more capital has been withdrawn and, in fact, the foreign capital has been one of the few sources of capital that has gone into the industry over the last 10 years.

Mr. WYLIE. As I understand it right now, you operate pretty much as a domestic securities dealership would operate.

Mr. PERRY. That is right, sir, a wholesale firm largely with international clientele. Most of the clients that we serve are those who come to us from Europe. Our shareholders feel it is important. Just to cite an example as the reason for this. One of our shareholders competes in the European market very aggressively with the major U.S. security houses such as Morgan, Stanley. They feel that in order to preserve their relationships in Europe it is important that they have a representative in the United States who can service the investment banking needs of European companies in the United States.

Otherwise, they are at a competitive disadvantage as they compete, and they do compete strenuously in Europe. It is just a small example but a typical one.

Mr. DOWD. I would like to redirect your attention to point 4 in my prepared testimony on page 6.

The perceived consequence that we saw from passage of the bill as written would be exactly as Mr. Perry has described it. This business is not without its headaches, with taxes, SEC regulations, et cetera.

If you did cut off a substantial segment of their potential business here, they might just decide that it is not worth the aggravation and give their customers securities business, whatever it is, to the New York Stock Exchange firms, again compounding the almost monopoly that that exchange now has.

Mr. WYLIE. Thank you very much.

Thank you, Mr. Chairman.

Mr. ST GERMAIN. Once again, thank you.

Mr. PERRY. Thank you, Mr. Chairman.

Mr. St Germain. At this time we are very fortunate the way the panel has been proceeding here that we have a good deal of time remaining before the House goes into session, and we are indeed additionally fortunate in that the panel representing the Institute of Foreign Bankers is present and we hope that we can get through a good part of their presentation.

If they would come forward now, Mr. Mario R. de Luca, executive vice president, the Bank of Rome, accompanied by Isao Ichikawa, general manager of the Mitsubishi Bank, Ltd., Tokyo; Rudolph Kuchler, senior vice president, Union Bank of Switzerland; and Steuart L. Pittman, counsel, Institute of Foreign Bankers.

Mr. De Luca. Thank you very much for hearing our testimony now.

Mr. St Germain. Mr. De Luca and members of the panel, I must say you have been very diligent. You have a very exhaustive presentation and without objection, we will put the entire presentation in the record following your oral presentation, and the time is yours.

Mr. St Germain. You may orchestrate as you would like to be heard.

Mr. De Luca. Thank you. Our verbal presentation will be much shorter, not to trespass on your time. Copies of this verbal statement will be distributed to you for quick reference.

STATEMENT OF MARIO R. DE LUCA, EXECUTIVE VICE PRESIDENT, BANCO DI ROMA (BANK OF ROME), CHAIRMAN, INSTITUTE OF FOREIGN BANKERS; ACCOMPANIED BY ISAO ICHIKAWA, GENERAL MANAGER, MITSUBISHI BANK, LTD., TOKYO; RUDOLPH KUCHLER, SENIOR VICE PRESIDENT, UNION BANK OF SWITZWERLAND; AND STEUART L. PITTMAN, COUNSEL FOR THE INSTITUTE

Mr. De Luca. Mr. Chairman, I am Mario de Luca, chairman of the Institute of Foreign Bankers and executive vice president of the Banco di Roma. With me are Mr. Rudolph Kuchler of Union Bank of Switzerland, vice president of the institute; Mr. Isao Ichikawa of Mitsubishi Bank, a trustee of the institute; and Mr. Steuart Pittman, our counsel.

The institute has at present 142 members composed of the offices in the United States of foreign banks in over 35 countries from different parts of the world.

Our written statement is longer than we would like, but the subject is complex and all that we have written seems to us necessary and important. These statements of the institute will be the only available reaction from those who would be directly regulated by the bill you are contemplating. We hope they will have the personal consideration of the members of the subcommittee.

Mr. St Germain. Of that you may rest assured.

Mr. De Luca. Thank you, sir.

The bill is unnecessary. We appreciate the suggestions of the Federal agencies for moderating the bill and recognize that some of these are improvements. Nevertheless, our view continues to be that this bill is unnecessary and has the effect of aggravating inequality of treatment of foreign and domestic banks rather than the stated purpose of placing them on an equal footing.

This view was not accepted by your subcommittee last year. We have been advised by some that we should go along with the best available bill and stop arguing. We have reviewed the question again with our members and others concerned with this subject. Our conclusion is that our reasons have not been fully appreciated and that we have a duty to try again to explain the difficulties we perceive in this bill.

We believe that this hearing is again demonstrating that this is not a bill of consensus but one of controversy, and that the controversy is between regulators and between differently situated domestic banks, not merely the anticipated differences between the regulators and those regulated.

Governor Gardner said on Tuesday that the United States is the only nation in which the central bank does not regulate foreign banks. This is a consequence of the U.S. dual banking system which is unique in the world. Foreign banks are extensively and competently regulated by the State banking departments who all impose reserve requirements.

Furthermore, foreign banks supply regularly information reports as requested by the Fed, and voluntarily comply with the marginal reserve requirements as laid down by the Fed.

The figure of $76 billion in total assets of the foreign banks in the United States is often quoted together with the increase of operations in these last years to demonstrate the necessity of Federal regulation. Actually, the Fed statistics submitted at this hearing show only $66 billion and not $76 billion of assets.

What may have been overlooked is the fact that U.S. banks expanded abroad at a much faster pace in the preceding decade and that the total assets stood, as of April 1976, at about $220 billion which is over three times as much as the foreign banks have in the United States. Measured by assets, the foreign bank share of the U.S. market was 6 percent in 1974 and is only 7 percent in 1977, a 1 percent increase through the years, hardly alarming.

More realistically measured by deposit business, the foreign bank share is under 2 percent.

Multi-State branching is perhaps the key issue. Section 5 of the bill assigns a priority for equal treatment among banks over equal treatment among cities competing for the business which derives from international financial center status. It would impose a Federal veto on efforts by this country's most important business centers to attract foreign bank branches.

The recent success of Chicago in attracting over two dozen foreign bank branches would have been aborted by this bill. New foreign bank activities in the United States would tend to concentrate in New York City to the detriment of other growing financial centers.

Foreign banks' branching in more than one State are primarily those with New York branches which have opened second branches in Chicago. Illinois has solved the conflict between the aspirations of Chicago for international financial center status and the concerns of Illinois banks against competition from out-of-State banks by the simple expedient of limiting foreign bank branches to a single location in the financial district of Chicago. They are thus effectively kept out of retail banking and confined to their principal interest which is wholesale banking.

The large domestic banks which are the competitiors of foreign banks are far more active by any count in interstate wholesale banking than are foreign bank branches. In comparison with foreign banks, these large U.S. banks have about 23 times the number of locations outside their home State in about ten times the number of States. The alleged competitive advantage is therefore illusory.

Nondepository institutions and State-chartered subsidiaries should not be covered by this bill. This bill is intended to provide equal treatment under Federal laws which are designed to regulate depository institutions. However, foreign bank agencies and commercial lending companies are nondepository institutions and as such should not be covered by this bill. State-chartered subsidiaries should not be covered either because they are already federally regulated under both the Bank Holding Company Act and the Federal Deposit Insurance Act.

The Chairman of the FDIC has correctly advised this subcommittee that foreign bank branch business in the United States is not the type of retail deposit business which FDIC insurance can protect and that foreign-owned retail banks, which as a practical matter must be organized as State-chartered subsidiaries, in all cases are required by the Bank Holding Company Act to carry FDIC insurance. I emphasize this last point as it was a matter of some confusion on the first day of these hearings. Also, part of the reserves foreign branches have to maintain at State level are already pledged for the protection of depositors.

We concur in the FDIC conclusion that mandatory insurance unduly discriminates against foreign bank branches in the United States, particularly because the FDIC insurance fund must be protected by security arrangements uniquely applied to foreign bank branches.

Turning to monetary policy: Section 7 authorizes the FRB to impose on certain foreign bank operations in the United States any or all of the Federal Reserve Act restrictions on domestic member banks. This is not equal treatment; on the contrary, this is discrimination against foreign banks. Federal Reserve Board reserve requirements and other restrictions, optional for domestic banks, become mandatory for foreign banking in the U.S.

Monetary policy is the only specific need alleged in the hearings for a greater Federal rôle in foreign bank regulation. This need has been merely asserted as self-evident, without factual support or argumentation about the monetary quantities involved or about the ample opportunities for the movement of funds to bypass the U.S. offices of foreign banks.

The bill attempts to use a size distinction to overcome these obvious discriminations. Even if size distinctions made good law, which they clearly do not, the logic fails for two reasons. First, while the large domestic banks may all be members of the Federal Reserve System, this is their choice and they can withdraw if and when the benefits are outweighed by the burdens.

Second, if size is relevant, realistic comparisons with domestic banks should be made with the U.S. operations and should not include the many diverse overseas operations.

EEC witnesses have focused on the subject of nonbanking activities and, as submitted in our written statement, we concur with their views.

If this legislation is enacted, the grandfather date should be the date of enactment. If this is unacceptable, it should be at least no earlier than the date of reporting the bill to the House floor.

In conclusion, to our view, foreign bank operations in the United States do not subject domestic banks to any unfair competition and in practice do not impair the Federal Reserve Board's conduct of monetary policy. Rather than offering evidence on these key issues, proponents of the bill have tended to assert as a matter of principle that foreign banks require Federal regulation. The inherent diversity in U.S. banking is not called unfair competition as between domestic banks; to do so in the case of foreign banks appears illogical.

We do not object to changes in law applied equally to foreign and domestic banks, but we believe this bill, while purporting to cure differences in treatment, creates significant new discriminations against foreign banks.

Thank you very much, Mr. Chairman.

[The entire statements of the Institute of Foreign Bankers follow:]

Statements of

THE INSTITUTE OF FOREIGN BANKERS

Before the

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS

SUPERVISION, REGULATION AND INSURANCE

of the

HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

on

LEGISLATION FOR FEDERAL REGULATION OF FOREIGN BANKS

A. COMMENTS ON H.R. 7325

B. COMMENTS ON FRB AMENDMENTS

C. PROSPECTS FOR IMPROVING H.R. 7325

TABLE OF CONTENTS

Page

STATEMENT B

ANALYSIS OF FEDERAL RESERVE BOARD

PROPOSED CHANGES IN H.R. 7325

(Bracketed references are to paragraphs of FRB Staff Memorandum)

STATEMENT C

SUGGESTIONS FOR PROSPECTS

FOR IMPROVING H.R. 7325

A-1 July 12, 1977

INSTITUTE OF FOREIGN BANKERS

COMMENTS ON H.R. 7325

We appreciate the invitation to give you the views of the Institute of Foreign Bankers on H.R. 7325. The Institute membership includes subsidiary banks, branches, agencies and representative offices of foreign banks from over thirty-five countries directly affected by the issues before you. The total institutional membership is 142 and includes the vast majority of the foreign bank's operating offices in the U. S. Although its members have diverse interests and views on some subjects, the Institute is here speaking for the management of the great majority of operating foreign bank offices in the United States which would be most directly affected by the proposal before you. Because these foreign bankers live with the peculiarly diverse system of regulation in the U. S., these comments derive from that experience, not from philosophical views about the role of the Federal Government in the dual banking system.

The job of analyzing proposed changes in foreign bank regulation and presenting the foreign bank point of view was given to the officers of the Institute and to the Institute's counsel, Shaw, Pittman, Potts & Trowbridge. The responsibility for preparing and presenting these statements is shared by the following who are here to answer your questions:

Mario R. de Luca, Chairman, Institute of Foreign Bankers and Executive Vice President, Banco di Roma, N.Y.C.

Isao Ichikawa, General Manager, Mitsubishi Bank, Ltd., N.Y.C.

Rudolph Kuchler, Senior Vice President, Union Bank of Switzerland, N.Y.C.

Steuart L. Pittman, Counsel, Institute of Foreign Bankers, Shaw, Pittman, Potts & Trowbridge, Wash., D. C.

I Background

1. Foreign Bank Legislation is Not Needed Now

In a series of statements the FRB has offered three major reasons why new legislation is needed: (a) foreign banking in the U. S. has grown rapidly in the last 2 years; (b) the "patchwork" system of bank regulation in the U. S. results in differences in the regulatory treatment of foreign banks and domestic banks; and (c) regulation of foreign bank offices in the U. S. is more appropriate under federal than state administration.

In a few words, our response is (a) that the U. S. growth of foreign banks has conformed to world economic trends and remains low relative to expansion of U. S. banks abroad;

A-3

(b) that the "patchwork," whether it be chaos or healthy diversity, is an integral part of bank regulation in the United States, creating many regulatory differences or "advantages" among the various classes of domestic banks, and provides no justification for singling out a few selected differences in foreign bank treatment for correction, when neither domestic nor foreign banks complain of any impact from unfair competition; (c) that the proposed elaborate federalization of foreign bank regulation serves no clearly defined needs, trading in a system which has proved workable for many years for one which would increase the cost of doing business and create years of uncertainty as new administrators come to grips with unforeseen problems; and (d) we believe that the FRB capability to administer national monetary policy is not in doubt or in need of reinforcement and that no attempt has been made to show that the FRB should or would take any presently unauthorized action with respect to foreign banks which would significantly affect the supply of money and credit in the U. S.

H. R. 7325 and similar proposals are not the product of complaints from injured domestic banks about the regulation of foreign banks; they have their main impetus from the Federal Reserve Board's accelerating efforts towards centralizing and federalizing of bank regulation. While it may be understandable for regulators to seek to extend their jurisdiction to the extent politically and legally possible, in this time of proliferating regulatory burdens, Congress should insist that specific public benefits be demonstrated; it is not enough to rely upon philosophical concepts.

Conceptually, some of the Bill's proposals have a certain logic. But we have yet to see any analysis, from the practical standpoint of business and economics, of the precise need for each specific change proposed and of the potential effect of these changes. There are no high principles which require federal rather than state regulation of foreign-owned businesses or foreign commerce.

We all subscribe to the generalization that bank regulations should not give unfair competitive advantage to either foreign or domestic banks. We also agree that foreign bank activities in the U. S. should not impair the administration of monetary policy. The many witnesses in the four Congressional hearings last year produced no evidence of such unfair competitive impact or that monetary policy has been impaired. We believe each of these possibilities to be theoretical and not likely to become realities under foreseeable circumstances. It appears to us that bank regulators, including the Federal Reserve

Board, and our domestic bank competitors are generally in agreement that foreign banks are not causing any such adverse effects at this time. This view is supported by an independent study two years ago in the Commerce Department report to Congress required by statute on the status of foreign investments.* We urge that a present, not a future, necessity should be established at these hearings to justify any such far-reaching legislation.

We believe the Bill continues to be premature. The need for, and nature of, any change intended to achieve equal treatment will be more readily perceived after disposition of proposals pending before Congress which may change the comparable treatment of domestic banks with respect to certain critical issues of the Bill: interstate branching; Glass-Steagall policy; mandatory universal Federal Reserve System membership; and interest earning FRB reserves. We do not oppose any legislative changes creating new rules applicable to domestic banks as well as to foreign bank offices.

2. The Allegations of Competitive Advantage are Applicable Only to Foreign Bank Branches, Not to Agencies or Subsidiaries

New York, California and, within the last several years, Illinois are the main states attracting foreign banks. These

---

*Foreign Direct Investments in the U. S., Commerce Dept., Oct. 1975, Appendix VIII, p. 26.

states are motivated to augment and protect the roles of their leading cities as international financial centers. For competitive reasons, the international foreign and domestic banks must follow the market of international commerce to the world financial centers. Foreign banks in the U. S. financial centers pursue primarily a wholesale banking business incidental to their international activities. Thus, with a few exceptions, they compete in the wholesale market with the large big city domestic banks, and not in local retail markets.

The exceptional foreign entry into retail banking has been successfully pursued almost entirely through a state-chartered subsidiary branching within its state. Such banks are regulated in essentially the same manner as domestic banks. They are limited to a single state (with one two-state exception as a result of a grandfather exemption under the Bank Holding Company Act, which is no different than that accorded to a number of domestic bank holding companies operating in more than one state). These subsidiary branching systems, as well as subsidiaries mainly in wholesale banking, are owned by registered foreign bank holding companies and submit to the nonbanking prohibitions of Section 4 of the Bank Holding Company Act. They carry federal deposit insurance.

Some of them have also joined the Federal Reserve System as their growth requires the benefits of membership, just as do expanding domestic banks. Thus, neither retail banking in the U. S. nor subsidiary state banks of any kind owned by foreign banks are significantly affected by most of the changes proposed by the Bill.

The Bill would make the more modest objectives of wholesale banking more difficult to attain and will have little effect on the few foreign bank subsidiaries ambitious enough to compete in the retail domestic market. The likely result is to discourage foreign bank wholesale competition in the U. S. and to encourage competition at the retail level. The only clear complaint about foreign bank competition arose several years ago in California, largely because of foreign retail expansion. It was voted down in the California legislature. Thus, if there is any protectionist domestic bank support for this Bill, it is probably predicated on a misunderstanding of the Bill's probable consequences.

The agencies* of foreign banks are not depository institutions. They exist only under New York and California laws which deny them access to the deposit market and do not permit

---

*We are following the growing practice, and the definition in this Bill, of including as agencies, in addition to the non-depository New York and California agencies, the California "branches" which differ only in that they can accept foreign deposits.

them to act as fiduciaries.* They are not banks within the meaning of the Bank Holding Company Act and other federal banking laws regulating depository institutions. They compete with nonbank lending institutions as well as in the wholesale commercial banking market. Large domestic banks also compete extensively, by various methods, in the same market, and in doing so also operate largely outside the framework of federal laws governing depository institutions.

The issue of competitive advantage may well come down to the treatment of foreign bank direct branches (without an intermediate state subsidiary) in the only two states where they exist in significant numbers, New York and Illinois. Most of the recent new branches have been in Illinois, which has successfully promoted downtown Chicago as a site for foreign bank branches restricted to one location. The branches compete with the big city international domestic banks for the business of depositors and borrowers in their home countries or their U. S. subsidiaries and for the business of the U. S. based multinational corporations.

3. Regulatory Diversity Creates Differences but Not Unfair Competition

We believe that some degree of competitive advantage or disadvantage from regulatory differences is inherent in the

*Georgia and Florida have recently adopted New York type agencies laws to attract nondepository offices of foreign banks to Atlanta and Miami, but substantial agency activity has not yet developed.

diverse American system of bank regulation. It is difficult to say whether foreign banks are favored or disfavored by this system; the FRB has drawn no conclusion. But, we repeat, it is clear that they compete only with large domestic banks in the wholesale, largely international, markets, except for the small number of retail banks which have no regulatory advantages and are largely unaffected by H.R. 7325. Protecting the big city domestic international banks from foreign bank competition, without their asking Washington for such help, over the objection of affected states, is not an issue requiring priority in a full Congressional schedule. Congress is not busy equalizing regulatory burdens of different classes of domestic banks which do not expect such perfect justice. Why are foreign banks singled out for an analysis of legal "advantages" resulting from the diversity of the American scheme of bank regulation? It is a system of choices of benefits and restrictions, intelligently made, with competitive implications taken into account at the time, not complained of later on. To deny the benefits of this diversity only to foreign banks would be clearly discriminatory and cannot be justified by comparisons to centralized mandatory foreign regulatory systems.

4. <u>The Proposals Discriminate Rather than Equalize Treatment</u>

The regulation of banks in the United States is unique in the world in that it offers those regulated greater flexibility and diversity in choosing among methods of regulation. The most important federal banking regulations allow their jurisdiction to depend on whether or not banks elect to submit to that jurisdiction, which means that the banks decide whether or not the benefits outweigh the restrictions. Among the major regulatory options pertinent to this Bill are: (a) membership in the Federal Reserve System which imposes reserve requirements and many other regulations flowing from the Federal Reserve Act; (b) membership in the FDIC with its system of regulations as a condition of obtaining deposit insurance; (c) expansion through subsidiaries under the Bank Holding Company Act with its closely regulated exemptions from prohibited nonbank affiliations; (d) organization under either federal or state law, with important resulting differences in regulation. The essentially discriminatory nature of this Bill arises from the denial of the most important of these choices to foreign banks. More specifically, the major discriminations of this Bill against foreign banks are as follows:

(a) One-state location restrictions on branches and agencies engaged in wholesale banking, proposed to equalize conditions for foreign bank domestic banks, would in fact accentuate the disadvantage under which foreign banks now operate in competition with the extensive multistate wholesale banking activities of their domestic competitors.

(b) This Bill would deny to branches and agencies the opportunity to branch in secondary states which permit entry explicitly by statute, a possibility open to domestic state banks in the event reciprocal interstate branching arrangements.

(c) Whereas domestic banks may elect to expand either by the subsidiary route under the Bank Holding Company Act restrictions or by branches under applicable federal or state statutes, foreign banks are denied a choice because they are compelled to become bank holding companies without owning any shares in a bank subsidiary in the U. S.

(d) Despite the fact that Congress for good reason limited the Bank Holding Company Act to holdings of depository banking institutions, this Bill would apply the prohibitions of that Act to nondepository foreign bank agencies but to no domestic nondepository institutions.

(e) As repeatedly and again recently pointed out by the Chairman of FDIC, mandatory deposit insurance or substitute surety arrangements are either unworkable or discriminatory.

(f) FRB reserve requirements and other restrictions on members in the Federal Reserve System mandatory only for foreign bank branches and agencies which are part of foreign banking systems with world-wide assets exceeding $1 billion is another special rule exclusively for foreign banks. The growing interest in the opportunity to withdraw from System membership and the FRB responsive proposal to equalize the burdens of FRB and state reserves demonstrates the importance to domestic banks of the option not to become a System member.

We believe it is misleading to justify the proposals which are discriminatory in terms of the principle of national or equal treatment of foreign and domestic banks. If discriminations are imposed, it should be anticipated that they will be questioned in the light of the bilateral and multilateral treaties and agreements which express principles of nondiscrimination on which the U. S. has provided world leadership in recent decades. The rhetoric of equal treatment cannot soften discriminatory results.

5. <u>Foreign Bank Operations in the U. S. are Heavily and Effectively Regulated</u>

The myth has arisen that the U. S. offices of foreign banks have an advantage in being under-regulated relative to U. S. national or state banks. In fact, foreign banks in the U. S. are more heavily regulated than many domestic banks. At the state level, they are regulated by the banking departments of New York and California, and, more recently, Illinois, all money center states with more in-depth experience in foreign bank regulation than any federal agency at this time. These states have learned to administer reciprocity successfully and to reflect national policy as necessary through regular consultation with appropriate federal agencies. They have developed special rules to assure adequate resources in the U. S. for the protection of U. S. customers. They know how to examine banks which mainly operate in the international market. Foreign bank applications for licenses or charters are granted by New York, California or Illinois only after a full investigation of community need and prospective soundness.

Despite the contrary impression created by proponents of last year's foreign bank bill, all foreign banking activities in the U. S., including branches and agencies, are subject to significant federal regulation and reporting because of the foreignness either of their ownership or of their operations. This includes for example, in addition to reporting to and examination by the state supervisors: universal voluntary compliance with FRB marginal reserve requirements (comparable to certain Regulation M and D requirements); recordkeeping and reporting required by federal statute, administered by the Treasury Department, in connection with specified international transactions; periodic foreign exchange reports to Treasury; monthly foreign bank status reports to the FRB, from which the FRB receives any and all information it requests for monetary policy or other purposes. Furthermore, most of the deposit business of foreign banks is conducted by state chartered subsidiaries which are subject to the Bank Holding Company Act and the Federal Deposit Insurance Act; no new legislation is needed to provide them with national or equal treatment.

6. Growth of Foreign Banks in the U. S. Has Been Beneficial to the U. S. and Consistent with World Trends

The widespread assumption of extraordinary foreign bank growth in the U. S. may go to the question of whether foreign bank legislation is too urgent to wait for the legislative decisions mentioned earlier, which may equally affect foreign and domestic banks. However, there is no suggestion in any of the various proposals for foreign banks regulation that their purpose is to curtail the growth of foreign banks in the United States because they have too much of this country's banking business; rather there is general acknowledgement in the four hearings last year that this growth has been beneficial to the United States.

The growth of foreign bank operations in the U. S. is not one of the many problems facing the domestic banking industry. The increase in foreign bank assets in the United States over the last decade, and particularly in commercial lending,* is a response, which should have been anticipated and welcomed, to the growth of U. S. banking activities abroad, the growth of multinational banking worldwide and the growth of international trade and investment worldwide. The assets of foreign branches of U. S. banks continue to be three times that of the assets of all forms of foreign banking in the United States and both are growing at comparable rates.

The United States has more banks in the top 100 banks of the world than any other country. The U. S. banks are better represented in the world's leading financial centers than the banks of any other country. If New York City, the leading financial center of the world, failed to attract and hold the presence of most of the largest banks in the world, there would

---

*Except as otherwise noted, all statistical comments are based on sources originating with the Federal Reserve Board Bulletin, its monthly summaries of foreign bank reports and its other published data.

be cause for concern about the future role of that city as an international financial, monetary and payments center and perhaps also about the role of the U. S. dollar as the leading means for internatinal payments. If New York City, because of federal law, was the only window for foreign bank participation in the U. S. market, other money center cities would have a justifiable complaint.

If there were cause to worry over foreign invasion of U. S. banking markets, the critical fact would be the relative levels of deposits because deposits are the basis on which commercial banking is built. Even given the benefit of all interpretations, foreign banks still have less than 3% of all U. S. commercial banking deposits, composed mostly of deposits of foreign customers, of U. S. affiliates of foreign corporations, and of foreign central banks. The comparable deposit figures on U. S. bank invasion of the banking markets of foreign countries are in most cases many times greater.

Even if one is willing to compare the growth of foreign banking in the U. S. and U. S. banking abroad solely in terms of assets, the last several years or even the last ten years are misleading periods. U. S. banks made their surge in expansion abroad between ten and twenty years ago and led the way towards multinational banking. The leading banks of other major capital exporting countries have followed in the last ten years, particularly in the last several years.

To improve further the perspective on growth, we should break down the forms of foreign bank activity which allegedly have advantages over domestic banks.

FRB statistics show foreign bank assets to be roughly one half attributable to agencies, one quarter to subsidiaries and one quarter to branches. A large part of these subsidiary assets are those of the small number of subsidiaries branching intrastate into retail banking. The most rapid foreign bank expansion in recent years has resulted from one-shot acquisitions by those few banks electing to compete in the retail markets through state chartered banks with intrastate branching systems. These retail banking systems do not have the advantages alleged by proponents of foreign bank legislation, as explained earlier. Thus, subsidiary growth, one quarter of foreign bank assets in the U. S., is to a large extent irrelevant to the issues presented by H.R. 7325.

The agencies of foreign banks are not depository institutions. As mentioned earlier, they exist to date under New York and California laws, which deny them access to the market for deposits and the opportunity to act as fiduciaries. They are not banks within the meaning of the Bank Holding Company Act and other federal banking laws. Their domestic competitors are not only the big wholesale banks but also nonbank lending institutions of various types. The growth of agencies, about half of all foreign bank assets, is of questionable significance to the issues at hand.

Thus, the growth of branch assets, about one quarter of foreign bank assets in the U. S., is the growth primarily relevant to this Bill.

II Key Issues of H.R. 7325

1. Interstate Branching

Multistate branching is the threshold issue without which foreign bank legislation would not have gotten started. This Bill gives equal treatment among banks priority over equal treatment among cities competing for the business which derives from international financial center status. It would impose a federal prohibition to block effectively efforts to attract foreign bank branches to many important cities. The only justification, the protection of competing domestic banks, does not stand up.

Existing law and practice effectively limits foreign banks seeking to compete in U. S. retail markets to the same one-state restrictions as apply to domestic banks. Any substantial penetration of retail banking markets requires that foreign banks operate by means of subsidiaries which are able to branch within their state of incorporation. Such foreign banks are subject to Section 3(d) of the Bank Holding Company Act, which restricts banking in any secondary state except as expressly authorized by a statute of that state. The interstate branching issue posed by this Bill, therefore, relates solely to the wholesale banking market. In contrast the emotional and philosophical controversy among domestic banks is mainly concerned with branching for purposes of expanding retail markets. This Bill should be extricated from the domestic interstate branching controversy.

The recent success of Chicago in attracting several dozen foreign bank branches in about two years could not have occurred under the House or FRB bill. New foreign bank activities in the U. S. would tend to be concentrated in the several largest money center cities to the detriment of other growing financial centers. Georgia and Florida have recently adopted an agency law of the New York type. They are watching the Chicago experience to see if limited branching will be necessary. Over the next decade Houston, Philadelphia, Minneapolis, New Orleans and many other leading cities may decide to attract foreign banks in an effort to stimulate international finance and commerce.

There are no public policy grounds on which the Federal Government should block such forward-looking and constructive civic and economic aspirations. On the contrary, existing federal law (Section 3(d) of the Bank Holding Company Act) enables any state, explicitly by statute, to admit subsidiary banks owned by out-of-state banks, whether foreign or domestic. It has been federal policy to discourage anticompetitive geographic restraints on commerce of all kinds, and an exception in the case of the rights of states to determine whether to admit foreign banks serves no public interest.

Significant multistate branching by foreign banks is largely the result of Chicago opening up to foreign banks, many of which were already branching in New York and San Francisco. Illinois concluded, after carefully studying experience in other states, that foreign banks could most effectively be attracted to Chicago in the form of branches. The controversial issue of retail branch banking was avoided by limiting foreign banks to a single site in downtown Chicago. The result has been no controversy with the Illinois banking community and a boost to international commerce and finance in Chicago. Should this have been prevented by federal law? If not, it is difficult to justify denial of a comparable opportunity to other cities, which may in the future have similar progressive plans, if and when the laws of their states are amended to permit such entry. This Bill would bring about an artificial concentration of new foreign banking in New York City, the dominant U. S. money center and logical "home state" choice for most foreign banks, and would lock in the preeminent positions of California and Illinois as well, because many large foreign banks are already there. It is interesting that these beneficiary states do not seek and vigorously oppose any such preferred positions bestowed by federal intervention.

The hearing records of last year establish that large domestic banks are far more active, by any count, in interstate wholesale banking than are foreign bank branches. In comparison with 44 foreign banks, 12 large U. S. banks have about 23 times the aggregate number of locations outside their home state in about 10 times the number of states. Neither group of banks do any appreciable interstate retail deposit banking outside their home state.* Multistate banking by large domestic banks takes various forms, which, put together, make up a formidable capability including: loan production offices; operating nondepository subsidiaries; grandfathered multistate holdings of banks by bank holding companies; multistate 4(c)(8) closely related activities of bank holding companies; and Edge Act corporations. The inability to accept deposits does not restrain a New York bank from performing other valuable banking services in, for example, Houston for a Houston-based customer and arranging to accept that customer's deposits in New York. From the standpoint of competition in wholesale banking the location of deposits can be a relatively minor aspect of the relationship.

---

* The retail banking exceptions are subsidiaries grandfathered under the Bank Holding Company Act, which could be insured retail banks. There is one such foreign-owned bank and more than 8 domestic banks grandfathered.

The combined effect of these multistate activities, as reported in the American Banker's series last year on this subject, is summarized in Exhibit A. It shows that 12 domestic banks have 1,550 offices, other than their home state branches, in up to 34 states. By comparison 44 foreign banks have 67 operating locations, largely in 3 states, outside the state of their main business.* Existing law permits uninhibited multistate wholesale banking and financing by domestic banks. Foreign bank opportunities are far more limited, largely due to state restrictions. To illustrate how these figures are composed, we are appending as Exhibit B one of the serials which cover one large bank's nationwide activities.

Foreign bank multistate branching, primarily in the wholesale banking markets of New York and Illinois, constitutes the belated catching up with large domestic competitors which are active wherever the money markets take them, at home and abroad.

2. Nonbank Affiliations

This Bill proposes that foreign bank branches and agencies be treated as though they were subsidiaries in order to bring them under the restrictions against nonbank holdings or affiliations presently contained in Section 4 of the Bank

---

* From Table 17 of Appendix to Governor Mitchell's Dec. 12, 1975 statement before the House Subcommittee on Financial Institutions Supervision, Regulation and Insurance.

Holding Company Act. The Act has not been applied to bank branches or agencies, whether foreign or domestic owned. To do so would distort the Act's structure which is designed to regulate controlling shareholdings. On this point, the Association of Bank Holding Companies, commenting in September, 1975 to the House, Banking, Currency and Housing Committee on the Federal Reserve Board bill (H.R. 5617), objected to the application of the Bank Holding Company Act to foreign bank branches and agencies, calling it a "legal fiction" inviting misinterpretations of federal and state statutes governing domestic banking activities.

We submit that it is discriminatory to apply the prohibitions of that Act as though foreign branches and agencies, and not domestic branches, were subsidiaries owned by their head offices. It is more sharply discriminatory to apply the prohibitions of an Act clearly focused on depository institutions, because of the potential for abuses by those permitted to take the public's freely deposited money, to a class of nondepository institutions, namely, foreign bank agencies, solely because of foreign ownership.

The Section 4 prohibitions of that Act are peppered with many exemptions because Congress has found that many nonbank affiliations may be useful or at least harmless. One of these (Section 4(c)(9)) reflected Congressional recognition in 1970 that foreign banks are permitted many nonbank affiliations abroad and that these affiliations might be expected, increasingly in a world of growing international commerce, to do business in the United

States. The Congress left it to the expertise of the Federal Reserve Board to define by regulations what exemptions applicable to foreign bank holding companies would be permitted without conflicting with the essential objectives of the Act. The reason for this restraint still makes sense: in the absence of abuse, the Federal Reserve Board should not become unnecessarily entangled in direct regulation of foreign banks, requiring disclosure and policing of shareholdings abroad to an extent without precedent in many foreign countries.

The resulting FRB regulations under Section 4(c)(9) are concerned with whether the foreign bank holding company is mostly active abroad, whether the nonbank holding is mostly active abroad and whether the U. S. activities are incidental to foreign or international business. However, securities affiliations prohibited by the Glass-Steagall Act were expressly not exempted by the FRB regulations, so that foreign and domestic bank holding companies are treated alike in this respect.

This recent history is pertinent because it tells us something about the extent of the problem of nonbank holdings by foreign banks with U. S. activities. There have been very few divestitures ordered by the Federal Reserve Board, mostly involving smaller businesses without significance to bank competition or to the economy.

Section 4(c)(9) and the exemptive regulations issued thereunder were intended to compromise the principle of equal treatment with the recognition that many foreign banks have more diverse activities than domestic banks and that the U. S. Government should be restrained from attempting extraterritorial regulation of the affairs of foreign banks. Special FRB forms were developed for registration and reporting by foreign bank holding companies to avoid undue disclosure of information not required to regulate their activities in the U. S. It will be much more difficult to draw this line in the case of home offices and their branches and agencies, which are a single legal entity, than in the case of separately incorporated parents and subsidiaries. The problem could bear some resemblance to the difficulties which FDIC has perceived in the extraterritorial administration of its Act.

We draw the conclusion (a) that foreign banks do not, to any significant extent, have nonbank holdings which would not be exempted under Section 4 and (b) that coverage of branches and agencies would require a troublesome degree of control and reporting requirements imposed by the U. S. Government on the foreign activities of foreign banks.

3. Securities Affiliations

The question remains as to whether our conclusions on nonbank holdings and activities in general can be applied to the controversial subject of U. S. securities affiliates of foreign banks. The proponents of the need for new legislation have viewed Section 8 of the Bill as primarily a Glass-Steagall issue.

Controlling foreign bank interests in securities firms are almost entirely in New York City. While most of these firms engage primarily in the distribution and dealing in securities for foreign account, some participate in underwriting syndicates where international capability is required. The appropriate Congressional committees should perhaps consider whether the Glass-Steagall Act should be extended to foreign shareholders, including banks, in the context of the advantages and disadvantages of foreign investment in the U. S. securities industry, as well as in the context of commercial bank regulation. We doubt that the full scope of this issue fits easily into the subject of this Bill.

We suggest that the problem of securities affiliations is limited to foreign bank branches. Subsidiaries are already covered and agencies are nondepository institutions which probably were not intended to be covered by the Glass-Steagall Act.

Less than a dozen foreign banks with U. S. branches own over 5% of the voting shares of U. S. affiliates which might be subject to Section 8(a) of the Bill. Some of these may very well not be engaged in the type of securities activities which would be prohibited by an amendment to the Glass-Steagall Act to cover foreign banks and clarify its prohibitions. The Federal Reserve has said, upon proposing its original bill in December, 1974, that the securities affiliates "have little competitive impact within the securities or banking industries."

While not disagreeing in principle with the stated national or equal treatment purpose of this Bill, we would point out that the Glass-Steagall issue poses a needless confrontation with those foreign banks and central banks which are concerned with reciprocity. The foreign banks are engaging in securities activities in order to compete at home and in most parts of the world. U. S. banks engage in these activities abroad. To the extent that foreign banks are engaged in securities activities in the United States as a natural extension of their major securities activities which are abroad, there are practical reasons for exemption from or compromise with a purist application of the adage "in Rome do as the Romans do."

Whatever is done, there is sound reason to do it by amending the Glass-Steagall Act and avoiding Glass-Steagall reasons for burdening this Bill with the complex nonbank holding prohibitions of the Bank Holding Company Act.

Finally, our later comments to the effect that non-discrimination requires grandfather exemptions apply as much to securities affiliates as to the divestiture of any other type of business.

4. Mandatory FDIC Insurance

The Bill provides in Section 6 for surety bonds or asset pledges as a substitute for admittedly unworkable mandatory federal deposit insurance.

The justification for mandatory federal deposit insurance must either be a perceived need to protect the public depositors (the purpose of the Federal Deposit Insurance Act) or a novel concern that the uninsured have a competitive advantage over insured institutions. As pointed out earlier, foreign banks are generally disinterested in the retail banking market, with the exception of those few subsidiary banks which branch intrastate for retail purposes. The latter, along with all other foreign bank subsidiaries, for both business and legal reasons, are in every case already members of FDIC. Thus, the issue concerns only those foreign bank offices which do not deal with the depositing public to any significant extent.

It seems obvious that mandatory insurance should not apply to agencies which do not take domestic deposits. The deposit business of branches is composed of foreign customers, subsidiaries of foreign corporations or the multinational U. S. corporations. As the Chairman of the FDIC has repeatedly advised, the deposit business of foreign banks is not with bank customers requiring the FDIC type of protection.

We cannot believe that a serious argument is being made that insurance should be required of foreign bank branches not dealing with a public requiring FDIC protection in order to burden them with an unnecessary cost merely because their domestic competitors incur that cost and in exchange buy the benefits of the insurance which increases their access to free funds from depositors with accounts small enough to be protected under the FDIC ceilings on insurable amounts.

If, as FDIC has advised, deposit insurance cannot be imposed without either unduly exposing the FDIC fund to foreign risks or imposing surety conditions which are clearly discriminatory, it seems clear that the solution offered by the Bill of surety conditions without benefit of insurance is the most discriminatory solution of any which have been proposed. There is no compensating justification in terms of federal policy or the public interest.

5. Mandatory FRB Reserve Requirements and Other Member Bank Restrictions

a. The Section 7 Issue Should be Narrowed to Requirements Related to Monetary Policy, i.e., Reserve Requirements

Section 7 authorizes the FRB to impose restrictions applicable to System member banks to foreign bank branches, agencies and commercial lending companies. The key question is what, if any, of such restrictions are required by federal monetary policy. Although many disagree that monetary policy justifies Section 7, it is a more respectable justification than the notion that nonmembership in the System is unfair competition.

The FRB authority in Section 7(d) to apply the many and diverse restrictions of the Federal Reserve Act regulations, in addition to reserve requirements more specifically authorized by Section 7(a), would make Section 7 tantamount to mandatory System membership. If the Subcommittee means to reject mandatory membership, as indicated last year, Section 7(d) should be deleted. It has little to do with mandatory policy, and its discriminatory results are not even softened by the billion dollar size condition applied to mandatory reserve requirements (Section 7(a)).

Likewise, if monetary policy is the concern, FRB power in Section 7(e) to veto the approval by state authorities of foreign bank applications for licenses of branches and agencies and for state charters for commercial lending companies is extraneous and seems unduly aggravating to the states concerned. It should be dropped.

To avoid compounding the discriminatory results of mandating federal reserve requirements, the FRB authority should be curtailed so that reserve ratios on foreign bank operations could not be higher than for domestic banks and so that reserves could not be required for types of foreign bank transactions which are not applied to comparable domestic bank transactions. The most likely examples of the latter are the application of reserve requirements to credit balances held by nondepository agencies and advances from foreign home offices, both of which the FRB has indicated would probably be subjected to reserve requirements.

b. The Billion Dollar Size Distinction Fails to Cure the Discriminatory Denial of the Choice to be a Nonmember Bank Subject to State Rather than Federal Reserve Requirements.

If Section 7 is thus stripped down to nondiscriminatory reserve requirements, the central questions are whether federal reserve requirements are discriminatory and whether they are needed.

The fundamental argument that what is right for over half of the domestic banks, namely, the option to be outside the System, cannot be wrong for foreign bank branches, has been met by proponents of the Bill by the application of a size distinction. Under the Bill, FRB reserve requirements would only be applied to foreign banks with worldwide assets exceeding $1 billion. Even if such a novel and arbitrary distinction based on size made good law, which is highly doubtful, the standard is grossly distorted by including the overseas assets of a worldwide banking system for purposes of comparing sizes of banking businesses in the U. S. subject to U. S. regulation. The subsidiary, branch or agency in the U. S. is a separate enterprise which must return a profit to its foreign owners or be abandoned. Furthermore, the home office and other overseas components of the system are subject to the reserve requirements of foreign governments and foreign central banks.

To compound the discrimination, Section 7 makes no provision for foreign banks to be allowed access to Federal Reserve privileges on equal terms with domestic banks. Furthermore, the size distinction is only available as a limitation on mandatory reserve requirements (Section 7(a)); the FRB is authorized to impose the many other restrictions applicable to member banks on the operations of smaller foreign banks. It would seem that the size distinction is more window dressing than a reflection of any intention to purge the Bill, or even Section 7, of discriminatory consequences.

The denial to foreign bank agencies and branches of the choice of being members or nonmember banks cannot be viewed from abroad as anything but discrimination unless the arbitrary size distinctions are applied to domestic banks as well as to foreign banks. The fact that domestic bank policies will not accommodate such a change points up the fact that the foreign banks, because they lack a U. S. political constituency, are the targets of proposed treatment unacceptable to domestic banks, which is precisely the circumstance that the principle of national or equal treatment is intended to prevent.

c. Mandatory FRB Reserve Requirements are Not Needed to Carry Out Domestic Monetary Policy

There has been no attempt by the FRB to demonstrate the need for FRB, rather than state, reserve requirements in the specific terms of the aggregates of types of transactions to be covered. We think it necessary for the sake of clarity to separate domestic monetary requirements from the much more complex issue of whether and how the U. S. Government should influence the flow of funds in and out of the country. We can conclude rather quickly that deposits subject to reserve requirements controlled by foreign banks are inconsequentially small in relation to domestic deposits beyond the reach of FRB reserve requirements. We believe that only foreign bank branches are relevant for this purpose: agencies do not have deposits; Section 7, we hope, deliberately and correctly avoids coverage of foreign-controlled state bank subsidiaries because to do so would be blatantly discriminatory. As of June 30, 1976 subsidiaries accounted for about 70% of deposits of the U. S. operations of foreign banks. Foreign bank branches account for a fraction of 1% of deposits of all banks in the U. S.

It can hardly be disputed that the quantities of transactions by foreign bank branches subject to reserve requirements are far too small, actually or potentially, to affect adversely U. S. domestic monetary policy. Even if the quantities were to become much larger or even if subsidiary deposits and agency credit balances were added, the impact would still not be significant, particularly after allowing for the effect of state reserve requirements, which approximate the federal ratios. The principal difference between state and federal reserves is that the state requirements are so applied as to permit a moderate yield on funds in reserve, whereas FRB reserve funds are sterile. The FRB has recently asked Congress to reduce membership burdens by liberalizing this sterility policy in the face of the increased withdrawals of domestic bank members of the System. This move demonstrates that voluntary membership is profoundly important to the domestic banking industry.

We will not pause over the debate on whether reserve requirements are an effective tool of monetary policy, except to say that the respectable doubts have been well set forth before your Subcommittee by other witnesses during last year's hearings on this subject.

It can be reasonably concluded that the need for Federal Reserve Board jurisdiction over foreign bank operations in the United States to avoid impairment of domestic monetary policy has not been established, probably because the need is not there. It has merely been asserted and not seriously argued by the Federal Reserve Board in the four Congressional hearings last year.

d. The Requirements of International Monetary Policy, While Potentially Important, Cannot be Met by Nondiscriminatory FRB Reserve Requirements

International monetary policy is a thornier problem than domestic monetary policy. It cannot be denied that foreign bank operations in the U. S. are on the fringe of the serious problem of whether and how national governments can or should influence the international flow of funds. U.S. foreign economic policy in general seeks by example and by influence to discourage nationalistic controls over the international flow of investments and money. The international monetary controls attempted by the United States in the past have been deliberately moderate and limited to times of stress. The most notable effort has been the Federal Reserve Board voluntary control program of the early seventies, which used persuasion without teeth to induce commercial banks to cooperate with national balance of payment objectives. There was full compliance, demonstrating the value of voluntary programs. Current restraints are limited to the 4% reserve requirements contained in Regulations M and D affecting, among other things, borrowings by U. S. banks from foreign offices of foreign banks and from U. S. banking offices abroad, primarily Eurodollar borrowings. Comparable reserve requirements were effectively imposed in 1973 on foreign banks with U. S. operations by the simple expedient of a letter request by the FRB to each foreign bank office, and compliance by foreign banks has been complete, demonstrating again the inherent power of the FRB to regulate by request for voluntary action, whether by domestic or foreign banks.

What new authority, then, is needed to enable the Federal Reserve Board to implement international monetary policy through regulation of foreign banks? This question must be considered in the context of controls over the large international domestic banks, which account for most of the in and out movement of funds, and of controls over multinational corporations and nonbanking financial institutions, which account for a significant part of such movements of funds. If standby or emergency controls are what is needed, they probably must be direct controls, not reserve requirements. If they are to be effective, prior negotiation on coordinated action is necessary between the major capital exporting countries at the level of governments or central banks.

In any event, it is clear that foreign bank operations in the United States provide merely a facility for the movement of funds which also move through domestic banks or nonbanks as economic forces dictate. The volumes would be only slightly affected by the availability of foreign bank offices in the United States. The FRB could indeed have problems arising from flows or potential flows of dollars between other countries and the U. S. But the more important international pressures and movements are not dependent upon the foreign banks having offices here. Effective dealing with problems of these kinds would depend upon international economic negotiations of very broad scope. It would therefore not be realistic to expect the regulation of the U. S. offices of foreign banks to achieve any significant results in governing the movement of funds into or out of this country.

Obviously, the FRB does need information about banking operations in this country, but it has ample access and no limits on its opportunity to obtain whatever it needs. Foreign banks operating in the United States already supply more data through their monthly reports than do the domestic nonmember banks and have always supplied whatever data have been requested, whether directly or through state supervisors.

If serious consideration is to be given to standby or permanent controls over the international flow of funds, the subject requires far more study than it has yet received. Legislation, if appropriate at all, must be designed in the broader context of the regulation of domestic international banks, as well as foreign banks. This Subcommittee has shown interest in studying this larger question. The Senate Banking Committee has initiated such a study. The Federal Reserve Board has apparently not completed its study of the foreign operations of U. S. banks, part of the work of the task force which recommended the foreign bank legislation proposed by the FRB in December, 1974.

It seems to us that neither domestic nor international monetary policy requirements have yet been defined which dictate an urgent need for legislation of the kind under consideration for foreign bank regulation.

e. Equal Treatment Does not Justify Imposing the Burdens of System Membership on Foreign Banks

Quite apart from monetary policy requirements, the past testimony of the Federal Reserve Board has suggested that the principle of equal treatment requires that foreign bank operations in the United States be subject to FRB reserve requirements for the reason that the FRB reserves are sterile while state reserves have some earning capacity. The argument was persuasively disputed by the testimony last year of the Conference of State Bank Supervisors. For present purposes it is enough to say that the analysis of economic effects of FRB reserve requirements and the compensating benefits of membership is complex, but leads to no conclusion. It is improper to add unnecessary regulations for the purpose of equalizing burdens. Furthermore, the FRB has proposed removing cost inequality between domestic member and nonmember banks by allowing earnings on FRB reserves. It may be noted that this proposal, now the subject of hearings in the Senate, is one more reason why the disposition of the foreign bank problem might reasonably be deferred until larger reform issues involving the domestic banking industry have been resolved.

Even if attempting to equate costs made sense, foreign banks have found that in general the cost of funds for their operations in the United States are higher than the cost of funds of their U. S. competitors. The funds of foreign bank branches and agencies in the United States must all be acquired at a price, whether they be from foreign or domestic sources, whereas their domestic competitors acquire a large part of their funds at little or no cost as deposits from the public. Coupled with the fact that money costs somewhat more in most foreign countries than in the United States today, it appears to be a safe conclusion that the average cost of funds of foreign bank branches and agencies in the United States is higher than the average cost of funds of the large domestic international banks. Thus it appears likely that the imposition of sterile federal reserve requirements on a mandatory basis would not equalize but rather would exaggerate an inherent advantage of domestic banks over foreign banks.

The desirability of mandatory FRB reserve requirements should be judged strictly in terms of the requirements of monetary policy and not colored by allegations of cost advantages based on too narrow an analysis of this complex subject.

f. There is No Monetary Policy or Other Justification for Subjecting Credit Balances to Reserve Requirements

An incidental question is whether nondepository foreign bank agencies or "commercial lending companies" (N.Y. investment companies) should be included in any proposal for mandatory FRB reserve requirements. Agencies and New York investment companies are not subject to domestic reserve requirements, state or federal, because, not being banks in the ordinary sense, they are not permitted to accept domestic deposits. Domestic nonbank lending institutions are also free of reserve requirements. Neither have deposits on which reserves might be maintained but both have credit balances, which are maintained for purposes of specific transactions, unlike deposits. Savings and loan associations, savings banks, finance companies, factors and others who extend credit are not subject to bank-type regulations.

The FRB intention to use Section 7 to classify credit balances as deposits to extend the reach of its reserve requirements disregards state and federal classifications of long standing. It is important to understand that credit balances maintained by agencies, by commercial lending companies for foreign banks and by other domestic nonbank lenders are different than the deposits maintained by banks and have not been subjected to FRB or state reserve requirements because of that difference. The New York Banking Department has extensive experience in administering the distinction between credit balances and prohibited deposits. Credit balances are liabilities to customers that arise out of, or are related to, business transactions conducted by the agency or other lender for a customer. Examples are funds received as proceeds of a draft collected for the customer, or cash collateral for a letter of credit, or the balance of a loan that the customer has not yet used, or payments for drafts discounted for a customer. The customer may not draw checks against these credit balances, or maintain such balances for purposes unrelated to transactions with the agency.

These balances normally change rapidly as transactions are completed. Because of their special origin, use and duration, they do not serve as a means by which an agency can acquire funds for its lending purposes. For these reasons, credit balances are essentially similar, not to bank deposits, but to the customer accounts maintained by nonbanks, such as finance companies, stock brokers and factors. We want to emphasize that credit balances of agencies or any other organizations, lumped with deposits in the Federal Reserve statistics, are not the type of funds which should be, or have been in the past, subject to federal or state reserve requirements of any kind.

* * *

We should add that the Institute does not object to foreign bank offices in the U. S. being subjected to mandatory FRB reserve requirements at any time when such requirements are imposed universally on domestic banks, as the Federal Reserve Board has proposed from time to time.

July 12, 1977

B-1

INSTITUTE OF FOREIGN BANKERS
ANALYSIS OF FEDERAL RESERVE BOARD
PROPOSED CHANGES IN H.R. 7325

The Federal Reserve Board has proposed to this Subcommittee amendments to H.R. 7325, which are so extensive as to be tantamount to a new bill. We assume that the Subcommittee will be seriously considering this latest FRB version of foreign bank legislation along with H.R. 7325. Accordingly, the Institute offers for the Subcommittee's use its analysis of these changes in H.R. 7325 recommended by the Federal Reserve Board. Our comments are grouped by subject and carry bracketed references to the numbering of the proposals in the staff memorandum of the FRB forwarded to the Senate and House Banking Committees under Dr. Burns' letters of June 1.

I Interstate Branching

1.[15(a)] Reciprocal Interstate Branching. Section 5(a) would be modified to permit reciprocal interstate branching arrangements to include foreign bank branches. Although this federal concession to the dual banking system is better than nothing, unless and until there are reciprocal arrangements covering domestic banks, it would provide no relief from Section 5 for those states seeking foreign bank participation in their money-center banking markets but not ready to admit the large domestic banks from out of state.

2.[15(b)] Agencies and Commercial Lending Companies. As amended Section 5(a) would apply interstate branching restrictions to agencies and N.Y. investment companies ("commercial lending companies"), in addition to branches. The result would be discriminatory because no such restrictions are applied to domestic nondepository financial institutions. Edge corporations, which the FRB seems to equate with agencies, are widely used by large domestic banks to cross state lines. Of the dozen or so N.Y. investment companies over half are owned by domestic shareholders who would not be subject to Section 5 restrictions. There is no escaping this blatant discrimination on account of shareholder nationality. More generally, the FRB's underlying premise that credit balances maintained by agencies and investment companies are the same as deposits is not well founded in law. The distinction is important and enforced under New York and California law which provide the principal experience in this country in regulating nondepository institutions.

3.[16] Grandfathering. Section 5(b) would be changed to update to May 23, 1977 the May 1, 1976 grandfather date applicable to interstate branching. The FRB correctly points to the need for updating. But we assume that the relevant date should be the time at which foreign banks are effectively on notice that the law is likely to be changed. Taking account of the legislative position since the introduction of the FRB bill on December 3, 1974, we think it is unreasonable to have expected foreign banks to have suspended their plans for investing in banking in the United States in anticipation of any of the restrictions in the various bills given consideration since that time. There was a

B-4

close vote last year on the floor of the House on whether to retain significant interstate branching restrictions, and the Conference of State Bank Supervisors has indicated renewed opposition this year. Senator McIntyre's subcommittee has expressed tentative views for purposes of obtaining comments last year which included dropping the interstate branching restrictions. Against this background, foreign banks have had no reason either to accelerate or postpone plans to apply for branch licenses in the few states available, nor do they yet know how to assess the likelihood of passage of Section 5. If the Committee were to take the position adopted last year, it would use the approximate date of reporting out a bill. We see no "reasonable notice" in the FRB proposed date of introduction of the Bill (May 23), which has in effect the reintroduction of an identical bill in the last Congress, without benefit of the current hearings. We urge that the date be the date of enactment, but if this is unacceptable a date no earlier than the date this Bill is reported to the House floor.

4.[17] <u>Home State</u>. <u>Section 5(c)</u> would also be changed to conform the selection of a home state for interstate branching restrictions to expanded coverage of agencies and investment companies. The resulting simplification and liberalization of the choice of home state by foreign banks operating in more than one state makes sense. In fact, there appears to be no public interest served by denying maximum flexibility to foreign banks to change the election of the home state at any time to keep pace with the changing market conditions so long as they do not increase the extent of their interstate branching, that is to say, that they do not increase the number of states in which they were operating on the grandfather date and, of course, are confined to states welcoming their entry.

II <u>Mandatory FDIC Insurance</u>

5.[18] <u>Deposit Insurance</u>. <u>Section 6</u> would be changed in accordance with the recommendations of the

Federal Deposit Insurance Corporation, except that the FRB would make deposit insurance mandatory, rather than voluntary. FDIC has made it clear that the insurance must be coupled with special and inevitably burdensome arrangements for surety because of the foreignness of the insured corporation, and, therefore, that there is no way to impose mandatory insurance in a nondiscriminatory fashion. The FRB explanation does not address the FDIC position that the insurance is not needed to protect either bank customers or the banks themselves for the type of operations conducted by foreign bank branches in the United States. The FRB has implied in the past an equalizing justification on the assumption that foreign bank branches are advantaged by avoiding FDIC premiums. We believe that the insurance is a service carrying benefits bearing some reasonable relationship to the cost and that those banks not engaged in retail banking (which with rare exceptions are foreign, not domestic banks) should not be penalized with compulsory insurance costs for insurance which is not needed. The FRB proposal for mandatory insurance is an unnecessary discrimination with no relevance to federal monetary policy, thereby undermining the integrity of the Bill.

III Restrictions on System Members

6.[19,20,22-30] Foreign Bank Subsidiaries. Section 7 would be changed to subject foreign bank subsidiaries to the FRB reserve requirements and to the many other restrictions imposed on banks which are members of the System. Whatever tenuous arguments are available to apply the billion dollar size distinction to the worldwide assets of foreign banks with U.S. branches, they do not apply to subsidiaries, whether wholly owned or merely controlled (25% of the voting shares) by a foreign bank. Both from the standpoint of business practicality and bank regulation, subsidiaries differ from branches. For example, their legal lending limits are based on their own capital and surplus, not that of the parent. They are subject to federal regulation under the Bank Holding Company Act and the Federal Deposit Insurance Act. They are regulated in precisely the same manner as domestic banks and have no place in this Bill. To deny them the option of joining or not joining the System because of the size of a controlling shareholder is to indulge the legal fiction that they are the same as branches. The House wisely decided last year that the discriminatory denial of the right to decide whether to be a member bank could not be applied to subsidiaries without doing violence to the equal treatment principle underlying last year's (and this year's) bill.

7.[21] Discriminatory Reserve Ratios. Section 7(a)(1) would be changed to limit the authority of the Federal Reserve Board to discriminate against foreign banks by imposing different reserve ratios than apply to domestic banks. Presumably the purpose is to make Section 7 less vulnerable to the charge of discrimination and recognize that the authority would not be used in a discriminatory fashion with respect to reserve ratios. However, the FRB comment makes it clear that special treatment might still be imposed on foreign banks through the definition and classification of deposits, including credit balances. Also, the FRB would retain the right to select restrictions applicable to member banks for imposition on foreign banks without some of the accompanying benefits of membership in the System. The proposed curing of authority for discriminatory treatment of foreign banks should be extended to all features of Section 7.

IV Nonbank Holdings and Activities

8.[32&33] Grandfathering. In Section 8(c), restrictions on the grandfathering of securities affiliates would be removed. This would be a significant improvement. However, the FRB proposes retaining the outdated date of introduction of its original bill, December 3, 1974, as the grandfather date. Our comments on the interstate branching grandfather date apply with even greater force to the retention of the Section 8 grandfather date, which has significance not only for securities affiliates but for the foreign bank holdings of 5 percent of more voting shares in foreign industrial and trading corporations doing business in the United States. If the rationale for the grandfather date is a reasonable date of notice of impending legislative change, we cannot see the justification for two different dates in the same Bill. A date nearly three years old seems patently wrong.

9.[34] Exemption for Business Principally Abroad. Section 8 would be expanded with an amendment of the Bank Holding Company Act codifying existing regulations exempting foreign bank holding companies which are incorporated by reference into Section 8(b) and adding certain changes which both liberalize and restrict existing law. The Bill would improve the exemption of shareholdings of foreign corporations with more than 50 percent of their business outside of the United States by removing the condition that they not be subsidiaries of the foreign bank. However, this progressive amendment is conditioned on two new restrictions not presently applied by the Bill or the Bank Holding Company Act. The first would deny the 50 percent exemption when the nonbank activity is bank-related (in the sense of Section 4(c)(8) of the Bank Holding Company Act). Whatever the rationale for foreign bank exemptions, it seems illogical to be more restrictive on activities of a financial or bank-related nature than those far removed from banking. It is the bank-related activities which are most likely to be an integral part of the overseas banking business. Second, a new restriction not applicable to domestic banks would prohibit more favorable credit terms to affiliates than to other borrowers. While this principle is followed in practice, supervision and regulation of the question of comparability of credit terms requires a new level of intimacy in the daily conduct of of the banking business. Comparability is a judgment factor far more complex than interest rates and maturity dates. If the Congress were to impose (unwisely, we think) this form of "price" regulation (the price of borrowed money) on domestic banks, foreign banks would have no grounds for objection, but to make this innovation for foreign banks only would surely be construed abroad as another discrimination in this Bill. We are surprised that the FRB would expose itself to the complex administrative task of enforcing such a rule. We should add that the last paragraph of the FRB explanation of this proposal states sound principles of extraterritorial restraint with which we fully concur and wish only that they could be more broadly applied in the FRB proposals and in H.R. 7325.

V Less Critical Amendments

10.[1&2] Definition of "Agency" and "Branch." In Section 1(b)(1) & (3) of the Bill, the definitions of agency and branch are modified by deleting "checks are paid or money is lent" from the description of a branch and adding it to a description of an agency. The FRB, apparently believing that a mistake was made by your Subcommittee last year, seeks to make it clear that a foreign bank office which accepts deposits but does not lend money or pay checks is defined as a "branch." We see no reason for this Bill to cover offices of foreign banks which do not engage in banking and the many nonbanking organizations which hold funds of those with whom they do business. The FRB seems inclined to treat such funds as deposits wherever possible. The proposal is likely to create more problems than it solves. As to the definition of an "agency," the proposed change seems to be superfluous, inasmuch as credit balances are by definition incidental to or arising out of the exercise of banking powers, thereby tying agencies to banking.

11.[3] Definition of "Foreign Bank." In Section 1(b)(7), the definition of a "foreign bank" would be amended to cover foreign banks principally engaged in business in the United States. While the Institute has no objection to this purpose, we suggest that the FRB and the Congress should make up their minds at this time on the scope of the Act and not leave it, as provided in this proposed amendment, for the FRB or the Comptroller of the Currency to change that scope by regulation in order to "prevent evasions" of the Act. If such broad authority is required, it seems appropriate to ascertain why it is necessary and how it would be used before enacting legislation. The result would probably provide a basis for your Subcommittee to focus the definition of foreign bank more sharply on the requirements of this legislation.

12.[4] U. S. Accounting Principles. A new Section 1(b)(12) would be added to require U. S. accounting principles to be applied in determining consolidation for purposes of the asset-size test of Section 7. It would be difficult, and it appears to us unnecessary, to require banks and many foreign countries with accounting practices as well developed as those in

93-031 O - 77 - 33

the United States to maintain books on a different basis for purposes of complying with U. S. law. It would seem that this should be done only if there is no other way to administer the purpose of the Bill and not merely to facilitate the administrative work of the regulating federal agency. The exemptions in Section 4(c)(9) of the Bank Holding Company Act have also applied U. S. accounting principles to the concept of consolidation over the objections of foreign banks at the time these regulations were published for comment. The problem highlights the difficulties of extra-territorial regulation called for in Section 5, 7 and 8 of this Bill.

13.[5] Section 2, title change. IFB takes no position.

14.[6] Edge Corporation Reserves. Section 3(b) would be amended to remove from the Edge Act the minimum 10 percent limit on reserves required of Edge corporations in order to permit the Board to assure competitive equality between those corporations and foreign bank branches and agencies. Although the Institute has no objection to the proposed change, it would be useful to recognize that branches and agencies of foreign banks are different from each other and from Edge corporations and that a policy of assuring competitive equality between these three classes of financial institutions would serve no useful purpose, would confuse the administration of existing law and this Bill and would require federal intervention in privately managed enterprises where there is no adequate public interest in that intervention. It would be helpful for the Committee Report on this Bill to reject explicitly any such new standard or objective or, if a contrary decision is reached, to state it explicitly and with appropriate qualifications for purposes of the Bill.

15.[7-14] Federal Branches and Agencies. Proposed changes in Section 4. Because we have discovered no interest as yet on the part of foreign banks in obtaining federal licenses to open branches or agencies in the various states, Section 4 has a low priority in the limited time we have to present our views. We have authorized our counsel to discuss these changes with the Committee staff if the Committee believes this to be helpful. However, we should emphasize that our members do not seek a federal procecure to enter states in the form of branches or agencies at a time when that state expresses through its laws or regulations a policy to discourage the entry of foreign bank branches and agencies. It is fundamental to our position on interstate branching that foreign banks are relying upon the state bank supervisors and state law to determine whether foreign bank branching would be good or bad for that particular banking market.

16.[31(a)] Uniformity of State Regulation. A proposed new Section 7(f) concerns branches and agencies licensed by the Federal Government, which is a subject with a low priority for foreign banks as pointed out above. We would only comment at this point that this new section appears to carry unnecessary implications for interference with those states which are regulating foreign bank branches and agencies and in all cases doing so effectively. Although there appears to be considerable similarity in state regulations designed to protect bank customers, we fail to understand why uniformity is desired for state foreign bank regulation but no comparable uniformity is thought to be necessary for domestic banks.

17.[31(b)] Representative Office Reporting. The proposed new Section 7(g) apparently contemplates federal reporting requirements for foreign bank representative offices which do not engage in banking. We are not aware of federal requirements for comparable reporting from the many out-of-state offices of domestic banks which are located where they have no authority to engage in banking. Thus, the requirement appears to be discriminatory. Foreign banks frequently explore the prospects for entering the U. S. market by first opening a representative office. To be confronted at that stage with federal reporting requirements would have some dampening effect on the early stages of entering the U. S. We know of no monetary policy or other clear federal need which might justify this new dimension of paper work. A new Section 7(g) might be reworded to achieve a broader purpose, namely, to assure the FRB of its power to obtain reports on all foreign banks conducting banking operations in the U. S. regardless of their form. This would cover branches, agencies and subsidiaries, but not representative offices which cannot engage in banking.

18.[35-41] These FRB proposed changes are either technical or primarily of administrative concern to bank regulators. Therefore, we have no comment.

C-1 July 12, 1977

INSTITUTE OF FOREIGN BANKERS
SUGGESTIONS FOR PROSPECTS
FOR IMPROVING H.R. 7325

The record of last year's hearings has already made it clear that this Bill encompasses a large number of complex issues and has provoked a wide range of opposing views from both banks and regulators of banks. If the many reasons suggested for setting aside this legislation at the present time are not persuasive to your Subcommittee and you decide to report out this Bill or one like it, we urge that you give consideration to a number of opportunities to improve the Bill and perhaps to minimize some of its opposition. Without abandoning our conviction that the Bill is unnecessary at this time and discriminates more than it equalizes, we suggest that serious consideration be given to the following possibilities for major improvements. We may, if permitted, submit before the record closes further suggestions for less important, but nonetheless useful, changes which we believe should also be considered when the Bill is marked up.

I Interstate Branching, Section 5

It should be possible to reconcile the conflicting objectives of the few states competing for international financial center status, domestic banks worried about prejudicing the sensitive domestic interstate branching issue and foreign banks from countries which do not impose one-location restrictions on U. S. bank branches in their countries. Section 3(d) of the Bank Holding Company Act points the way by breaching the unconditional McFadden Act interstate branching prohibition by permitting any state to authorize explicitly by statute entry of a foreign or out-of-state domestic subsidiary bank. The proposal is that this Bill could enable interested states to settle the issue of foreign bank branching explicitly by statute (if they have not already done so) so that there is a full and fair opportunity for the banking community and the banking market in that state to resolve their conflicting interests through a local legislative process sensitive to local banking and civic concerns. The result would be to preserve the options available to Atlanta and Miami, and possibly other cities which might later decide to admit foreign banks under limited conditions preventing entry into retail markets, following the Illinois example of one branch in the Chicago financial district.

If the foregoing modification of Section 5 is unacceptable, consideration should be given to grandfathering the states admitting foreign bank operations, rather than the foreign banks. This approach properly recognizes that interests of the communities involved, of which banks are only a part, are more important than the interests of particular domestic banks in protection from foreign competition. It would permit Chicago to continue its successful program of attracting foreign bank branches, which, if last year's bill had been passed, would have cut off important and welcome new additions to the growing international banking community of Chicago. The disadvantage of this approach is that it precludes, for example, Houston, Philadelphia, or some other aspiring city from competing for international financial center status. However it would presumably be open to them to seek federal legislation in the future to enable new state legislation to admit foreign bank branches or agencies to have its intended results. Whether or not the FRB proposal to apply interstate restrictions to agencies is adopted, there is justification for grandfathering those states which have authorized foreign banks to operate banking businesses, without regard to the form of organization (branch, agency or subsidiary). How the state permits foreign banks to organize under state law should not, and need not, be a Federal Government concern, and flexibility may well be needed by the states in determining how much latitude must be accorded foreign banks in order to attract them. This may be particularly important to Florida and Georgia, which are currently experimenting with New York type agency laws and are also watching carefully the experience of Illinois with its limited branching law.

If neither of the foregoing is acceptable, some improvement can be obtained by liberalizing the grandfather date as we have suggested elsewhere and by providing maximum flexibility in selecting and changing the "home" state and converting from one to another form of business, without increasing the number of states in which any one foreign bank operates on the grandfather date.

II <u>Mandatory Federal Insurance, Section 6</u>

FDIC, the federal agency with direct experience in the insurance of bank deposits, has again set forth in its May 25, 1977, letter to your Chairman the essential parameters of the problem of insuring foreign bank branches:

(a) It is impossible to require insurance without either unduly exposing the insurance fund to foreign risks or discriminating against foreign banks by surety arrangements to avoid those risks.

(b) There is no need for deposit insurance for foreign bank branches and agencies because of the wholesale nature or international nature of their business or, conversely, the absence of any significant amount of domestic retail business; foreign banks seeking retail business are compelled to incorporate as subsidiaries under the Bank Holding Company Act, which requires that they be insured by FDIC.

Last year there was some intimation that mandatory federal insurance might be justified under the banner of equal treatment. This rationale ignores the fact that the costs of insurance bear some reasonable relationship to the benefits. Domestic banks may have to insure more accounts than they wish to insure, but few, if any, would concede that they do not derive some benefit from the insurance because, unlike foreign bank branches, they are engaged in substantial retail as well as wholesale banking. If the FRB's mandatory insurance or the substitution of surety bonds or asset pledges in Section 6 cannot be justified on the grounds of curing a discrimination against domestic banks, the FDIC proposal for voluntary insurance supported by appropriate surety arrangements is clearly the alternative which makes the most sense among the various proposals for insurance or for depositor protection. The amendment proposed by FDIC appears to accomplish this purpose.

III System Membership Restrictions, Section 7

This Subcommittee took the position in its FINE study report that it opposed mandatory membership in the System for foreign bank branches, agencies and subsidiaries and has never explicitly changed the position. We suspect that there may be some misunderstanding that Section 7 of the Bill is significantly different from the restrictions resulting from mandatory membership. It is not. Inquiry to the FRB would, we believe, establish that Section 7 powers would be used to impose all restrictions on foreign bank operations which are applicable to domestic member banks without regard to any monetary policy justification, except in a few situations identified in the original FRB bill in which FRB regulatory restrictions were either unworkable or clearly inequitable because of foreignness. If the justification for Section 7 is to enable the FRB to avoid impairment of its monetary policy, then this Section goes well beyond its purpose and should, as a minimum, be confined to nondiscriminatory FRB reserve requirements.

FRB reserve requirements, if they are to be imposed, should be imposed only on foreign bank branches. As recognized by H.R. 7325, subsidiaries are separate corporations not properly subjected to the billion dollar size distinction, which artificially consolidates the assets of the worldwide affiliates of the parent foreign bank. Agencies should not be covered because they do not take deposits of the type which are, or should be, subject to state or FRB reserve requirements. The contention that agency credit balances are in effect deposits should not be accepted without careful examination of the important distinction maintained under New York State law between credit balances and deposits. When the nature of credit balances, which we have briefly explained elsewhere, is understood, it should be clear that the potential impact of the credit balances on monetary policy, unlike deposits held free of other transactions, is relatively slight. The application of FRB reserve requirements to foreign bank agency credit balances can only be justified if the overwhelmingly larger credit balances maintained by domestic industrial and financial institutions are also covered by FRB reserve requirements. Not even the FRB has seriously proposed such an expansion of FRB jurisdiction.

If the issue can be reduced to nondiscriminatory reserve requirements imposed on branches only (assuming the billion dollar size distinction can be justified, which we have said is illogical and discriminatory), the question is left of how to deny foreign bank branches the choices available to domestic banks organized under the same state law as that branch without unfairly discriminating. We have two suggestions: First, condition Section 7 authority on the enactment of pending proposals designed to make the costs of maintaining FRB and state reserves more comparable; or, second, condition Section 7 authority on enactment of a comparable billion dollar size distinction on domestic banks or on enactment of universal mandatory reserve requirements.

IV Nonbank Holdings and Activities, Section 8

The records of last year's four Congressional hearings make it quite clear that the concerns of proponents of Section 8 are primarily derived from the failure of the Glass-Steagall Act to reach foreign banks which have both U. S. branches and holdings in securities firms engaging in underwriting, distributing, and selling securities in the United States. The logical and practical response is for Congress to consider amending the Glass-Steagall Act to clarify its application both to domestic and foreign banks. As pointed out elsewhere, to meet the problem by imposing the rules of the Bank Holding Company Act on foreign banks with branches in the United States is an unnecessary distortion of that Act. U. S. banks have the option of expanding through holding company systems under the Bank Holding Company Act or through branches in whatever locations branches are permitted. The attempt to apply Bank

Holding Company Act concepts to foreign bank branches would involve the United States unnecessarily in the direct regulation of foreign banks.

If consideration of amending the Glass-Steagall Act to cover foreign banks is to be left to other hearings on other legislation, Section 8 becomes of minor significance and should be deleted from this Bill.

A reasonable compromise would be to amend the Glass-Steagall Act to cover foreign banks, preferably in a separate bill with separate hearings, and, in anticipation of legislation for this purpose, to delete Section 8 from this Bill.

If it is decided that Section 8 in essentially its present form must be retained, an alternative compromise might be to build on the recent FRB proposal for exempting from Section 8 nonbank holdings and activities located more than 50 percent outside the United States. The rationale for such an exemption is (a) to avoid undue interference with foreign banks which operate abroad both as commercial and investment banks and (b) a reasonable assumption that the abuses of nonbanking affiliations are unlikely through a chain of foreign ownership involving activities mainly outside the United States. A theoretical potential for abuse remains but is insufficient to justify taking on the many problems resulting from efforts to treat foreign banks as though they were domestic banks. If this correctly states the rationale, it applies as much to nonbank holdings in the securities business (and to holdings or activities in bank-related businesses for which the FRB would deny exemptions), as it does to industrial and trading activities. It may well be that such an exemption would cover most of the controversial existing nonbank holdings and activities, including securities activities as well as industrial and other nonbanking activities. However, to have this effect it would be necessary to consolidate a foreign bank's nonbank activities in the United States with activities in the same line of business abroad, without regard to whether the activity is conducted by one or more subsidiaries or directly by the bank, in order to determine whether the largest part of the activity for a particular line of business is in the United States or abroad. The objective would be to exempt activity which has to date produced no abuses, according to the testimony last year, but would deter foreign banks from engaging in businesses in the United States which are not incidental to the type of business in which they are engaged overseas.

Regardless of the decision made on the prohibitions of Section 8, there should be full and complete grandfathering of existing activities of foreign banks as recommended by all regulatory agencies and banking groups testifying last year.

V Grandfather Dates, Section 5(b) and 8(c)

We appreciate the constructive position on grandfathering taken by the FRB and all other federal agencies and all domestic banking groups, namely, that it be permanent and complete as to existing prohibited nonbank holdings and activities and as to location.

As the Bank Holding Company Act has been extended over new classes of domestic banks from time to time, grandfathering has been applied to avoid retroactive destruction of investments in banking and other businesses of domestic banks. To discriminate by denying grandfather exemptions only to foreign banks, in violation of treaty obligations and principles on which the U. S. has provided world leadership, would be hard to understand.

To the extent that a bill emerges from Committee containing prohibitions justifying grandfathering treatment, the grandfather dates should be the same for all purposes and should be a date on which foreign banks may reasonably be expected to hold up on their plans for developing their U. S. capabilities because they are on notice of likely pending legislation which would prohibit those activities. Certainly at this point in time it would be unreasonable to assume that foreign banks should have suspended their plans for doing business in the United States for the nearly three years since the FRB proposed its initial bill. Foreign banks have observed closely the strong intimations from the Senate Banking Subcommittee that its views on foreign bank legislation are quite different from those revealed by this Subcommittee last year. It is not possible to guess at this time whether and how Sections 5 and 8 will emerge as law. The action of this Subcommittee in reporting out a bill will be the first signal in this Congress as to the nature of foreign bank legislation currently going through the legislative process. There appears to be sufficient controversy from domestic banks and bank regulators over this Bill to anticipate a repetition of last year's attempts on the floor of the House to change key provisions of the Bill containing grandfather protection. Senate action is unpredictable. Therefore, it would seem reasonable for the House to use a grandfather date for all purposes in H.R. 7325, which would be the date of enactment, the approximate time when foreign banks will know the final intention of Congress. If last year's rationale for a grandfather date is used, the date should be no earlier than the date of reporting the Bill out of Committee to the House floor.

VI Nondepository Institutions

The bill can be both simplified and more effectively focused on its objectives by confining its scope to foreign bank branches.

As we have emphasized elsewhere, agencies and the so-called commercial lending companies are prohibited by state law from taking domestic deposits and, therefore, should not be covered by the Bill. That part of the Bill attempting to equalize treatment of foreign and domestic banks is mainly concerned with federal legislation which would not exist if commercial banks did not have access to deposits of the public without having to pay for the use of those funds. Financial institutions prohibited from this fundamental banking function should not be and cannot be regulated in the same manner as commercial banks. The difference is imbedded in New York banking law, and our proposition has been and would be supported by knowledgeable witnesses from the New York State Banking Department. The commercial lending companies include only foreign-owned New York investment companies of which there are less than one-half dozen, with no prospects for increasing their numbers or their significance. Their inclusion distorts the structure of the Bill, because New York investment companies owned by domestic shareholders are not covered, and because they are subsidiaries and are equated with agencies which are not subsidiaries. As to subsidiaries of foreign banks, the Bill would do nothing to equalize their treatment with domestic banks because they are already treated the same.

The monetary policy justification for this Bill offers no substantial arguments for covering agencies, commercial lending companies or subsidiaries. For reasons explained elsewhere, we believe that credit balances have no significant impact on monetary policy and that subsidiaries should not be subject to application of the restrictions of membership in the System.

The principal reason for this Bill reaching beyond foreign bank branches is that agencies are the most active vehicle for foreign bank participation in the U. S. money markets and perhaps also in the commercial lending markets. Neither of these activities has been cited by the FRB as significant to its monetary policy concerns and neither has been cited by any domestic banks as significant to the issue of unfair competition or even of unequal treatment. These are wholesale banking operations engaged in on a multistate basis by the large domestic competitors of foreign banks; they involve none of the deposit oriented issues of mandatory insurance or mandatory reserve requirements. This complex Bill could be simplified and streamlined without loss of its effectiveness in carrying out its primary purpose by focusing clearly on the central concern, which is foreign bank branching with access to domestic deposits.

VII <u>Federal Reports and Examination</u>

A major and justified concern of proponents of this Bill seems to be that the Federal Government be fully informed about the activities of foreign banks so that it will be alert at all times to changes affecting U. S. monetary policy or the need for federal legislation. We have no doubt that the FRB has ample practical opportunity, derived from its invariable success with voluntary compliance, several existing federal statutes and the cooperation of state bank regulators, to obtain such reports as it wishes about U. S. activities of foreign bank branches, agencies and subsidiaries (and the several so-called commercial lending companies if they are considered important). To the extent that state examination reports are required by the FRB, we find it hard to conceive that they would not be made available to state banking departments on request by the FRB. If the FRB access to information can be shown to require reinforcement by federal law, we have no objection to authority in this Bill which would be carefully drafted to serve the foregoing purpose. With clear access to information, it is hard for us to believe that the FRB is not amply empowered to meet central banking responsibilities and to otherwise protect the national interests.

* * *

We would be happy to have our counsel prepare for consideration by your staff legislative language for any of the foregoing suggestions which may be of interest to your Subcommittee.

Thank you for your kind attention to these comments.

EXHIBIT A

Multistate Activities of Selected Domestic Banking Systems

American Banker Issue	Bank or Holding Co.	Number of Offices in Secondary States	Number of States
Oct. 23/75	BankAmerica Corp.	336	32
Oct. 29/75	Citicorp	284	34
Nov. 5/75	Manufacturers Hanover Corp.	151	15
Nov. 13/75	Chemical New York Corp.	121	15
Nov. 20/75	First Chicago Corp.	26	9
Dec. 4/75	Security Pacific Corp.	45	13
Dec. 12/75	First National Boston Corp.	33	11
Dec. 22/75	First Pennsylvania Corp.	263	25
Dec. 29/75	Philadelphia National Corp.	94	15
Jan. 6/76	North Carolina National Bank	122	7
Jan. 13/76	Citizen and Southern National Bank	40	9
Jan. 21/76	Pittsburg National Corp.	35	15
	TOTAL:	1550	

EXHIBIT B

Nationwide Spread of BHCs: 336 Nonbank Offices of BankAmerica Corp. in 32 States

By MICHAEL QUINT

The spread across the United States of nonbank subsidiaries of bank holding companies has been a significant development in the years since the 1970 amendments to the Bank Holding Company Act.

This article about BankAmerica Corp., accompanied by a map on pages 8-9, is the first of a series describing the geographical range and functional variety of some of the largest of these holding companies.

NEW YORK. — The $64.2 billion-asset BankAmerica Corp., San Francisco, holding company for the $52.3 billion-deposit Bank of America NT&SA, will have 336 nonbank offices in 32 states after it divests itself of some consumer finance offices in the western United States.

Bank of America, besides its 1,045 branches in California, has five Edge Act corporations, a securities trading operation in New York City, and four corporate service centers.

The holding company's subsidiaries are engaged in consumer and sales finance, commercial lending, mortgage banking, selling and reinsuring credit-related insurance, leasing, computer services, investment management, providing venture capital to businesses in the U. S. and abroad, marketing travelers' checks, and a full range of banking services.

BankAmerica's most geographically dispersed domestic subsidiary is FinanceAmerica, Inc., an Allentown, Pa. consumer finance company known as GAC Finance, Inc., until August, 1974. After the proposed sale of 127 consumer finance offices in 12 western states, announced Sept. 18, 1975, is completed, FinanceAmerica will have 314 offices in 29 states. BankAmerica acquired the company in January, 1974, after obtaining Federal Reserve Board approval in the preceding month.

The offices to be sold in the western U. S. are omitted from the accompanying map.

When the Fed approved the acquisition BankAmerica agreed to divest the consumer finance offices in California, Oregon, Washington, Arizona, New Mexico, Texas, Idaho, Montana, Wyoming, North Dakota, South Dakota and Colorado, as well as some other assets of GAC Finance, Inc., including the rediscount business.

According to officials of the holding company, the sale agreement announced in September will fully meet the divestiture requirements in the Fed's approval. The offices in the 12 affected states have been operated under the name of GAC Finance pending the sale. The agreement calls for them to be purchased by ITT Financial Corp., a subsidiary of International Telephone & Telegraph.

BankAmerica will be allowed to reenter the consumer finance business in those 12 states through an acquisition by creating a new office, but any such expansion will require Federal Reserve Board approval.

Officials at the holding company noted that when the proposed sale to ITT Financial is completed, the holding company will not be engaged in any activities that have not yet been approved by the Fed or that would require such approval by 1980.

The exact number and locations of consumer finance offices shift frequently because of changing growth patterns in cities and internal reorganization, a FinanceAmerica official noted. The locations shown on the accompanying map are based on an internal FinanceAmerica roster as of June 30. The map does not include seven offices of FinanceAmerica which are engaged in collection of bad loans made by other offices.

An official of FinanceAmerica noted that approval of the Federal Reserve is necessary to open new offices or to relocate an office by more than a mile. Approval is not necessary to close an office, he added.

FinanceAmerica's advertisements and store signs identify it as "A BankAmerica Company" or "A BankAmerica Financial Service Company."

The largest portion of FinanceAmerica's business is in the consumer credit division, which makes personal loans where permitted and also finances consumers' purchases of appliances, furniture and other goods from retailers. In February, 1975, FinanceAmerica said there were 303 offices in this division and that 259 of them offered loans secured by second mortgages. Subject to state laws, the consumer loan offices also sell credit-related insurance.

An Oklahoma City office is the base for a loan program offered to professionals and executives in 16 states by mail.

...

FinanceAmerica said the offices in the consumer credit division are linked by an on-line, real-time computer system. FinanceAmerica officials said the company does not use the services of Decimus Corp. another BankAmerica subsidiary offering computer services.

Beginning in July, 1974, six FinanceAmerica loan offices in Pennsylvania started selling BankAmerica Travelers cheques. This activity was extended to the remainder of the FinanceAmerica loan offices in that state at the start of '75 and officials said that they plan to expand the activity to other states.

FinanceAmerica Private Brands is the largest element in the diversified division of FinanceAmerica with 11 offices in 11 states. There were two Private Brands offices in California and one in Texas, but according to BankAmerica Corp. officials, those will not remain in FinanceAmerica after the sale to ITT Financial is completed.

In its promotional literature, FinanceAmerica explains that the Private Brands financing provides a manufacturer or wholesaler with a credit line necessary in distributing products to dealers. It notes that the client can have Private Brands set up a special company with the name identified with the client product, or that the company can use its own money and Private Brands only as manager.

"Utilizing on-line data processing, Private Brands furnishes marketing and credit data, financial records, analyses of sales performance and reports of product turn-over," FinanceAmerica explained.

In an application in April, 1974, to the Fed to change the location of the Allentown, Pa., branch of Private Brands, its activities were described as engaging "in providing funds and/or credit services in connection with financing of stock and floor plan inventory of distributors and dealers of consumer products; makes available at dealers option and cost, fire, theft, and damage insurance on a monthly reporting basis covering only outstanding indebtedness on such floor plan inventory."

Other activities of FinanceAmerica Management Services include servicing student loans for correspondence schools and big ticket items for nonconsumers, the company said.

The commercial division of FinanceAmerica began operations in Oct. 1974, after the company was acquired by BankAmerica and has only one office in Allentown. The division provides credit secured by receivables, machinery, equipment and inventories. It also will make loans secured by the borrowers' real estate, according to FinanceAmerica.

An official in the division explained that it is not in the factoring business. In its promotional literature, FinanceAmerica said it plans to establish regional offices for this division as its volume of business expands.

Besides the real estate lending of the bank, BankAmerica Corp. has three mortgage banking subsidiaries operating in eight cities in eight states. All of these subsidiaries were created de novo. The holding company's annual report explained that the mortgage companies differ from the bank in that they originate the mortgages but then sell them to institutional investors, retaining only the servicing.

336 Nonbank Offices of BankAmerica Corp.

BA Mortgage Co. of Denver, Inc., was the first to be established and was permitted by the Federal Reserve in August, 1972, to open a Denver office that would make or acquire for its own account or for the account of others loans and other extensions of credit, as would be made by a mortgage company.

The Fed's approval specifically noted that the permitted activities included the development, making, placement and servicing of mortgage loan investments on residential, industrial and commercial property.

In April, 1974, the Fed approved the creation of BA Mortgage Co. of Texas, Dallas, with the same authorized activities as the Denver-based company.

BA Mortgage Co., Inc., was approved by the Fed in June, 1974, with offices in Miami, Atlanta, and San Francisco. Its permitted activities were the same as for the two existing mortgage banking subsidiaries. In October, 1974, the Fed permitted BA Mortgage to open additional offices in Minneapolis, Kansas City and Chicago.

In addition to the nonbank mortgage banking firms, BankAmerica has other subsidiaries engaged in real estate advice, lending against mortgages or making mortgages on recreational properties.

BankAmerica Realty Services, Inc., San Francisco, was authorized by the Fed in August, 1971 to act as an investment adviser to BankAmerica Realty Investors, a real estate investment trust, and to provide advice on real estate matters to BankAmerica Corp. and its affiliates. At the time of the approval, the Fed also denied permission to "establish and sell limited partnership interest in real estate syndicates and to provide investment advice and management for such syndications as the general partner thereof."

BankAmerica Realty Investors is publicly owned and is not a subsidiary of the holding company or the bank.

Western America Financial, Inc., San Francisco, is a subsidiary of the holding company that was authorized by the Fed in August, 1971, to purchase notes secured by deeds of trust and mortgages covering recreation land or recreation homes.

BA Land Finance, Inc., San Francisco, is a subsidiary of the holding company that was authorized by the Fed in February, 1974, to purchase notes secured by deeds of trust and mortgages covering recreational homes, principally in Arizona.

BankAmerica's leasing activities through its nonbank subsidiaries were authorized by the Fed in January, 1975, when it approved the activity in the offices of the BA Mortgage companies, except San Francisco. The language in the Fed's approval for the leasing activity closely follows that of Regulation Y requiring the lease to be a functional equivalent of an extension of credit and that terms of the lease, including tax benefits, will yield a return to the lessor sufficient to cover the full cost of the property, including the cost of financing the property.

BA Leasing Corp., San Francisco, is a subsidiary of Bank of America that was formed in 1971 to engage in the leasing business in a similar manner to the bank. All leasing business out of California generated by the bank is booked through BA Leasing Corp., officials said.

BA Insurance Agency, Inc., and BA Insurance Co., Inc., both in San Francisco, are subsidiaries of the holding company that were approved by the Federal Reserve in May and December, 1973, respectively. They are involved in selling and reinsuring insurance contracts related to extensions of credit made by Bank of America only and operate only in California.

BA Insurance Agency acts as an insurance agent for sales of credit life and disability insurance related to extensions of credit by the bank, including Timeplan loans. In January, 1975, the agency also was authorized to act as an agent for sales of mortgage redemption and disability insurance related credit extended by the bank.

The primary insurer for insurance contracts sold by BA Insurance Agency is Occidental Life Insurance Co. of California, Los Angeles, a subsidiary of Transamerica Corp.

Occidental, in turn, reinsures insurance sold by the BA Insurance Agency with BA Insurance Co., a wholly owned subsidiary of BankAmerica. Officials noted that BA Insurance Co. reinsures only insurance contracts related to extensions of credit by Bank of America.

Decimus Corp., with six offices in five states, is a subsidiary of the holding company that was approved by the Federal Reserve in April, 1972. It has offices in San Francisco; Glendale, Calif.; New York; Elk Grove, Ill.; Houston, and Piscataway Township, New Jersey. All these offices, except for the one in New Jersey, were authorized in April, 1972. The New Jersey office, located midway between New York City and Philadelphia, was approved in October, 1974.

The Fed's approval of the Decimus offices listed several activities. It may engage in full payout leasing of personal property, primarily computer equipment, or act as an agent or adviser for such a lease. Also, it may store or process data used by financial institutions, such as demand deposit accounting, general ledger accounting, account reconciliation, instalment loan accounting, mortgage loan accounting, savings accounting, credit union accounting, commercial loan accounting. It also may store and process financial and accounting data for nonfinancial institutions relating to payrolls, accounts receivable or payable and other billing services.

Additionally, Decimus Corp. was authorized to provide bookkeping or data processing services for the internal operations of BankAmerica and its affiliates.

According to officials of BankAmerica Corp., Decimus has been the largest independent processor of demand deposits for commercial banks in California for several years. Decimus is about 86% owned by BankAmerica.

Decimus Computer Leasing Corp. was approved by the Federal Reserve in July, 1972, to lease computer equipment, primarily to large corporations, in the same locations as Decimus Corp., except for Piscataway Township, N. J., which had not yet been established. Decimus Computer Leasing is 80% owned by BankAmerica and 20% by Decimus.

BA Investment Management Corp., San Francisco, a subsidiary of the holding company approved by the Federal Reserve in July, 1972, provides investment management and research services for the Bank of America trust department and institutional tax-exempt funds. It also is the adviser to Montgomery St. Income Securities, Inc. San Francisco, a closed-end investment company that is now publicly owned, but was originally sponsored by Bank of America.

Subsidiaries of the Bank of America with offices outside of California are its corporate service centers, Edge Act banks and an office of its bank investment securities division in New York City.

The four corporate service centers, or loan production offices, are located in Chicago, New York, Los Angeles and San Francisco. These offices do not accept deposits.

The Edge Act subsidiaries of Bank of America are located in New York, Chicago, Miami, Houston and San Francisco.

Bank of America (New York) is the oldest Edge Act bank in the country, established in 1948. This bank makes investments in foreign companies, as well as engaging in internationally related commercial banking.

The newest Edge Act subsidiaries were all established or approved by the Federal Reserve in 1971. They are Bank of America International of Chicago, of Florida and of Texas.

Another Edge Act subsidiary, Bamerical International Financial Corp., San Francisco, was established in 1962 but differs significantly in function from the others. Its primary activity is the providing of venture capital to foreign companies through investments, rather than commercial banking.

In addition to Bamerical, there are two other subsidiaries within the holding company that provide venture capital to small businesses.

Small Business Enterprises Co., with offices in San Francisco and Los Angeles, is a small business investment company that is a subsidiary of the bank. Formed in 1959, it provides venture capital to small firms throughout the U. S., but primarily in California.

WestVen Management, based in San Francisco and formed in 1970, manages a partnership called Western Investment Associates, which provides venture capital to foreign and domestic companies. BankAmerica is the principal partner in the firm. The limited partners are Weiss, Peck & Greer, New York stock brokerage firm, and several insurance companies.

The partnership has not been approved by the Federal Reserve, but officials of the holding company noted it was established prior to the Bank Holding Company Amendments of 1970.

They said terms of the partnership calls for it to dissolve in 1978 and if BankAmerica were to set up a similar activity then, it would be necessary to obtain the Fed's approval.

BA Cheque Corp., San Francisco, which was approved by the Federal Reserve in June, 1973, markets and distributes the travelers checks which are issued by BankAmerica Corp. The checks are payable through Bank of America, which is reimbursed for its costs. By making the holding company the issuer rather than the bank, costs of the business were reduced by eliminating the need to maintain reserves against checks outstanding, the application' to the Fed explained.

Mr. St Germain. Thank you, Mr. De Luca. Do any of your colleagues wish to now make any additional presentations?

Mr. De Luca. No, sir.

Mr. St Germain. In the opening of your statement you argue that legislation regulating foreign banks in the United States is not needed now because the growth in foreign banks has merely kept pace with world economic trends and remains low relative to the expansion of U.S. banks abroad.

Governor Gardner testified Tuesday that international banking is testing the regulatory and monetary frameworks of most countries and cited four major industrial countries currently revising their banking laws in ways which have implications for foreign banks in their borders. In addition, U.S. regulatory authorities have been moving recently to improve the regulation and supervision of U.S. banks abroad.

This subcommittee is well aware of it because we have been involved in encouraging them to do so.

Would you give us your comments on these developments and the degree to which they demonstrate the need for increased regulations and supervision of international banking, both by the United States and foreign authorities?

Mr. De Luca. I don't know that I know very much about these developments in other countries for greater regulations of foreign banks.

What I would like to point out again is the difference between the American system and the system that prevails in many European countries. In any case, in European countries, to my sure knowledge, American banks or foreign banks in general are allowed a great freedom of action and in some instances when the local authorities are about to pass some kind of restrictions which may have monetary or economic policy impacts but which would be extremely hard on foreign banks, they consider the possibility of making exceptions for these foreign banks.

I have such a case being now under consideration in France, for instance.

Mr. St Germain. The Fed this week—not only the Fed but three of our Federal regulatory authorities—announced new reporting requirements to assess country risk, again as a result, I think, of some hearings that were held here, and the situation that has developed. This will put the U.S. authorities even further out front of the banking authorities in other countries in terms of the information they collect on international operations of banks that they supervise, so that we are in fact increasing our regulation of our domestic banks in the international markets.

Foreign banking assets at the end of 1976 were $76 billion. I believe that is the figure you cited to us.

Mr. De Luca. That was a peak at the end of 1976, but it had seasonal reasons for it to be so high.

Mr. St Germain. If you will allow me to proceed, they are now $66 billion, which I think is what you were about to point out.

Does this not illustrate the volatility of the operations of these banks in these countries; in other words, a flow of funds in and out of the United States, and doesn't this point up the necessity for direct Federal Reserve monetary control, this volatility that you yourself began to mention?

Mr. DE LUCA. In my view, sir, there is no such great volatility because it is difficult for bank assets in general to be subject to seasonal factors, especially in all sectors of banking; and this applies to U.S. banks as well. The end of the year is a particular period and assets do go up substantially. I personally would not see any special indication of volatility in this fluctuation of figures that we have just been talking about to justify this Federal regulation.

Mr. ST GERMAIN. On pages 3 and 4 of your statement, you argue that the present regulation did not arise from complaints of insured domestic banks, but rather from a desire on the part of the Federal Reserve to federalize banking regulations and extend their jurisdiction.

I don't know that that is exactly accurate. The first legislation to provide Federal regulation of foreign banks was introduced by Senator Javits and the former chairman of the full Committee on Banking, Wright Patman, in 1967, and this occurred after the failure of the Intrabank in Lebanon which has been referred to in our hearings today, and the closing of its New York branch, with the resultant loss to depositors.

Congressman Patman reintroduced his legislation in 1973 before the Federal Reserve bill was introduced and it was subsequently modified and introduced by former Congressman Rees of California. Moreover, I submit that the successful passage of this legislation by the House last year reflected the fact that the Congress felt that there was a necessity for this legislation.

Many of us would state unequivocally that we have—through our own efforts in the FINE Study and through discussions with U.S. banks and foreign banks overseas—made a clear case for the legislation and that as a result of that I say to you on what grounds do you base your statement, ignoring the role of the Congress in both developing the present legislation and the passing the last year?

Mr. DE LUCA. Mr. Chairman, I am not sure I understand exactly what the question is.

Mr. ST GERMAIN. The question is: You stated that the legislation before us did not arise from complaints of insured domestic banks, but merely as a result or desire of the Fed to federalize bank regulation and extend their jurisdiction.

I think that there are reasons over and beyond that, as I have just cited, the fact that the original legislation came not from the Fed but from Senator Javits and Mr. Patman and reintroduced by Chairman Patman, reintroduced by Mr. Rees from California, and then cosponsored by many Members in the last Congress as well on this bill, and the passage of same.

So I don't think you can say it is all the Fed. We have studied this and we have come to conclusions.

Mr. DE LUCA. We think there is a certain logic to what we say and actually also what you brought out as to our arguing as opponents of this. We must accept whatever decision would be made on the subject.

Mr. ST GERMAIN. Mr. Wylie?

Mr. WYLIE. Thank you, Mr. Chairman.

I am not intending to be argumentative here; that is not my purpose at all, rather to develop a sort of a rapport and understanding maybe between some of us on this subcommittee and the panel; but I would like to go back to point one in followup to what the chairman has just stated and observed, and that is that, first of all, I hope you understand our problem.

The question has been asked several times and I put it a little earlier to one of the other panel members. The thought was followed up by Robert Palmer, vice president of Bankers' Association for Foreign Trade. It is not just a feeling of our central bank or of Dr. Burns that the Fed would like to expand its own authority over foreign banks operating in this country just to be doing so. But, why shouldn't foreign banks operating in the United States—and I will ask the question of you again—be treated the same as domestic banks?

Mr. DE LUCA. Well, first of all, I want to say that we are all for equal treatment and we do not object at all to equal treatment and to the principle that foreign banks in the United States should be treated as American banks are treated in the United States.

Mr. WYLIE. That is the purpose of this legislation?

Mr. DE LUCA. Yes, but there is a certain diversity because it is difficult to apply equal treatment to two groups of entities that don't really compare.

Now, the whole set of Federal legislation that concerns U.S. banks and would be applied by this bill to foreign banks deals primarily with depository institutions engaged in retail banking in the United States. As far as the activity of the foreign banks in the United States is concerned, when the foreign banks decide to go into a retail full-service activity, what they do is to incorporate a subsidiary and the subsidiary is for all intents and purposes an American bank that is regulated by the Bank Holding Company Act and by the FDIC Act. It must carry FDIC insurance. The agencies, on the other hand, are nondepository institutions and to apply a set of rules that were designed for depository institutions to nondepository institutions may create considerable discrimination; and branches, if we go to the other section of the activity of foreign banks, do take deposits but not small retail deposits from the general public. They are wholesalers and so again it is a different kind of activity, in our view.

Mr. WYLIE. If this law then only applied to retail operations, you would have no objection to it, if we could define what a retail operation is?

Mr. DE LUCA. It would be difficult to define what retail operations mean, but, of course, if the whole legislation were limited to retail operations, it would be a great help.

Mr. WYLIE. But you are still not saying that you would think that would be all right?

Mr. DE LUCA. Well, sir, I would have to digest the idea.

Mr. WYLIE. Thank you. The reason for our difficulty in arriving at something here, I guess, is because of statements such as the one Mr. Palmer has made, the inconsistency with what you are saying, in that he says on page 3 of his statement:

Consistent with the principle of equal national treatment, we urge that the operations of foreign banks in this country be subject by law and practice to the same regulations regarding permissible activities as are American banks.

That statement is from a representative of insured domestic banks; that is not something we dreamed up here on this subcommittee or that Mr. Burns dreamed up.

Mr. DE LUCA. Right, sir.

Mr. WYLIE. So when Mr. Palmer makes that statement and when somebody from a television station puts the tube in my mouth and flashes the light on me and says, "Why shouldn't foreign banks operating in the United States be treated the same as domestic banks?", you understand the difficulty that I have as a U.S Representative?

Mr. DE LUCA. Yes, sir.

STATEMENT OF RUDOLPH KUCHLER, SENIOR VICE PRESIDENT, UNION BANK OF SWITZERLAND

Mr. KUCHLER. Sir, I would like to say in this context that I think we have a clear discepancy here and the bill would in fact create unequal treatment under the dual banking system.

American Banks have the choice to have either a State charter or a Federal charter, and the bill would take away that choice from the foreign banks and in that sense it is not equal.

Mr. WYLIE. You could still have the choice but you just couldn't branch across State lines, and a domestic bank cannot do that either. You would still have the choice under our bill. I think what you are saying is that you wouldn't have the choice to——

Mr. KUCHLER. I am referring to mandatory membership in the Federal Reserve bank.

Mr. WYLIE. You don't think that the foreign banks should be required to join the Federal Reserve then?

Mr. KUCHLER. I am just pointing this out as one of the discepancies when we talk about equal treatment.

Mr. WYLIE. Mr. Palmer says that is unequal because Reserve requirements are also important with respect to competitive equity. The cost considerations of Reserve requirements to us are crucial and important in the highly competitive market of wholesale banking, and our foreign competitors doen't have to have these same Reserve requirements.

So he says that is unequal the other way.

Mr. KUCHLER. But the American banks are not compelled to have mandatory membership.

Mr. WYLIE. If they are State-chartered?

Mr. KUCHLER. That is right, yes.

Mr. WYLIE. Maybe we could provide something for State chartering but just that foreign bank which is State-chartered and, of course, you would have to be State-chartered now in order to branch interstate.

Mr. KUCHLER. The foreign bank subsidiary which is State-chartered couldn't branch interstate but it wouldn't be subject to the Reserve requirements. I should add also that we are subject to both State and voluntary Federal Reserve requirements already, as is known, and therefore it is not entirely correct to say that the Americans are at a competitive disadvantage in this regard.

Mr. WYLIE. You disagree with Mr. Palmer then?

Mr. KUCHLER. Yes.

Mr. DE LUCA. May I add only one point?

I want to say that Mr. Palmer did say that he was not representing a monolithic consensus of opinion and there was some disagreement within his own group. This is a point which I wanted to bring up.

Mr. ST GERMAIN. Of course, we appreciate that fact and I am sure you appreciate that fact, that if the only legislation that were ever adopted were that represented by a monolith, we could end our sessions after about 6 weeks here in Congress, rather than going 12 months.

Mr. DE LUCA. Yes, sir.

Mr. ST GERMAIN. That is why we are here, to make a judgment factor as between competing parties.

Mr. De Luca, in the statement, your previous statement, you referred to grandfathering and that it should be the date of the passage of the bill or the date it goes to the floor for enactment. I forget. That was in your summary.

Then I looked at your longer statement on page B-10. You say,

> If the rationale for the grandfather date is a reasonable date of notice of impending legislative change, we cannot see the justification for two different dates in the same bill.

You are asking now, I guess it is, for a definition of what is an impending legislative change. We passed the bill in the House last year. The reason it didn't go through the Senate as well was because of the lateness of the hour in the Congress and a national campaign for the Presidency; but this bill has been introduced now and has been advocated for quite a period of time; so I am wondering who feels that the notice of impending change has been around for quite a period of time?

Mr. DE LUCA. Well, Mr. Chairman, the point is that the legislation was not enacted last year and as a matter of fact since 1974 I think there has been some rumor of legislation being introduced, et cetera.

The point is, and we submit respectfully to you the case, that here we have big international financial institutions that have some plans and these plans have been probably developed 2 or 3 years in advance and it would have been extremely hard for everybody concerned to just suspend application of these plans in the event that Congress would have passed the legislation; so we submit to you the idea that perhaps it would be probably unfair if the legislation is enacted to grandfather an institution from the enactment date, or, at least from the date the bill is reported to the floor.

Mr. ST GERMAIN. Mr. De Luca, you have to understand the way we think also. We feel, or many of us feel, and have felt for a period of time, that notice has been served of impending legislation.

One of our big questions right now is the question of deregulation of natural gas—will it or will it not be deregulated? If you study the stock market, not that I spend that much time at it, but in this particular area that has been impending for quite a period of time, the advocates of deregulation have been working very, very diligently for a long period of time. The Federal Power Commission came out in favor of this a few years ago and as a result thereof you think your banks made plans. You ought to see what the stockholders, major stockholders in this country, investors, have been going through recognizing there was impending change, you see.

So those are the facts of life for legislation, at least here, that there is an impending situation and we just have to make adjustments to when it is impending.

Gentlemen, do the banking authorities of any of the countries whose banks you represent examine your offices here in the United States?

Mr. DE LUCA. Pardon?

Mr. ST GERMAIN. Do the banking authorities of Italy examine your banking offices here in the United States? Do they physically come here to examine them?

Mr. DE LUCA. They did. They did at the end of last year, by special arrangement based on reciprocity with the New York State Banking Department. The authorities in my country regularly allowed examiners from New York, examiners in Italy, to get together with central bank examiners and reciprocity was granted in the United States.

Mr. ST GERMAIN. Had there been a limitation on examining your offices here by the State of New York in the past?

Mr. DE LUCA. I don't think the question ever arose.

Mr. ST GERMAIN. So there has been one examination last year?

Mr. DE LUCA. That would be one examination last year and it is my understanding that there will be regular examinations carried on every year.

Mr. ST GERMAIN. Mr. Ichikawa?

Mr. ICHIKAWA. Yes, sir, we have the same sort of examinations by Japanese banking authorities. Also we have restrictions so far as branch and agencies are concerned under the Japanese banking authorities' regulations.

Mr. KUCHLER. Mr. Chairman, there are no restrictions taking place by Swiss regulatory bodies in this country respecting this sovereignty.

Mr. ST GERMAIN. What was that?

Mr. KUCHLER. Respecting the sovereignty.

Mr. ST GERMAIN. Have your regulatory authorities asked to inspect your offices here?

Mr. KUCHLER. Nobody has asked, and I don't think the topic ever came up.

Mr. ST GERMAIN. You don't think we would refuse you that examination, do you?

Mr. KUCHLER. No, I don't think you would refuse it, but I think the difference in the laws between Switzerland and the United States will not on the other side make it possible for you to inspect branches in Switzerland.

Mr. ST GERMAIN. We are aware of the fact that we cannot go into Switzerland and inspect. We are well aware. That has come through to us loud and clear; but I would submit if the Swiss authorities wanted to examine the offices of the Swiss banks here, I think I am on safe ground in saying they would be welcomed with open arms.

Mr. KUCHLER. I understand that.

Mr. ST GERMAIN. And we won't even require reciprocity. We would just ask that you dwell upon it. Do your regulatory authorities require that you file assets and liabilities of your U.S. offices with your regulatory authorities at home?

Mr. DE LUCA. Yes.

Mr. ST GERMAIN. Mr. Ichikawa says yes.

Mr. Kuchler?

Mr. KUCHLER. Yes.

Mr. ST GERMAIN. Do the home offices of the banks you represent require that you send duplicates of loan information to the parent bank? Mr. De Luca?

Mr. DE LUCA. Yes.

Mr. ST GERMAIN. Mr. Ichikawa and Mr. Kuchler, do the home offices of your banks that are located here that have subsidiaries or branches, or what have you, require that you send duplicates of loan information to the parent bank?

Mr. KUCHLER. Yes.

Mr. ICHIKAWA. My anwer is yes.

Mr. ST GERMAIN. Do the home offices of banks you represent establish loan limits, limits on foreign exchange exposure, et cetera, and to what degree is policy set by the home office for U.S. agencies and branches? That is a twofold question.

Let's take the first part first: Do the home offices of banks you represent establish loan limits, limits on foreign exchange exposure, et cetera?

Mr. DE LUCA. Yes.

Mr. ICHIKAWA. Yes, we do.

Mr. ST GERMAIN. Mr. Kuchler?

Mr. KUCHLER. Yes.

Mr. ST GERMAIN. To what degree is policy set by the home office for your U.S. agencies and branches in this country?

Mr. DE LUCA. Expansion policy and loan policy, Mr. Chairman?

Mr. ST GERMAIN. Yes.

Mr. DE LUCA. The policy is set according to some market researches that we make here according to some development plans that we prepare here. Then we send the policy proposal to the home office. There is a discussion in which we take part. We state our reasons why we would like the policy to be set in a certain way rather than another way and, finally, a decision is made.

Mr. ST GERMAIN. But the final determination is made by your parent?

Mr. DE LUCA. By both, after having heard also my colleagues' opinion on the matters.

Mr. ICHIKAWA. In the case of Japanese banks, including our bank, policies for loans, issuance of letters of credit, and the budgets are approved by the home office.

Mr. KUCHLER. In our case it is similar to what Mr. De Luca stated.

Mr. DE LUCA. I would like to point out that naturally, as far as the operations are concerned, they, on the other hand, are carried on by management here, according to American regulations and usages.

Mr. St Germain. Mr. Annunzio?

Mr. Annunzio. Thank you, Mr. Chairman.

I note in your statement, Mr. De Luca, that you are chairman of the Institute of Foreign Bankers and also executive vice president of Banca di Roma, so today you are appearing in the capacity as chairman of the Institute of Foreign Bankers and also in both capacities you are wearing two hats?

Mr. De Luca. No, Mr. Annunzio, I am here appearing as chairman of the Institute of Foreign Bankers. I specified that my position in my bank for purposes of identification.

Mr. Annunzio. I wanted to make that clear for the record.

The next question then: As the chairman of the Institute of Foreign Bankers, are there any provisions of H.R. 7325 which the foreign banks welcome? Is there anything in this bill that you like?

Mr. De Luca. Well, Mr. Annunzio, section 3, for instance, would be helpful.

Mr. Annunzio. Well, we are making some progress.

Mr. De Luca. We feel at this point in time, Mr. Annunzio, we are competently and very efficiently regulated, and we are very much afraid that the result might be going on the overregulation. That is our feeling in all this. We don't want to be antagonistic; we would like to be as constructive as possible and if we have ever given the impresssion that we are being antagonistic, we apologize for it. We are all for equal treatment but we do feel that there are a few points that perhaps have not been known enough.

For instance, that foreign banks do have reserves, that the foreign subsidiaries are already thoroughly federally regulated, that both the New York and the Chicago legislation put some rules also for the protection of depositors, the famous 5-percent rules.

There are other rules in these State regulations such as 108-percent eligible assets kept at all times against specified liabilities.

What we want to really bring to light is the fact that we are being fully regulated now.

Mr. Annunzio. Mr. De Luca, in the U.S., banks are a highly regulated industry, and they must be. They are quasipublic bodies. We have some bankers in the United States who feel they own the banks and usually it is those bankers who feel that way who are the first to get into trouble.

But take the Banca di Roma, you are located on the main floor. Then you have an upstairs; is that right?

Mr. De Luca. In Chicago?

Mr. Annunzio. Yes, sir.

Mr. De Luca. Correct, yes.

Mr. Annunzio. There are foreign banks that do not have a main floor, first floor. I put them in the category of commercial banks where they deal only in $100,000, $500,000, million dollar transactions and deposits, but in the Banco di Roma in Chicago on the main floor—and I have been there several times to watch the operation—there are hundreds of people literally, especially in the lunch hour, that walk in, make deposits, write checks; you do business just like any American institution? They are consumers. They are people.

Mr. De Luca. We are an American insitution in Chicago because we are an Illinois State-chartered bank.

Mr. Annunzio. You are an American institution, but are you insured?

Mr. De Luca. Yes, we are, sir. We carry FDIC insurance.

Mr. Annunzio. You have FDIC insurance?

Mr. De Luca. Yes, sir.

Mr. Annunzio. Then you should not object to that section?

Mr. De Luca. Well, as far as the Chicago subsidiary is concerned; but now, as I said, I am appearing here not on behalf of the bank but on behalf of the 142 banks coming from 35 different nations, including branches and agencies which, unlike subsidiaries, are affected by the bill.

Mr. Annunzio. I am only interested in Chicago. I am a Congressman from Chicago on the House Banking, Finance and Urban Affairs Committee. Mr. Hyde is also from the Chicago area, from Illinois, who is a member of this committee. We have constituents who go to Banco di Roma; they put their money in your bank. I know hundreds of them. If you know anything about Chicago, you know that I am telling it as it is. I do know who these people are; and if something went wrong with your bank and you didn't have FDIC insurance, the first guy they would look for is Frank Annunzio.

Mr. De Luca. Mr. Annunzio, in Chicago we have a fine board of directors, out of which there are 11 Americans, Illinois residents, and only three Italians, the president of the bank, myself, and the president of the bank in Rome.

Mr. Annunzio. Dr. Rettallata, chairman of the board, is a former president of the Illinois Institute of Technology. He was on the faculty of Massachusetts Institute. I am only talking here about insurance now and the people who live in my district who come to your bank and in good faith put their money in your bank; I just want to be sure they are insured.

Mr. De Luca. They are insured, sir.

Mr. St Germain. Would you yield?

Mr. Annunzio. Yes.

Mr. St Germain. Do you have any Frenchmen on that board of directors in Chicago?

Mr. Annunzio. I can testify to the fact that they have every nationality represented. The Italians are magnanimous; they are universal.

STATEMENT OF STEUART PITTMAN, COUNSEL, INSTITUTE OF FOREIGN BANKERS

Mr. Pittman. You have made a point that is vitally important to key provisions of the bill. It seems to me in these hearings as I have observed them it has been generally missed.

The Banco di Roma situation in Chicago illustrates the point. They are insured because existing law requires them to be insured by FDIC. Because they have incorporated, they are subject to the Bank Holding Company Act and that has a provision that requires membership in FDIC.

It is impractical for foreign banks to engage in retail banking unless they incorporate and unless they subject themselves to the Bank Holding Company Act and are thereby subjected to mandatory membership in FDIC.

This bill won't change a thing with respect to those kinds of banks.

Mr. ANNUNZIO. There was one other thing that I am interested in, Mr. De Luca. Is there any provision of H.R. 7325 that violates any treaties between the United States and Italy?

Mr. DE LUCA. Well, I am not an expert on this subject, so I would not say whether there is actually one, but we did say in our statement that it was important to take into consideration that there are many such treaties between the United States and several countries and that perhaps some other provisions of this bill might be in violation of some of these treaties; but specifically I cannot say, also because I am not an expert in this field, whether or not there is such a violation.

Mr. ANNUNZIO. I have one last question: Let's take the example of the grandfathering in your statement. You have a branch in Chicago, then you have another one in New York?

Mr. DE LUCA. Yes, sir.

Mr. ANNUNZIO. Do you have any on the west coast?

Mr. DE LUCA. We have an agency in San Francisco.

Mr. ANNUNZIO. In San Francisco. You have three agencies in the United States?

Mr. DE LUCA. Three offices in the United States.

Mr. ANNUNZIO. You have established a subsidiary in Chicago operating under Illinois law?

Mr. DE LUCA. Yes.

Mr. ST GERMAIN. And you have a branch in New York and an agency in San Francisco?

Mr. DE LUCA. Yes.

Mr. ST GERMAIN. When did you establish a branch in New York?

Mr. DE LUCA. 1974.

Mr. ST GERMAIN. Therefore you would be grandfathered in?

Mr. DE LUCA. We would.

Mr. ST GERMAIN. And there is no problem with the agencies?

Mr. DE LUCA. The agency in San Francisco was established in 1971.

Mr. ANNUNZIO. It is the organization you represent today?

Mr. DE LUCA. There are some banks that have established some facilities I think in 1975 or 1976 or even 1977, and updated grandfathering is needed for the protection of those. They are banks coming from various countries.

Mr. ANNUNZIO. To give you a better understanding, since the legislation we last passed, in my own city of Chicago we have eight more banks. I was just trying to get your explanation, your thinking on this grandfathering. You said something about being grandfathered the day we passed the bill.

Mr. DE LUCA. We believe that is a fair date of grandfathering, when the bill is enacted. Alternatively, I suggested if this is not possible, the grandfather date might be put on the day when the bill reaches the House floor. These were the suggestions we made.

Mr. PITTMAN. On the grandfathering point, there is a rather special problem here. I speak as one of the many lawyers who has been advising foreign banks about expansion in the United States and, therefore, have been looking at the legislative process.

Mr. ANNUNZIO. Are you a member of the American Bar Association?

Mr. PITTMAN. Yes.

Mr. ANNUNZIO. Don't brag about it when I am around.

Mr. PITTMAN. The point I want to make is that the Senate also is participating in the legislative process and held hearings over there, as you know. Senator McIntyre took the perhaps unusual step of putting out a seven-point kind of trial balloon of ideas he had on this legislation which would have pretty well taken out of the bill any restrictions on interstate branching. He also expressed such views during those hearings, so it left the advisers of foreign banks in the position where they are saying you really can't make a decision on whether legislation is likely or not likely at this point in time and you had better continue routine business and planning without attempting to speculate on the unknown.

Mr. ST GERMAIN. By the same token, they are and have been on notice that legislation is under serious consideration and that legislation passed the House last year; with all due deference to my respective counterpart in the Senate, this is a two-branch Congress, and I don't think that the views on this side have been kept hidden or secret. They have been very open, so that you have notice from two sides.

Mr. PITTMAN. We appreciate that and that is the point I am trying to make; it does take two branches to make law.

Mr. ANNUNZIO. Mr. De Luca, I am trying to develop something for the record so that the American people can have a much better understanding of foreign banks in the United States. I would like for you, as an official, not only as a member of the Bank of Rome, but as a member of the institution, to answer these questions.

I want to show that it is not a one-way street. You don't set up the branches to make all the money, and you are not helping yourself, or you are not helping America, or the community, or Americans in general.

There is a large part of the business of the Bank of Rome in this country. Does it encourage trade between the United States and Italy?

Mr. DE LUCA. Yes.

Mr. ANNUNZIO. Does your presence here, and in Chicago in particular, assist in encouraging mutually beneficial trade relations between the two countries because of their ties with companies in Italy?

Mr. DE LUCA. Yes.

Mr. ANNUNZIO. Do you provide a valuable service in helping U.S. companies export to Italy?

Mr. DE LUCA. We do.

Mr. ANNUNZIO. Do you help Italian companies who are exporting to the United States?

Mr. DE LUCA. Yes, sir, we do.

Mr. ANNUNZIO. Is this kind of activity a very essential ingredient? Do you think this is an essential ingredient in fostering friendship and political alliances all of us depend upon so much in the free world?

Mr. DE LUCA. I think it is a very important ingredient.

Mr. ANNUNZIO. And that, I would say, is applicable to the gentleman from Japan and Mr. Kuchler?

Mr. ICHIKAWA. Yes.

Mr. KUCHLER. Yes.

Mr. ANNUNZIO. Are you getting along with the communist party over in Italy?

Mr. DE LUCA. I am a banker and am not in politics.

Mr. ANNUNZIO. Bankers are not in politics. You remain free. You are independent like our Federal Reserve Board is here. We have no politicians on that Board.

I have no further questions but I want to say to the gentleman who has a bank in Chicago, I am happy to have the benefit of your testimony.

Mr. Hyde can speak for himself, but we are always happy to have businessmen from our State before this panel and we appreciate the work being done in our community, the jobs, the industry and keeping the community together.

Mr. ST GERMAIN. I state to my colleague I am troubled here. A few moments ago he said to Mr. Pittman if he was a member of the ABA, he wasn't a friend of his. Is that it?

Mr. ANNUNZIO. No, I said I wouldn't brag about it. If you have trouble with me, wait until you get to the Senate.

Mr. ST GERMAIN. The reason I ask that question is, the gentleman from Chicago sounded to me like one of the finest members the ABA ever had. If I ever heard an example of what is zoned classically in the practice of law as leading questions, yi, yi, yi; he was terrific.

Mr. ANNUNZIO. My distinguished chairman also sits on another committee with me and I think he knows the reason I made that statement, because he got very upset one afternon when a representative of the ABA was here and said something to the effect that they were in convention on the west coast somewhere and they had had a resolution against a bill that both of us were deeply interested in. The ABA was against it.

Upon investigation, I find that certain lawyers were selling their letterheads to unscrupulous debt collectors and making a buck, but the ABA had to go on record against the debt collection bill because they didn't want these lawyers deprived of $30 a month. It is all right to break somebody's head, but don't take $30 away from a lawyer. That is the reason I keep referring to that. Every place I can I want to do the best I can to give them the best advertising I can.

Mr. ST GERMAIN. After that landslide victory we had on the floor last week, we will get back to foreign banking.

Mr. ANNUNZIO. We passed that bill by one vote, by the way.

When I say we passed the bill by one vote, you must remember there are 435 Members of Congress and I wouldn't accuse anybody of a conflict of interest, but there are at least 300 lawyers in the

Congress, so if you want to know why things are screwed up, that is the reason.

Mr. St Germain. Should I resign from the bar?

Mr. Annunzio. The people will wake up one of these days.

Mr. St Germain. On page 16 you refer to foreign bankers and commercial banking. You will note that foreign bankers' share of commercial banking deposits are still quite small. This, as a matter of fact, is true. However, the share is growing and the fact is that foreign banks now obtain 35 percent of their funds from U.S. corporations and other U.S. nonbanking sources and substantial additional funds from other U.S. banks. Equally important, foreign banks now account for approximately 14 percent of the commercial and industrial loans made in the United States, up from 10 percent 2 years ago.

Now, doesn't this increase in their share of U.S. deposits and loans justify the concern of some? Don't you feel there is reason for some concern about the existence of competitive advantages?

Mr. De Luca. Well, Mr. Chairman, we think in all this field of the loans we have, of course, benefited by coming to the United States, but we also have brought something into it, and especially from the point of view of competition with big city banks, and I do not personally see why this should be a matter of concern. The fact that foreign banks——

Mr. St Germain. If I were in your shoes, I wouldn't either.

Mr. De Luca. After all, if this bill were passed, I don't see how those loans, those 14 percent of total U.S. loans that you mentioned, would be affected at any rate.

Mr. St Germain. It is a question of judgment.

Mr. De Luca, or anyone on the panel—as a matter of fact, I would like to have answers from all three—during the last Congress when we held hearings on this legislation and again in this set of hearings, we were hearing about retaliation. We heard one witness say last week that either he or the group he represented had a feeling that there would be retaliation by the same token as was quoted by Mr. Palmer here earlier this morning. Dr. Jahn made it very clear in the Senate hearings in 1976 that he—in fact he interjected during the questioning to state this definitely was not the case.

I am wondering whether or not you people also have concern about the fact that there might be retaliation?

Mr. De Luca. Well, Mr. Chairman, first of all, we don't really like this word "retaliation."

Mr. St Germain. I agree with you.

Mr. De Luca. There is one point. International banking has been growing in these last 10 years very much and international banks have been cooperating very well. I think the panel of the EEC delegation this morning indicated how international banks at large had been a major factor in solving problems of redistribution of petro dollars and such things.

Now, this cooperation came about because international banks are seeing more of each other; they are competing more; they are cooperating more and the United States has always been the most open society. They have been leading the way to further cooperation.

Now, a legislation that should in some way limit or constrain the activity of the foreign banks in the United States would change the climate, would be interpreted, perhaps—and this is a two-way street—it would change the climate and I think that is what one of the witnesses in the previous hearing said.

It is the climate of international banking which would have a setback. That is what this would mean. Does this answer your question?

Mr. ST GERMAIN. Mr. Ichikawa.

Mr. ICHIKAWA. I have the same opinion.

Mr. KUCHLER. I would like to add there can be a problem where you have a country like Switzerland in whose banking laws it says that the granting of reciprociy is the condition for a foreign bank to establish itself. So automatically, by not being able to fully expand within the same framework of laws as the American banks do in this country, that could create questions and complications.

I am glad I have an opportunity to answer to a question which I think remained unanswered this morning about Switzerland and restrictions on foreign banks coming to Switzerland. The question was put by Representative Wylie and I can say the only restriction that we have is that granting of reciprocity. There are no other restrictions on foreign banks' admission into Switzerland. They can do the same business Swiss banks can do.

Mr. ST GERMAIN. Except you are no longer allowing any new foreign banks to enter and haven't since the late sixties.

Mr. KUCHLER. I beg your pardon?

Mr. ST GERMAIN. Is that your policy, to avoid overbanking since the late sixties?

Mr. KUCHLER. Yes.

Mr. ST GERMAIN. How many new banks have been established in Switzerland in the past 7 years?

Mr. KUCHLER. I don't know the exact figure, but I don't think it is more than a dozen. But Switzerland is still open to foreign banks for branching. This is a fact.

Mr. ST GERMAIN. To establish a new foreign bank in Switzerland?

Mr. KUCHLER. Absolutely, sir.

Mr. ST GERMAIN. When we met with the Central Bank in Switzerland, that is not the impression we received.

Mr. KUCHLER. We have tightened certain requirements on foreign banks entering—stricter supervision, for instance—but there is no restriction other than what Swiss banks are subject to.

Mr. ST GERMAIN. There is no limitation on Swiss deposits?

Mr. KUCHLER. Yes.

Mr. ST GERMAIN. When did that go into effect?

Mr. KUCHLER. That was always so.

Mr. ST GERMAIN. Do we limit American deposits in Swiss banks here in the United States?

Mr. KUCHLER. I am sorry, I didn't hear that.

Mr. ST GERMAIN. Does the United States limit, or do any of the States limit U.S. deposits in Swiss banks that are established here?

Mr. KUCHLER. No, but we have the problem if we want to expand into States in the United States that at this point do not allow foreign banks to come in, a bank of that State could not essentially establish itself in Switzerland because there is no full reciprocity granted.

That is an area that can create conflicts and I mention this in connection with the question that you asked about retaliation. We do not like the word "retaliation" either.

Mr. St Germain. You like the word "reciprocity" but, as I said to your Central Bank when they used the word "reciprocity," my comment was that it all depends on which dictionary you use to define "reciprocity."

As I say, you limit Swiss deposits in foreign banks in Switzerland. There is a limitation. Yes, there is. Someone behind you nodded.

Mr. Kuchler. There is no limitation on accepting deposits. There are negative interest requirements on deposits, but that is something totally different. I think that has been confused.

Mr. De Luca. Mr. Chairman, on the whole I would like to point out, if I may, we do not urge reciprocity, but we do urge equal treatment.

Mr. Kuchler. The negative interest hasn't too much to do with this, but that is an interest requirement put in force by the Swiss National Bank for monetary reasons. All the banks are subject to it, whether foreign or Swiss.

Mr. St Germain. It is a sort of limitation, is it not?

Mr. Kuchler. You can put your deposit there. If it is over 100,000 francs, you have to be prepared to pay 40-percent interest per year.

Mr. St Germain. You may say you don't prohibit deposits, but that is very restrictive, isn't it?

Mr. Kuchler. Those restrictions apply to the Swiss banks the same as the foreign banks.

Mr. St Germain. However, do we have any restrictions in this country, or negative interest rates in this country on American deposits in Swiss banks established here?

Mr. Kuchler. No, I am very pleased that you do not have.

Mr. St Germain. Do you call that reciprocity?

Mr. Kuchler. I was trying to explain it is imposed for monetary reasons. We could not stand the inflow of deposits into Switzerland.

Mr. St Germain. That is why I say it depends on what dictionary you use.

Gentlemen, we may have a few more questions to submit to you in writing. We want to thank you for a very stimulating appearance. We are happy we were able to get to you this morning. I imagine none of you are catching the Concorde this afternoon, but if you have nothing else to do at this time, why don't you spend some money here and help out our economy?

Gentlemen, we once again want to thank you very kindly.

The subcommittee will be in recess until 1:30, at which time we will hear from Chairman LeMaistre of the FDIC and Mr. Bloom of the Comptroller's Office.

[Whereupon, at 12:20 p.m., the subcommittee was recessed, to reconvene at 1:30 p.m., the same day.]

AFTERNOON SESSION

Mr. St Germain. The subcommittee will come to order. Our witnesses this afternoon, a panel of the Honorable George LeMaistre, Chairman of the Federal Deposit Insurance Corporation, and the Honorable Robert Bloom, First Deputy for Policy, Office of the Comptroller of the Currency.

We will place in the record immediately following the testimony and the questioning of our two witnesses on this last panel the statement submitted by the Honorable George Busbee, Governor of the State of Georgia.

In view of the fact Governor Busbee, because of scheduling conflicts, could not be here, we have agreed to put his statement in the record in its entirety. Also, immediately following Governor Busbee's statement, we shall insert the statement received from Stroock & Stroock & Lavan, on behalf of Bank Hapoalim B.M. of Israel.

Chairman LeMaistre, it is nice to welcome you here. I believe it is your first appearance before this subcommittee. We take this occasion to congratulate you and tell you how much we have enjoyed working with you over the years, and we look forward to working with you as Chairman of the FDIC.

We will put your entire statement in the record at this point and you may proceed to elaborate.

STATEMENT OF HON. GEORGE A. LeMAISTRE, CHAIRMAN, FEDERAL DEPOSIT INSURANCE CORPORATION

Chairman LeMaistre. Mr. Chairman, I welcome the opportunity to testify on the issues raised in H.R. 7325, the International Banking Act of 1977.

The efforts of this subcommittee and the chairman, as well as the efforts of the Committee on Banking, Finance and Urban Affairs in this area have, I think, been timely and appropriate in light of the rapidly growing presence of the operations of foreign banks in this country. As I understand it, the stated goals of H.R. 7325 are, first, to provide a system of Federal regulation of the domestic activities of foreign banks—thought to be necessary because of the role these institutions play in domestic financial markets, their impact on the domestic and foreign commerce of the United States, and the fact that most foreign banks who operate in this country operate in more than one State.

Second, the bill would subject foreign banks operating in the United States to national treatment. That is, where appropriate, foreign and domestic banks operating within the United States would be treated equally.

It seems to me that as a general principle, the goal of national treatment or nondiscrimination in the regulation of foreign enterprises operating in the United States is highly desirable and should be pursued provided that its implementation is feasible and that adherence to it would not interfere with some other important public policy objective.

Similarly, I agree with the notion that, consistent with our framework of bank supervision, U.S. operations of foreign banks ought to be subject to Federal regulation and supervision. In addition to the arguments that are based on fairness to domestic competitors, I think a strong case can be made for the proposition that the special characteristics of foreign branches and agencies give rise to a set of concerns which is peculiarly Federal in nature and particularly the province of the Federal Reserve System. For these reasons, I support the essential thrust of the legislation before this committee and, indeed, I strongly endorse many of its provisions, but at the same time I must say I would be less than candid if I didn't express some reservations about certain aspects of the bill as drafted and offer my own views as to some preferable policy choices. In some respects it seems to me that the bill itself deviates from the policy of nondiscrimination without an overriding reason for doing so and, if I may, I will outline the FDIC's views with respect to six of the major facets of this legislation.

The first one is with reference to section 4 of the bill which would provide a Federal option for domestic branches and agencies of foreign banks and would facilitate ownership by foreign banks of Edge Act corporations, and national banks. Consistent with the principle of nondiscrimination, those provisions would afford foreign institutions the benefits of choice that are implicit in our dual system of banking and I heartily endorse these changes.

The practical effect of section 5(a) of the bill is to restrict domestic subsidiaries and direct branches of a foreign bank to its home State. The thrust of these provisions is to apply the principle of national treatment, as embodied in the McFadden Act, to the U.S. branches of foreign banks. Absent some overriding public interest, notions of equity and symmetry would naturally lead one to adopt the course that is proposed in the bill, but in my judgment there is an overriding public interest which leads me to oppose the application of this principle of national treatment in this particular context because it is unlikely that a foreign bank will want to make its initial entry and single location of operations in the United States outside of New York, California or Illinois. The net effect of these provisions would severely restrict the ability of cities outside these States to develop as centers of international commerce.

As a practical matter, if interstate banking opportunities are foreclosed for foreign banks, other States would find it quite difficult to attract foreign banks and, hence, would not reap benefits stemming from the activities of these banks, benefits which might be significant for the local or regional economy. This, it seems to me, is neither fair nor desirable.

Section 8 of H.R. 7325 subjects foreign banks' domestic agencies, branches, commercial lending companies, and affiliates to the provisions of the Bank Holding Company Act of 1956 as amended in 1970 and would subject foreign banks operating in the United States to the thrust of the Glass-Steagall Act. Although the bill would grandfather indefinitely other nonbanking activities and securities activities which are not domestic, the bill would require divestiture of all domestic securities activities by foreign banks by December 31, 1985.

It seems to me it would be fairer and less disruptive to grandfather all the existing securities operations of foreign banks. To do so would minimize any likelihood of retaliation and eliminate the hardship of winding down operations on those institutions which heretofore have played the game according to the rules as they exist. Although this approach would be at odds with the concept of national treatment, the practical effect would be, I think minimal, given the limited scope of existing foreign bank securities operations.

The former chairmen, my predecessors, Frank Wille, and Bob Barnett, have previously indicated in statements to this committee that the FDIC has had serious reservations about the necessity and desirability of making deposit insurance coverage available for domestic branches of foreign banks and these reservations have arisen primarily from the concern that insufficient legal and regulatory controls could be placed on the operations which are not legally separate from the parent bank in the foreign country.

Notwithstanding these views, a number of interested parties, including the Federal Reserve System, have strongly argued that some form of deposit insurance coverage should be available to U.S. branches of foreign banks. The surety bond or pledge of assets method of providing protection similar to deposit insurance coverage, which is provided in the bill, attempts to respond to these views, but we believe that this facet of the bill is both onerous and impractical as drafted, and as an alternative to this approach the Corporation recommends that a modified version of the surety bond and pledge of assets approach, which is presently contained in section 6 of the bill, be combined with regular deposit insurance for such branches and be made available on an optional basis.

If foreign banks' domestic branches choose deposit insurance under a revised section 6, they would become subject to what I think is a less onerous, less burdensome surety bond and pledge of assets requirement which would be designed to minimize the risk to the fund without placing an undue burden on the bank.

If deposit insurance is made available to domestic branches of foreign banks on the basis we have suggested, we believe we would then find it necessary that the bill give the FDIC explicit authority to examine such branches, whether licensed federally or by the States, when necessary, in its judgment, to assess the potential exposure of the insurance fund arising from insuring the bank's domestic deposits or to determine whether the bank is complying with the pledge of assets and surety bond requirement imposed by the bill.

We would also recommend that such branches be subject to the revocation of their insured status under section 8(a) of our act. Additionally, the bill should provide that the FDIC be appointed receiver of the branch in the event of its closing and that all the FDIC's financial assistance and liquidation powers under the Federal Deposit Insurance Act apply to insured domestic branches of foreign banks.

Section 7(a) of the bill subjects all branches, agencies and commercial lending companies controlled by foreign banks whose worldwide assets exceed $1 billion to reserve requirements and deposit interest rate controls imposed by the Federal Reserve on member banks, as well as making possible the access by these institutions to many of the benefits of Federal Reserve membership.

For all practical purposes, the bill, though it expressly says that membership is not required, does in fact require Federal Reserve membership, even though it is not directly stated.

As I have said in other testimony particularly to the Senate Banking Committee this year, I do not believe that the issue of reserve requirements for nonmember institutions should be dealt with on a piecemeal basis. It seems to me instead that the relationship to the Federal Reserve System of all banking institutions, including foreign banks, which choose not to join the Federal Reserve System, should be studied in a systematic and unified fashion.

This approach is, of course, consistent with the principle of national treatment, or nondiscrimination and, conversely, to require what is in effect Federal Reserve membership for only those domestic affiliates of foreign banks having total assets of more than $1 billion, would represent a deviation from that principle.

I recognize full well that the principle of national treatment cannot be viewed as an absolute and, as I indicated at the outset, that concept should certainly give way before overriding public policy considerations which arise out of special circumstances. In this regard the Federal Reserve has argued rather strenuously that the operations of relatively large foreign banking institutions pose just such a case and this mandates a departure from the principle of national treatment.

Although I acknowledge the validity of the Federal Reserve's argument that operations of foreign banks do pose a special case which may give rise to unique problems for the central banker, I really am not yet persuaded by the evidence presented that these potential problems are yet of such magnitude as to pose any real risk to the stability of our economy.

At the same time, I must say I recognize fully that the idea of whether to depart from the principle of nondiscrimination on the matter of reserve requirements is a knotty issue and it is one upon which reasonable men can differ.

In addition to granting the Comptroller of the Currency regulatory authority over Federal branches, agencies and commercial lending companies, section 7 of the legislation would provide the Federal Reserve System parallel authority over all branches, agencies and commercial lending companies chartered under State law.

I support the extension of Federal regulatory authority over these institutions because it is consistent with the principles of a system of Federal regulation and national treatment and not because I see any dissatisfaction with the existing regulation by State authorities. Although I do not object strenuously to the proposed delegation of this authority to the Federal Reserve with respect to State-chartered foreign institutions, I would point out that absent the requirement of mandatory membership, these provisions are not consistent with the principle of national treatment in the State-chartered nonmember institutions that are now supervised by the FDIC.

As indicated earlier, it is our judgment that the existing pattern of Federal regulation should be continued unless there is some indication that it is inadequate. Based on the experience that we have gained from examining subsidiaries of foreign banks, we feel it would be useful for the FDIC to have a hand in the regulation of the domestic operations of foreign banks and that the Corporation can do the job adequately.

Thank you.

[The prepared statement of Chairman LeMaistre follows:[

Statement on

H. R. 7325, 95th Congress, a Bill "To provide for Federal regulation of participation by foreign banks in domestic and financial markets."

Presented to

Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
Committee on Banking, Finance and Urban Affairs
House of Representatives

by

George A. LeMaistre
Chairman, Federai Deposit Insurance Corporation

Mr. Chairman, I welcome the opportunity to testify on issues raised in H. R. 7325, the International Banking Act of 1977.

The efforts of the House Banking, Currency and Housing Committee and this Subcommittee in this area have been timely and appropriate in light of the rapidly growing presence of the operations of foreign banks in the United States. According to statistics provided by the Federal Reserve, from November 1972 to the end of 1976, the number of U. S. banking institutions owned by foreign banks increased from 104 to 202 and their total U. S. assets more than tripled from $24 billion to $76 billion. Since 1965, there has been almost a tenfold increase in their assets.

Foreign banks presently operate in the United States through agencies, direct branches, subsidiaries/securities affiliates and commercial lending companies. Currently, these foreign banking organizations are located in nine states plus Puerto Rico and the Virgin Islands. However, 92 percent of all foreign banking offices in the U. S. are concentrated in New York, California and Illinois.

In terms of both number of offices and amount of assets, agencies are the dominant form of foreign banking in the U. S. As of December 1976, 91 agencies with approximately $30 billion in assets were operating in New York, California, Georgia and Hawaii. Agencies operate under state licenses and are not permitted to hold deposits but their customers may maintain credit balances which are technically due to the account of the home office.

Direct branches are the most rapidly growing form of foreign banking in the United States. There were 70 branches with assets totalling $28 billion in New York, Illinois, Washington, Oregon, Massachusetts, Puerto Rico and the Virgin Islands. Branches are licensed under state law and are permitted to hold both foreign and domestic deposits. These deposits are currently not eligible for Federal deposit insurance.

Foreign banks owned 36 state-chartered subsidiaries in New York, California, Illinois and Puerto Rico, with assets of $16 billion. Such subsidiaries may become members of the Federal Reserve System. Five have chosen to do so. Also, foreign banks may apply for national charters for bank subsidiaries; however, the requirement that all national bank directors be U.S. citizens has made this unattractive. Bank subsidiaries of foreign banks are subject to the Bank Holding Company Act of 1956, and must maintain FDIC insurance coverage.

Five commercial lending corporations with $1.9 billion in assets were licensed to operate in New York. In addition to having a wide range of conventional banking powers, these entities may engage in some investment banking.

Finally, a total of 21 securities affiliates were licensed to operate in the U.S. as of 1975. These firms are engaged in underwriting and direct sale of securities, activities that are prohibited for domestic banks by the Glass-Steagall Act. Most of these affiliates are located in New York State.

If a foreign bank chooses to operate in this country through a domestically incorporated banking subsidiary, its operations here are generally subject to the same rules under the Bank Holding Company Act that govern the U. S. activities of domestic bank holding companies, with limited exceptions involving nonbanking activities permitted by Federal Reserve regulations issued under Section 4(c)(9) of that Act. However, to the extent that a foreign bank operates domestically through branches, agencies, or commercial lending companies, it is not subject to certain restrictions and requirements applicable to domestic banking organizations -- principally those which forbid operating deposit-taking offices in more than one state and operating affiliated companies engaged in a securities business.

The stated goals of this legislation are twofold: The first is to provide a system of federal regulation of the domestic activities of foreign banks because of the role these institutions play in domestic financial markets, their impact on the domestic and foreign commerce of the United States and because most foreign banks operate in more than one state. The second goal is national treatment of foreign banks. In other words, to the extent possible or appropriate, foreign and domestic banks operating within the United States should be treated equally.

It seems to me that as a general principle, the goal of "national treatment" or "nondiscrimination" in the regulation of foreign enterprises operating in the United States is highly desirable and should be pursued provided that its implementation is feasible and adherence to it would not interfere with some other important public policy objective. Although some have objected to the national treatment approach on the grounds that it will prompt foreign countries to retaliate, I am persuaded by Governor Gardner's view, expressed when he was Deputy Secretary of the Treasury, that retaliation by foreign governments is not "... supported by the practical realities of the marketplace."

Similarly, I am in complete agreement with the notion that, consistent with our framework of bank supervision, U.S. operations of foreign banks should be subject to federal regulation and supervision. In addition to arguments based on fairness to domestic competitors, a strong case can be made for the proposition that the special characteristics of foreign branches and agencies give rise to a set of concerns which is peculiarly federal in nature and particularly the province of the Federal Reserve System.

For these reasons, I support the essential thrust of the legislation before the Committee and, indeed, strongly endorse many of its provisions. At the same time, I would be less than candid if I did not express reservations about certain aspects of the bill as drafted and state my own views as to preferable policy choices. In some respects, it seems to me that the bill itself deviates from the policy of nondiscrimination without an overriding reason for doing so. In the discussion which follows, I shall outline the FDIC's views with respect to six of the major facets of this legislation.

Provision of a Federal Chartering Option

Section 4 of the bill would provide a federal option for domestic branches and agencies of foreign banks by authorizing the Comptroller to approve their establishment in states where the foreign bank does not already operate a branch or agency under state law and where state law does not prohibit the establishment of a foreign branch or agency. These branches and agencies will be regulated and supervised like national banks to the extent appropriate. In addition, Section 2 of the bill would significantly liberalize requirements in the National Bank Act and the Edge Act restricting National Bank and Edge Act corporation directors to U. S. citizens. Consistent with the principle of nondiscrimination, these provisions would afford foreign institutions the benefits of choice implicit in our dual system. I heartily endorse these changes.

Prohibition on Interstate Banking Operations by Foreign Banks

Section 5(a) of the bill prohibits interstate branching by foreign banks unless national banks are accorded the same privilege. This subsection further provides that establishment of agency or commercial lending company operations outside the home state selected by a foreign bank requires the approval of a state in which it desires to operate.

Thus, while interstate operations are permitted to agencies and commercial lending companies, the practical effect of the provision is to restrict domestic subsidiaries and direct branches of foreign banks to only its "home state."

The thrust of these provisions is, of course, to apply the principle of national treatment, as embodied in the McFadden Act, to the U.S. branches of foreign banks. It is argued, and there is perhaps some validity to the argument, that foreign banks enjoy a competitive advantage in that they can conduct multi-state deposit banking operations. Certainly, whatever the impact on the ability of a foreign bank to compete, it should be acknowledged that foreign banks do enjoy a privilege that many U.S. banks covet dearly.

However, it should also be noted that foreign banks currently operate banking-type operations in only eleven U.S. states and territories while interstate operations of our large bank holding companies extend into almost every state. These interstate activities include consumer and sales finance, commercial lending, mortgage banking, selling and reinsuring credit related insurance, leasing, computer services and providing venture capital to business. U.S. banks may also establish Edge Act corporations, loan production offices and representative offices in states other than their home state.

Absent some overriding public interest, notions of equity and symmetry would lead one to adopt the course proposed in the bill. However, in my judgment there is an overriding public interest which leads me to strenuously oppose application of the principle of national treatment in this context.

Notwithstanding the provisions under Sections 2 and 4 which permit foreign banks to apply for a federal charter in any state which does not prohibit foreign banking under state statute, it is unlikely that a foreign bank will want to make its initial entry and single location of operations in the United States outside New York, California or Illinois. As a practical matter, if interstate banking opportunities are foreclosed for foreign banks, other states would find it difficult to attract foreign banks and, hence, would not reap benefits stemming from the activities of these banks -- benefits that may well accrue to the local economy.

One should not minimize the value of foreign banking growth to the banking community as a whole. In an interview published in the June 1977 issue of Euromoney, Paul Volcker, President of the Federal Reserve Bank of New York, stated that

> Bankers in general - those of the New York mentality anyway - hold that additional competition generates additional business. To the extent that it supports the growth of New York as an international banking centre it's going to be good for everybody. More of the world's business will be focused here, and the more effective and efficient this market is, we'll all be able to make some money out of it. Better here than elsewhere.

I see no reasons why other cities in other states should not enjoy the same potential benefits of expanded foreign banking activity. I feel strongly that a state should be permitted to invite a branch of a foreign bank into its banking communities if this is the only realistic way in which foreign bank entry is likely to take place.

Recent patterns of foreign banking expansion in the U. S. support the contention that regional financial centers may be hurt by the bill. Of the 202 foreign agencies, branches, subsidiaries, and commercial lending companies operating in the U. S. as of December 1976, only 16, or 8 percent, were located outside the money market centers of New York, Chicago, Los Angeles and San Francisco. These 16 offices are located in Massachusetts, the Virgin Islands, Puerto Rico, Georgia, Texas, Hawaii, Oregon and Washington. Thirteen of the sixteen offices located outside the four principal money market centers are direct branches of foreign banks. This suggests that branches are the major hope for increased foreign banking involvement outside these centers. Moreover, as indicated in the table, direct branches are the fastest growing organizational forms of foreign banking in the United States, both in number and total assets.

TABLE

Growth in Number of Offices and Size of Foreign Banking Operations in the United States

	December 1976		November 1972	
	Total Assets (billions)	Number	Total Assets (billions)	Number
All foreign institutions	$ 75.8	202	$ 24.3	104
Agencies	30.5	91	13.6	50
Branches	27.7	70	5.3	26
Subsidiaries	15.7	36	4.1	25
Commercial lending companies	1.9	5	1.3	3

Nine of the ten foreign banking organizations that do operate outside money market centers are part of foreign banking "families" that also have foreign banking offices in the States of New York, California and Illinois. This implies that the tendency is to geographically diversify foreign banking operations once banking operations have already been established in the principal centers. While this multi-state diversification is grandfathered under the proposed bill, the provisions of Section 5(a) that require a foreign bank to select a home office state would discourage similar diversification in the future.

Nonbanking Activities of Foreign Banks

Section 8 of H. R. 7325 subjects foreign banks' domestic agencies, branches, commercial lending companies and their affiliates to the provisions of the Bank Holding Company Act of 1956 as amended in 1970. Generally, nonbanking activities which were commenced or acquired prior to December 3, 1974 are grandfathered indefinitely. Those acquired after that date and which are prohibited for domestic-owned bank holding companies must be divested by December 31, 1985. Different rules apply, however, for the securities activities of foreign banks. Section 8 of the bill would require divestiture by December 31, 1985 of <u>all</u> securities activities whether commenced after the grandfather date or not. It would, however, permit foreign banks' securities affiliates to continue to engage in securities transactions for individuals and organizations outside U. S. jurisdiction.

When the bill was considered by the Committee last year, it was argued that the provisions applying to securities activities are both discriminatory and anticompetitive. It was felt that this provision is unfair to foreign banks, since large U.S. banks engage in substantial securities activities abroad. Moreover, it was feared that this legislation would prompt retaliation against those U.S. banks which do engage in extensive foreign securities operations. Also, it was argued that by lessening competition in the U.S., the cost of underwriting might be increased and the issuing of new securities made more difficult. Regional stock exchanges felt that they would suffer substantial revenue losses.

Although I understand fully the rationale of the bill as drafted, I believe that it would be fairer and less disruptive to grandfather all existing securities operations of foreign banks. To do so would minimize any likelihood of retaliation and would eliminate the hardship of winding down operations on those institutions which have played by the rules of the game to date. Although this approach would be at odds with the concept of national treatment, the practical effect would be minimal given the limited scope of existing foreign bank securities operations.

Accordingly, I would favor permanent grandfathering of all existing securities activities of foreign banks.

Deposit Insurance Coverage

As my predecessors Frank Wille and Robert Barnett have indicated in previous statements, the FDIC has had serious reservations about the necessity and desirability of making deposit insurance coverage available for domestic branches of foreign banks. These reservations arose from concern that insufficient legal and regulatory controls could be placed on operations which were not legally separate from their parent. At least five problems were noted:

1. Directors of the foreign bank are not usually subject to U.S. jurisdiction, and domestic branch personnel essential to explain certain transactions can be transferred beyond the reach of U.S. authorities. Also, essential records may be difficult to reach if they are kept at the head office or at branches in other countries.

2. The domestic branch may be subjected to requirements under foreign law or to political and economic decisions of a foreign government which conflict with domestic bank regulatory policies.

3. Administrative enforcement proceedings initiated by domestic regulatory authorities against domestic branch personnel may be frustrated or nullified as a result of lack of jurisdiction over the foreign bank's head office and head office personnel.

4. Many foreign banks are permitted under the law of their headquarter's country to engage in business activities abroad which would not be permitted to banks chartered in this country. Such foreign activities could give rise

to antitrust, conflict of interest, and other legal problems under U.S. law.

5. In the event of insolvency of a foreign bank, it is possible that:

-- assets could be easily and quickly shifted from the U.S. branch and out of U.S. jurisdiction, while deposits could be shifted to the U.S. branch;

-- legal obstacles and transactions involving other offices of the foreign bank might prevent FDIC from obtaining the usual subrogation of claims it normally gets from depositors in failed U.S. banks before making payment. Even if adequately subrogated, FDIC's aggregate claim in the failed bank's receivership estate might be jeopardized by foreign laws and procedures;

-- creditors with claims against other offices of the failed bank -- especially banks holding deposits of the U.S. branch -- could attempt offsets against assets in the U.S. or seek preference based on foreign law.

In addition to such concerns, it was stated that deposit insurance protection is largely unnecessary, insofar as foreign banks' domestic branches engage in "wholesale" international banking activities. Moreover, if foreign banks wish to expand their operations in this country into the "retail" banking business with the benefit of Federal deposit insurance, they presently have an option to do so under existing law through a domestically incorporated banking subsidiary in those states in which state law permits. Of course, in that event most of the problems outlined above are less important.

Notwithstanding these views, a number of interested parties, including the Federal Reserve System, have strongly argued that some form of deposit insurance coverage should be available to the U.S. branches of foreign banks. The surety bond or pledge of assets method of providing protection similar to deposit insurance coverage in Section 6(a) of H.R. 7325 attempts to respond to these views. In our opinion this solution is less than satisfactory for a number of reasons.

We could mitigate some of the risks listed above by imposing various conditions and restrictions upon the foreign bank under FDIC regulations issued pursuant to the surety bond and pledge of assets provision of the bill. The value of such requirements, of course, depends ultimately upon the ability to physically enforce such requirements by exercising quasi in rem jurisdiction over the foreign bank's domestic assets and/or obligors. Short of a dollar-for-dollar pledge of assets with the FDIC to back up 100 percent of the branch's domestic "insured" deposits, efforts to impose requirements designed to insure the presence in the United States of adequate assets of the foreign bank to cover its domestic liabilities could turn out to be of little real value.

Requiring the domestic branch to maintain a substantial portion of its assets in the custody of a third party and in the form of obligations of domestic obligors or requiring a surety bond to guarantee the presence in the U.S. of a stipulated amount of the foreign bank's assets could prove so onerous or costly for the foreign bank to comply with as to make such restrictions tantamount to a bar against the foreign bank's accepting domestic deposits through a U.S. branch. To the extent that nonmoney market cities have found foreign branches to be the major vehicle of foreign banking entry, the ability of these cities to attract foreign banks into their banking communities in the future could be stifled.

We believe that Section 6 of the bill as drafted is both onerous and impractical. However, in response to the strongly held views of others that some form of deposit insurance coverage is necessary, the Corporation recommends that a modified version of the surety bond and pledge of assets approach presently contained in Section 6 of the bill be combined with regular deposit insurance for such branches and be made available on an optional basis along the following lines:

> SEC. 6.(a) Any branch may become an insured bank under the Federal Deposit Insurance Act (12 U.S.C. 1811-31b) with respect to its domestic deposits, as defined by regulation by the Board of Directors of the Federal Deposit Insurance Corporation, as if such branch were a State nonmember bank. Upon so becoming an insured bank, a Federal branch shall thereafter be treated as if it were a national member bank, and any other branch shall thereafter be treated as if it were a State member bank, for purposes of applying the Federal Deposit Insurance Act to such branch's domestic activities (except that any such branch shall continue to be treated as

a State nonmember bank for purposes of the first sentence of Section 8(a) of that Act providing for voluntary termination of insured bank status). Any branch which becomes an insured bank shall maintain with the Federal Deposit Insurance Corporation, or as the Corporation may otherwise direct, a surety bond or a pledge of assets in such amount and subject to such conditions and rules as the Corporation may prescribe for the purpose of providing some additional protection to the deposit insurance fund against the additional risks entailed in insuring the domestic deposits of a foreign bank whose activities, assets and personnel are in large part outside the jurisdiction of the the United States. In prescribing such rules, however, the Corporation shall, to the maximum extent it considers appropriate, endeavor to avoid imposing requirements on such branches which would place them at an undue competitive disadvantage vis-a-vis domestically incorporated banks with which they compete.

(b) Paragraph (a) of this section shall take effect 180 days after enactment hereof. Within 90 days after enactment and as may be appropriate thereafter, the Corporation shall submit to the Congress its recommendations for amending the Federal Deposit Insurance Act so as to enable the Corporation to implement the provisions of this section in a manner fully consistent with the purposes of that Act.

If foreign banks' domestic branches choose deposit insurance coverage under such a revised Section 6, they would become subject to a much less onerous form of surety bond and pledge of assets requirement which would be designed not to provide each branch's domestic depositors 100 percent protection on a dollar-for-dollar basis, but rather merely to give the Federal deposit insurance fund a measure of protection to compensate for the additional risks to which it would be subjected, as described above, by virtue of insuring the domestic deposits of an entity operating for the most part outside of U. S. jurisdiction. Domestic depositors would be fully protected up to $40,000 just as are depositors in domestic insured banks. We believe that this approach of combining regular deposit insurance coverage with a modified form of the surety bond and pledge of assets requirement would be an acceptable compromise from the Corporation's standpoint which would put foreign banks on as nearly an equal basis as possible with domestic banks while at the same time affording appropriate supplemental protection to the deposit insurance fund roughly commensurate with the added degree of risk included in insuring foreign entities.

It will be noted that this revision of Section 6 would give the FDIC authority to define "domestic deposits" for purposes thereof. It is contemplated that that term would be defined to include deposits of individuals who are citizens or residents of the United States and companies having an appropriate business nexus with this country. It is likely also that such "domestic deposits" would be required to be denominated exclusively in U. S. dollars and payable only in the United States, also including perhaps a requirement that the deposit contract provide that U. S. law govern the depository relationship. Other criteria might also have to be considered from time to time in determining what would be an appropriate insurable "domestic deposit." We would greatly prefer the more flexible approach of defining this term by regulation rather than attempting to do so by statute.

If deposit insurance is made available to domestic branches of foreign banks on this basis, we believe it is imperative that the bill give the FDIC explicit authority to examine such branches, whether licensed federally or by the states, when necessary in its judgment to assess the potential exposure of the insurance fund arising from insuring the branch's domestic deposits or to ascertain whether the branch is complying in all respects with the pledge of assets/surety bond requirements imposed by the bill. It is contemplated that because of the unique factors involved in insuring foreign bank branches, the FDIC would find it necessary to exercise its power to examine foreign bank branches for the purposes indicated. We have also recommended that such branches be subject to revocation of their insured status under Section 8(a) of our Act (12 U.S.C. 1818(a)). Additionally, the bill should provide that the FDIC be appointed receiver of the branch in the event of its closing and that all the FDIC's financial assistance and liquidation powers under the FDI Act apply to insured domestic branches of foreign banks.

We feel that this proposed change in Section 6 would put foreign banks on as nearly an equal basis as possible with domestic banks while at the same time according appropriate supplemental protection to the deposit insurance fund roughly commensurate with the added degree of risk associated with foreign entities. Our staff will be happy to work with your Committee staff in drafting the appropriate language for amending Section 6 along the lines that we have proposed.

Imposition of Reserve Requirements and Interest Rate Controls

Section 7(a) of H.R. 7325 subjects all branches, agencies and commercial lending companies controlled by foreign banks whose world-wide assets exceed one billion dollars to the reserve requirements and deposit interest rate controls imposed by the Federal Reserve on member banks. Section 7(b) permits the Federal Reserve Board to prescribe rules and regulations governing the access of foreign branches, agencies and commercial lending companies to the clearing, discount and advance facilities of the Federal Reserve System.

While the bill does not require foreign institutions to become members of the Federal Reserve System, these two provisions of Section 7, along with the remaining provisions in the Section, impose upon foreign branches, agencies and commercial lending companies the obligations and benefits of Federal Reserve membership. For all practical purposes, this bill, in effect, requires Federal Reserve membership, even though it is not stated as such.

In my June 20, 1977 testimony before the Subcommittee on Financial Institutions of the Committee on Banking, Housing and Urban Affairs of the Senate, I indicated that, although I have an open mind with respect to the question of universal reserve requirements, I do not believe that the issue of reserve requirements for nonmember institutions should be dealt with on a piecemeal basis. Rather, it seems to me that the relationship to the Federal Reserve System of all banking institutions which choose not to join the Federal Reserve System should be studied in a systematic and unified fashion. Such a study is, it seems to me, the most effective way to respond to the Federal Reserve's concern with membership attrition. Applying this to the reserve requirement proposals contained in H. R. 7325 would dictate that the relationship of foreign banks, which choose to operate in the United States in one form or another, to the Federal Reserve System should be dealt with in the context of a broader solution to the question of membership.

This approach is, of course, consistent with the principle of national treatment or "nondiscrimination." And, conversely, to require, in effect, Federal Reserve membership for only those domestic affiliates of foreign banks having total assets of more than one billion dollars would represent a deviation from that principle.

Yet, I recognize full well that the principle of national treatment cannot be viewed as an absolute. As I indicated at the outset, that concept should certainly give way before overriding public policy considerations which arise out of special circumstances. In this regard, the Federal Reserve has argued rather strenuously that the operations of relatively large foreign banking institutions pose just such a case and this mandates a departure from the principle of national treatment.

The Federal Reserve has pointed out that from a monetary control standpoint, the operating characteristics of branches and agencies of foreign banks are noteworthy because these institutions generate a substantial portion of their funds from overseas sources, primarily from the parent or directly related institutions. These funds are not subject to Federal Reserve Regulations D or M. The Federal Reserve fears that this may result in a cost advantage for large foreign institutions vis-a-vis their large U. S. competitors who are members of the Federal Reserve System. More importantly, it is feared that lack of such direct Federal Reserve controls over reserves could impede the effective implementation of monetary policy in the face of massive and precipitous transfers of funds.

Although both these factors represent real concerns, at least two factors suggest that these problems are not sufficiently serious at this time to override the principle of national treatment in this area. It is true that foreign banking activity in the U. S. has grown considerably in recent years; yet its scale remains relatively small. The assets of all foreign banking entities, including state chartered banking subsidiaries, is less than 7 percent of total commercial bank assets. Moreover, the Federal Reserve has stated in previous testimony that foreign banking institutions in the U. S. generally have complied with a Federal Reserve Board request to maintain reserves on increases in net liabilities from abroad which parallel requirements under Regulations D and M.

For my own part, although I acknowledge the validity of the Federal Reserve's argument that operations of foreign banks pose a special case which may give rise to unique problems for the central banker, I am not yet persuaded by the evidence presented that these potential problems are yet of sufficient magnitude to pose a real risk to the stability of our economy. At the same time, I recognize fully that the question of whether to depart from the principle of "nondiscrimination" on the matter of reserve requirements is a knotty issue on which reasonable men may differ.

With respect to the matter of deposit interest rate controls, I fully support the notion that foreign branches, agencies, and commercial lending companies should be subjected to such controls. As drafted the legislation would, however, vest all such authority in the hands of the Federal Reserve System. Such an approach is appropriate if the Congress chooses, in effect, to require mandatory membership in the Federal Reserve System. However, if the Congress chooses to maintain the option of nonmembership, then administration of such controls vis-a-vis nonmember foreign banking institutions should be vested in the FDIC as it is presently with respect to nonmember domestic institutions.

Imposition of Federal Reporting, Examination and Supervisory Standards

In addition to granting the Comptroller of the Currency regulatory authority over Federal branches, agencies and commercial lending companies, Section 7 of the legislation would provide the Federal Reserve System parallel authority over all the branches, agencies and commercial lending companies chartered under state law. I do not object to the extension of Federal regulatory authority over these institutions because it is

93-031 O - 77 - 37

consistent with the principles of a system of federal regulation and national treatment and not because of any dissatisfaction with existing regulation by state authorities. I am not aware of any evidence to date that indicates that state authorities are not totally capable of supervising state-chartered foreign banking subsidiaries and state-licensed branches and agencies. According to former Federal Reserve Board Vice Chairman George Mitchell in his testimony before the Senate Subcommittee on Financial Institutions,

> There is nothing to indicate that foreign banks are abusing their powers in the sense that they are using the opportunities available to them under the present system to engage in any improper or unsound banking practices. On the contrary, it has been the experience of the Board that foreign banks operating in the United States have scrupulously complied with the existing U. S. laws and regulations and have been generally cooperative in their dealings with the Board.

Although I do not object strenuously to the proposed delegation of this authority to the Federal Reserve with respect to state-chartered foreign institutions, I would point out that absent the requirement of mandatory membership, these provisions are inconsistent with the principle of national treatment in that state-chartered nonmember institutions are now supervised by the FDIC. As we indicated earlier, it is our judgment that the existing pattern of federal regulation should be continued absent some indication that it is inadequate. Based on our experience from examining subsidiaries of foreign banks, we feel that it is useful and important for the FDIC to have its hand in regulation of foreign operations and that we can do this job well.

# # # # #

Mr. ST GERMAIN. Next we shall hear from Mr. Bloom.

We will put your entire statement in the record and without objection you may proceed.

STATEMENT OF HON. ROBERT BLOOM, FIRST DEPUTY COMPTROLLER FOR POLICY, OFFICE OF THE COMPTROLLER OF THE CURRENCY

Mr. BLOOM. I appreciate the opportunity to appear before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance to present the views of the Office of the Comptroller of the Currency on legislation dealing with foreign banking activity in the United States.

I would like to start by briefly summarizing what has happened in the past 5 years in terms of increase in foreign bank operations in this country.

The number of foreign bank offices of all types has almost exactly doubled to 210 from 104 in 1972. This breaks down into an increase in the number of agencies, so-called, to 95 from 50; an increase in the number of branches from 26 in 1972 to 76 in 1977. In addition to the agencies, branches, the foreign banks have 34 subsidiary corporations and five New York-chartered investment companies in the United States. Leaders in the group—or in the increase in the past 5 years—have been Japanese and Canadian offices—I am sorry.

The European banks as a whole have increased 123 percent since 1972, while Japanese and Canadians 86 percent and 24 percent, respectively.

The total assets of the foreign banks in the past 5 years have increased approximately threefold, from $24 billion in 1972 to $66 billion in April of 1977. The assets in New York alone are $45 billion and increased 153 percent from 1972.

California operations increased 207 percent over the 5 years to a present total of approximately $17 billion. Japanese banks went from $11 billion to $23 billion. These apparently large percentage increases have to be kept in perspective, however, by noting they are still quite small in relation to the increases in the offshore operations of American banks. Today, 119 U.S. banks operate 728 branches abroad and an additional 34 U.S. banks have some global subsidiaries.

The overseas branches and subsidiaries together of the U.S. banks approach $225 billion—primarily concentrated in the United Kingdom, $72 billion; Latin America, $62 billion; Continental Europe, $28 billion and in Japan, $11 billion.

Finally, when you contrast the foreign assets here with the total of over $1 trillion of total assets of the U.S. commercial banks as a whole, the foreign operations appear comparatively little.

We think that these figures show us that the present lack of a Federal control over foreign bank activity has not resulted in any impediments in either the domestic or foreign growth of U.S. institutions. At the same time, we have had a healthy flow of international finance which we obviously do not think should be interfered with except for compelling reasons.

This is not to say at all that the questions addressed in this legislation are not important, or that they should be put aside.

I might say that I think for a change it is refreshing to see serious attempts to anticipate problems and avoid them where solutions can be found.

I think in too many cases in banking situations we have had a tendency to lock our doors after the horses are gone.

This tremendous increase in interrelation of world commerce and finance, I think, makes this type of study especially important. We think there are several provisions in this legislation which are distinct improvements in the present structure.

Since I am speaking for the Office, I should at this point refer to some comments which the new Comptroller, Mr. John Heimann, expressed some time ago before this committee in terms of the basic principles of regulation of foreign activities.

He said there were three principles he thought should underlie regulation of foreign activity.

First, he thinks it should facilitate the flow of capital through U.S. capital markets, and the movement of trade into and out of the United States.

The second principle he thinks should be observed is that supervisory authority should be decentralized.

Thirdly, the so-called national treatment approach, the same opportunities and the same limitations as exist in domestic banks should be provided for foreign competitors.

Looking at those as the principles with which to approach the specific provisions of the bill, the first basic provision would permit the Comptroller of the Currency to charter Federal branches and agencies of foreign banks which would be regulated and supervised like national banks. An amendment to the National Bank Act would permit the Comptroller to waive the citizenship requirement for a minority of the directors of the national bank, even though it would be owned by foreign interests. We very much support the option for Federal chartering of branches of foreign institutions. We think that our Office is well suited to supervising such institutions in that we have a major presence in international bank supervision at the present time. The supervised institutions now have 635 overseas branches with foreign assets of $135 billion. Our International Operations Division is devoted exclusively to the examination and supervision of these international operations of national banks.

We have approximately 150 examiners trained in international examining. We send our examiners annually to at least 20 different countries and have done so since 1967. We have a permanent office in London out of which our European examiners operate.

We have a suggested change in the chartering provisions of the bill. We would suggest that the foreign banks be permitted the option to charter a Federal branch in a State where they may already have a State-chartered instrumentality. We think the prohibition in the bill against such dual chartering does represent a departure from national treatment and we do not see that it serves any functional purpose.

As you know, domestic bank holding companies can now have both State and federally-chartered institutions in the same State.

Like others who have testified, we have serious reservations about the section which requires and establishes a special Federal review of applications by foreign banks, applying criteria which are different from those looked at in the case of domestic banks.

Under the bill, the Secretary of the Treasury would be required to issue guidelines and general criteria for the admission of Federal banks and the Federal and State bank supervisor would be required to solicit the views of the Secretary of State, the Secretary of the Treasury, and the Federal Reserve Board.

Like Under Secretary Solomon, who testified for Treasury, and others who have testified, we don't think this treatment is necessary to insure proper control over the type of entry we are talking about, and we would like to see those provisions deleted. It is basically inconsistent with the national treatment approach.

Mr. St Germain. Basically——

Mr. Bloom. Inconsistent with the national approach, with the national treatment.

On the matter of the required reserves for the $1 billion-and-over institutions, we support the position of the Federal Reserve on that. I have no argument to present for it. I am sure my colleagues in the Federal Reserve have adequately briefed that question.

On the matter of the deposit insurance provisions, I am in accord with my colleague, George LeMaistre, as to the approach in essence of providing the same options to the subsidiary of the foreign bank as now afforded to domestic banks, and also the modifications in the mechanisms for doing this that Mr. LeMaistre suggested.

We do think that in States where there is mandatory deposit insurance, where the States require all of their institutions to have deposit insurance, that it should be similarly mandatory for U.S. branches of foreign banks located in those States.

I would now like to turn to two areas of particular importance and difficulty.

That is the interstate branching facilities and the securities affiliate provisions.

First on the matter of the interstate branching, I must say we have not found any particular problems in connection with the present freedom which foreign banks have in that regard. The fact is that while we have 51 foreign banks operating interstate in this country, the activity is concentrated in New York, Illinois and California, with 50 percent of the foreign activity in New York, 12 percent in Illinois, and 30 percent in California.

Forty-five percent of foreign bank agencies and 54 percent of their branches are in New York while 51 percent of their agencies are located in California, and 29 percent of the branches in Illinois.

Sixty-eight percent of all the foreign bank assets in this country are in New York and 25 percent in California.

The competition for retail banking business associated with most of these offices has been quite small. Deposit-taking branches at the present time may be established only in five States: New York, Illinois, Washington, Oregon and Massachusetts. We feel an unintended but nonetheless troublesome consequence of the bill's provisions restricting the acceptance of deposits to one State is that many regional centers which are now sort of at the incipiency of growth in the international business area may be cut off because, if the foreign bank looking to establish its first presence in the United States has to make a choice, it is going to be hard for them not to choose New York, Chicago or San Francisco, or Los Angeles.

Especially would they think twice about not establishing in New York which is still, of course, the money market center of the world. Others coming in from the Far East and Near East might choose California but we have many developing regional markets which would unfortunately be shut out by such a compelled choice.

In terms of competitive equality with domestic banks, we must not forget that U.S. banks, even though subject to the McFadden Act approach nevertheless do a great deal of wholesale banking business in this country and there are a number of mechanism permits to do that. They have loan production offices, operating subsidiaries, nonbanking subsidiaries of bank holding companies—these are all interstate—as well as Edge Act corporation offices confined to international banking activity. We have 34 banks which have 62 out-of-State Edge Act corporation offices at the end of 1976. In terms of interstate bank—nonbank subsidiaries or bank-holding companies, the Federal Reserve has 877 applications filed for such activities which were actually approved in the 5-year period from 1971 to 1976.

Mr. St Germain. Mr. Bloom, can foreign banks establish bank-holding companies?

Mr. Bloom. Yes, sir, they can.

They can use some of these mechanisms, but not all. I don't believe they can establish an Edge Act corporation office.

Mr. St Germain. I think we will probably provide for that in the act. They are agencies or loan production offices, are they not?

Mr. Bloom. Yes.

Mr. St Germain. It sort of breaks down that big stack of figures you have there.

Mr. Bloom. The bill does provide some of these alternative routes.

Mr. St Germain. That should be recognized.

Mr. Bloom. Yes, indeed, it should.

I think I have probably dwelt on that point enough. I was merely trying to state that the prohibition on branching alone is not the whole story, especially in the wholesale area.

On the securities affiliates, we also feel that the forced divestiture by 1985 could be unduly restrictive and perhaps one of the provisions which might incite retaliation abroad and we think that existing nonbanking affiliates, or securities affiliates, are not so numerous that we cannot be completely grandfathered without undue effect.

There are only 19 of them, according to our best information, that are operating today. Only four of them are members of the New York Stock Exchange. The total assets of the companies I have listed at $391 million, which is hardly an overly large figure.

That is my statement, Mr. Chairman.

[The prepared statement of Deputy Comptroller Bloom follows:]

Statement of

Robert Bloom

First Deputy Comptroller of the Currency

before the

Subcommittee on Financial Institutions Supervision,

Regulation and Insurance

of the

Committee on Banking, Currency and Housing

U.S. House of Representatives

I appreciate this opportunity to appear before the Financial Institutions Subcommittee to present the views of the Office of the Comptroller of the Currency on legislation dealing with foreign banking activity in the United States.

The number of foreign bank operations in the U.S. has increased to 210 from 104 during the past five years, an increase of 101%, with 93 foreign banks maintaining these facilities. The agencies of foreign banks have increased to 95 from 50, a 90% increase while the number of branches of foreign banks has increased 193%, to 76 in 1977 vs. 26 in 1972. In addition, foreign banks have 34 subsidiaries and 5 New York-chartered investment companies in the U.S. It is particularly notable that facilities of European banks have increased 123% since 1972, while Japanese and Canadian banks have increased the number of their facilities 86% and 24%, respectively, since 1972.

Total assets of foreign banks in the U.S. have increased 172% during the last five years. In 1972, foreign bank assets were $24 billion; in April 1977 they totaled $66 billion. Foreign bank assets in New York total $45 billion and represent a 153% growth since 1972. Foreign banks in California have assets totaling $17 billion, a 207% growth over the last five years. Since 1972, Japanese banks have increased their assets to $23 billion from $11 billion, a 114% change. Canadian assets now total $7 billion, a 37% growth since the $5 billion recorded in 1972. European banks have experienced an especially significant growth in the U.S. Their assets now total $30 billion, a 329% growth since the $7 billion booked here in 1972.

These apparently large percentage increases should be put into perspective by noting that the volume of foreign bank operations is still quite small in relation to the off-shore operations of American banks. One hundred nineteen U.S. banks operate 728 branches abroad, while 34 U.S. banks have significant global subsidiary activities. The overseas branches and subsidiaries of U.S. banks have total assets approaching $225 billion, primarily concentrated in the U.K. ($72 billion), Latin America ($62 billion), Continental Europe ($28 billion), and in Japan ($11 billion). When contrasted with the more than $1.1 trillion of total assets of U.S. commercial banks, the assets of foreign operations in this country appear very small.

I think these figures indicate that the present lack of federal control over foreign bank activity has not resulted in any undue impediments in either the domestic or foreign growth of U.S. institutions. At the same time a healthy free flow of international finance exists which should not be interfered with except for compelling reasons.

This is not to say that the questions addressed today should be ignored. It is, of course, important that Government officials in Congress and in the Administration attempt to anticipate problems and avoid them where solutions can be found. The increasing interrelation of world commerce and finance makes these deliberations on international banking especially important. There are several provisions in the international banking bill which we think are improvements in the present structure.

The present Comptroller of the Currency, Mr. John Heimann, expressed three basic principles of regulation of foreign activities in the United States to this Committee last year.

1. It should be a central purpose of any system of regulation of foreign banking to sustain and invigorate the American centers of international trade and finance so as to facilitate thereby the flow of capital through the U.S. capital markets and the movement of trade into and out of the United States.

2. It is a fundamental tenet of the American dual banking system, that supervisory authority is decentralized so that bank entry and conditions of bank operation are determined in response to locally perceived needs. The demands of the New York and Chicago money market centers are vastly different from those of suburban counties or rural sectors. While the resultant system of mixed federal and state regulation is complex, it has worked and worked well with respect to supervision of foreign bank activity in the United States. We have seen no evidence that this system has impeded the attainment of national policy objectives.

3. The structure of regulation which is established should seek, for foreign banks, to provide the same opportunities and to impose the same limitations as presently exist for domestic banks. The goal should be equality of options and equality of treatment once an option has been selected.

Let me turn, now, to the specific provisions of H.R. 7325.

<u>Federal Charters and Federal Branches for Foreign Banks</u>

The policy of national treatment, or nondiscrimination against foreign banks, dictates that foreign banks should have the same right as domestic banks to seek federal licenses as well as state licenses. H.R. 7325 would permit the Comptroller of the Currency to charter federal branches and agencies of foreign banks, which would be regulated and supervised like national banks. Amendment of the National Bank Act to permit the Comptroller to waive the citizenship requirements for a minority of directors would facilitate this process. We support this option for federal chartering as it is consistent with the basic principles just stated.

The Comptroller's Office is particularly suited to assume a major role in the regulation of foreign banks in the United States because of its experience in the international banking field. At the present time, 98 national banks have 635 overseas branches with foreign assets of 135 billion dollars. The International Operations Division of the Office is devoted exclusively to examination and supervision of these international operations of national banks. Approximately 150 national bank examiners are trained in international examining. The Comptroller's Office has sent examiners with this expertise annually to more than 20 countries since 1967. There is an office in London out of which national bank examiners operate. The Comptroller's Office is, therefore, in an excellent position to assume this responsibility.

In regard to the chartering provisions of the bill, we would suggest that foreign banks should be allowed to charter a federal branch in a state where it now has a state chartered bank. The prohibition in this bill against such dual chartering would restrict the newly given chartering right and would serve no functional purpose. Domestic bank holding companies can have both state and federally chartered institutions in the same state.

Federal Review and Foreign Bank Applications

The proposed legislation contains a section requiring special federal review of applications by foreign banks to establish facilities within the U.S. The Secretary of the Treasury would be required to issue guidelines establishing general criteria for the admission of foreign banks; federal and state bank supervisory authorities would be required to solicit the views of the Secretary of State, Secretary of the Treasury and the Federal Reserve Board, before acting on the applications; and foreign banks would be required to state specifically that they would comply with U.S. antidiscriminatory laws which apply to American banks.

These requirements are inconsistent with the principle of national treatment. Domestic banks are not subject to such onerous requirements and they would seem to serve no useful purpose. In addition, such procedures could set a precedent for other types of foreign investment in the U.S. with unfortunate consequences for the free flow of trade and capital. Finally, these requirements would not provide any special protection to U.S. depositors or to national interests.

I would recommend, therefore, that this provision be deleted from the bill.

Reserves

The bill would extend reserve requirements of the Federal Reserve System to all branches and agencies of foreign banks with world wide bank assets in excess of $1 billion. As almost all of the large American banks are subject to these reserve requirements, this provision would conform to parity of treatment of foreign and domestic banks.

The Board of Governors of the Federal Reserve System supports the section of the bill mandating reserve requirements for the billion dollar foreign banks and has commented extensively on it. There is little that we can add to this discussion except to support this provision.

Deposit Insurance

H.R. 7325 contains another important principle which we consider to be an improvement in the present foreign banking structure -- the federal insurance of domestic deposits. Under the bill, foreign bank branches must maintain with the FDIC a surety bond or pledge of assets for U.S. deposits.

The FDIC has developed a modification of this requirement to meet practical objections arising from previous legislative proposals. Branches of foreign banks in the U.S. would have the option of the same FDIC insurance coverage as domestically insured banks and would also be subject to requirements of a pledge of some assets or a surety bond to the FDIC to cover any additional risk. These requirements would not be extended to agencies as they do not solicit deposits.

This provision would have the salutary effects of 1) protecting all citizens when they place their deposits with foreign controlled banks, and 2) providing for equality of treatment between the foreign and domestic banks.

I would suggest, however, that to provide equality of treatment between foreign and domestic banks, deposit insurance be mandatory for U.S. branches of foreign banks to the same extent that it is mandatory for state chartered banks. The FDIC insurance program has proven extremely successful in promoting confidence in the domestic banking system and there is no reason that U.S. depositors in foreign branches in the U.S. should be deprived of this security.

Therefore, it is my view that section 6 of this bill should be appropriately amended to protect all U.S. citizens when they place their deposits in foreign controlled banks and to provide equality of treatment between foreign and domestic banks.

I turn now to two areas of particular importance. These are the interstate branching provisions and the restrictions on American securities affiliates of foreign banks. These provisions are especially sensitive since they involve two issues in domestic banking which are under review at this time by leaders in Congress and elsewhere. In the absence of specific abuses by foreign banks, some have questioned the need to legislate now in these areas for foreign banks.

Interstate Branches

H.R. 7325 would apply the prohibition against interstate banking by national banks to foreign branches and agencies. Under Secretary Solomon, on behalf of the Treasury Department, testified in support of the principle of competitive equality in interstate branching, but pointed out certain defects in the language of the bill.

We know of no particular problems in connection with interstate branches of foreign banks. While fifty-one foreign banks operate interstate, this activity remains concentrated in New York, Illinois, and California in which 50%, 12%, and 30%, respectively, of foreign bank presence is located. 45% of foreign bank agencies and 54% of their branches are located in New York while 51% of the agencies are located in California and 29% of the branches are located in Illinois. 68% of all foreign bank assets are held in New York facilities and 25% are held in California. The competition for retail banking business associated with most of these institutions has been small. Deposit taking branches may at the present time be established only in 5 states: New York, Illinois, Washington, Oregon and Massachusetts. A troublesome consequence of the bill's intent to restrict the acceptance of deposits to one state is that many important, growing regional centers in the U.S. would be cut off in their incipiency from the international business generated by the establishment of foreign bank branches. It seems clear that most of the foreign banks would choose New York as their home state because it is the money market center of the country, and the others would choose California for geographical reasons. Other important American markets, however, might benefit from establishment of branches to facilitate international commercial activities.

As Mr. Solomon pointed out, tying foreign banks to the existing limitations on national banks may be overly restrictive. Under present law, for example, non-member banks could branch interstate when and if they were permitted to do so by the states. Under the Bank Holding Company Act, states could permit the acquisition of subsidiary banks within their boundaries by out-of-state holding companies. So far, the states have declined to exercise these options although New York invited such reciprocal arrangements with California, Illinois, Massachusetts, and Texas in 1973. We do not believe the federal government should interfere with state prerogatives in the absence of clear abuse but we recommend that national banks be afforded complete competitive equality.

U.S. banks, while specifically prohibited from having actual branch offices in multiple states, do actually conduct a great deal of wholesale banking business interstate in the following forms:

1. Loan production offices and operating subsidiaries;

2. Interstate non-banking activities of banking holding companies permitted under section 4(c)(8) of the Bank Holding Company Act (Federal Reserve figures indicate 877 of the applications filed for such interstate activities were approved between 1971 and 1976);

3. Edge Corporation offices (thirty-four banks had some sixty-two out-of-state Edge Corporation offices involved in international banking activity as of year end 1976); and

4. Grandfathered multi-state banking (as of year end 1976, eight United States bank holding companies held banks in more than one state under the Douglas Amendment to the Bank Holding Company Act of 1956).

It has been reported that 12 bank holding companies, located in seven states, had a total of approximately 1400 offices engaged in bank related activities and located in states other than the home state of the holding company. In addition, the same holding companies conducted operations across state lines through 34 Edge Act corporations and 23 loan production offices. Bank America Corporation, for instance, has 384 nonbank offices in 33 states, while Citicorp has 276 non bank offices in 37 states.

93-031 O - 77 - 38

Securities Affiliates

H.R. 7325 grandfathers the American non-banking affiliates of foreign banks as of December 3, 1974. A special distinction is made, however, for affiliates engaged in the business of underwriting or distributing securities in the U.S. For these affiliates, the grandfathering provision applies only until 1985.

The limited life of such an affiliate is impractical. If the bill becomes law, there would be management and other problems which would result in confusion and an absence of confidence. For example, it is unlikely that a valuable trader would wait long to leave a securities firm whose closing date is set by law.

Permanently grandfathering existing securities affiliates should not present a problem. Only 19 foreign bank affiliated securities companies operate in the U.S. on the principal and regional exchanges. Only four are members of the NYSE. The total assets of these companies total $391 million.

Conclusion

We appreciate this opportunity to present our views on foreign banking in the U.S. The new Comptroller, having served as Superintendent of Banks of New York, the center of international finance, has considerable expertise and interest in this area. He hopes that you will call on him and his staff for any further input and assistance which may be needed.

Mr. BLOOM. Could I add one thing, Mr. Chairman?

On behalf of Mr. Heimann, even though he is not here today, coming from New York, which as I said before is still an international banking center, he does have considerable interest in this subject matter—and I think expertise—and he hopes that you or the staff will not hesitate to call on us and him personally.

Mr. ST GERMAIN. I appreciate the fact that he comes from New York. I come from Rhode Island. However, in an area such as this I have to legislate as though it came from all 50 States and Mr. Heimann is now Comptroller of the Currency and must look upon this not as a New Yorker, but as the Comptroller of the Currency for all 50 States.

Mr. BLOOM. I am sure he does. I might add that thought was my own, not his.

Mr. ST GERMAIN. My point is, Chairman LeMaistre had to rearrange his schedule for us in order to appear here today so I am going to try to ask the questions I would like to ask of you for the record so we can get you out in good time.

Mr. Chairman, Governor Gardner was unable to give any examples of harm to American citizen depositor/investors in foreign banks during the past 25 years. Could you give us a rundown of what happened as a result of the failure of Intrabank of Lebanon in the 1960's? Did U.S. depositors lose funds? Did any U.S. banks suffer losses on funds loaned to the New York branch of Intrabank?

Chairman LEMAISTRE. Do you refer to the Intrabank failure?

Mr. ST GERMAIN. Yes.

Chairman LEMAISTRE. I think the banks were protected by very quick action by the New York superintendent. The depositors were. I am not sure there was any great loss sustained. I will be glad to supply something for the record on that. I am under the impression that is our only big failure——

Mr. ST GERMAIN. Would you add to that one for the record? Our facts seem to be in conflict here.

Chairman LEMAISTRE. We will answer very completely.

[In response to the request of Chairman St Germain, the following information was submitted for the record by Chairman LeMaistre:]

In response to the question relating to losses incurred by depositors and creditors of Intra Bank's New York branch, it is our understanding that all depositors and creditors were paid in full three years after the branch was closed. The Commodity Credit Corporation held 53 guaranty letters of credit with a face amount of $21 million. Because these claims were contingent liabilities, they were not recorded on the branch's books as a liability. The CCC apparently suffered no significant losses, due primarily to the fortuitous discovery of an unexpected asset of the New York branch; namely, the branch's 21-story office building and due to stock the CCC received in the reorganized Intra Bank. (See Verkuil, Bank Solvency and Guaranty Letters of Credit, 25, STAN. L. REV. 716, 729-32 (1973). An exerpt from this article is attached.)

A. *The Intra Bank Affair*

Intra Bank was a Lebanese incorporated bank with a branch licensed to operate in New York City. It was the largest bank in the Middle East, with assets of $500 million and a worldwide network of offices.[70] In October 1966, a liquidity crisis was precipitated in Intra Bank, apparently by the transfer of funds by its non-New York depositors from Beirut to London in order to take advantage of higher interest rates. On October 14, the bank's depositors in Lebanon descended en masse to withdraw their deposits. The Lebanese government refused to assist the bank and its Beirut office closed

64. *See* notes 57–58 *supra*.

65. CAL. FIN. CODE § 1756.1(b) (West 1968); N.Y. BANKING LAW § 202-b(2) (McKinney 1971). New York's provision first appeared in 1960; California's in 1964. These provisions are virtually identical in their wording, thus suggesting California's awareness of the New York statute.

66. There are, in addition, requirements for security deposits by the foreign bank branches with the respective state superintendent of banks, but these deposits offer minimal protection. California and New York require a minimum of $100,000. CAL. FIN. CODE § 1751(g) (West 1968); N.Y. BANKING LAW § 202-b(1) (McKinney 1971). The New York *Banking Law* was so amended after the Intra Bank failure, discussed at notes 70–88 *infra*. *See* Address by Harry W. Albright, Jr., New York State Superintendent of Banks, to the New York State Bar Association, in Buffalo, N.Y., Oct. 20, 1972, at 14 [hereinafter cited as Albright Address].

67. Albright Address, *supra* note 66, at 1.

68. 12 U.S.C. §§ 1814, 1821 (Supp. 1972). While FDIC insurance is limited to $20,000 per depositor, it still would have great meaning to many depositors of foreign bank branches. For example, in New York state $123 million is held in 49,000 foreign bank branch accounts of $20,000 or less, Albright Address, *supra* note 66, at 1.

69. *See, e.g.*, CAL. FIN. CODE § 1760 (West 1968) (foreign bank reporting requirements); N.Y. BANKING LAW §§ 36, 204 (McKinney 1971) (superintendent's power of examination and foreign bank reporting requirements). In addition, creditors of foreign bank branches are given priority in any liquidation. CAL. FIN. CODE § 1753 (West 1968); N.Y. BANKING LAW § 606(4)(a) (McKinney 1971).

70. Albright Address, *supra* note 66, at 1–20.

on October 15. On that same day, the New York State Superintendent of Banks took possession of Intra Bank's New York branch, secured against removal of its assets, closed the bank, and directed that all items drawn on and presented to the branch as of that date be returned. A full examination of the books followed. This examination revealed branch liabilities of $2.15 million and assets of $2.4 million, apparently in compliance with the 108 percent rule.[71] At this point, all looked well for the branch's depositors,[72] but the problems were to begin shortly.

The United States Commodity Credit Corporation (CCC) held 53 guaranty letters of credit issued on the letterhead of the New York branch of Intra Bank with a combined face amount of over $21 million. As contingent liabilities, these letters of credit did not appear on the liability side of the branch's balance sheet. They had been issued at various times during the period 1964 to 1966 and had maturation dates ranging from 34 to 39 months from date of issuance.[73] They had been issued to CCC as beneficiary to insure payment for the export of surplus wheat and butter to the Bank's customers in the Middle East under the United States Government's Export Sales Program.[74] To receive payment, CCC had to present to the Intra Bank branch a statement that the amounts due from the buyers (Intra Bank's customers) had not been received. CCC asserted claims under these credits as priority liens[75] against the Superintendent of Banks, who was in the process of liquidating the branch's assets. As the Superintendent aptly observed,[76] to allow the $21 million claim would have "made nonsense" of the 108 percent rule and would have completely exhausted the $2.4 million in assets held by the branch.

The Superintendent reacted to this dilemma by rejecting CCC's claims. He relied on two grounds to defend against their assertion: first, that guaranty letters of credit are, in fact, guaranties whose issuance is illegal under New York banking law;[77] and second, that as a "contingent liability" such claims were not allowable in bank insolvency proceedings. Neither of these arguments is totally convincing. The ultra vires defense con-

71. *Id.* at 2–14.

72. There was $750,000 in demand deposits in the branch. *Id.* at 5.

73. These letters apparently violated the New York *Banking Law* which limits letters of credit to one year in time. *See* N.Y. BANKING LAW § 96(2) (McKinney 1971). The Superintendent of Banks asserted this illegality as a ground for not honoring the CCC claims in the Intra Bank liquidation.

74. The CCC secures letters of credit from foreign buyers who exchange strategic materials (*i.e.*, lead, zinc, etc.) for surplus grain. The CCC keeps the guaranty letter of credit open until it has received and inspected the materials; if the materials are found to be conforming, the letter of credit is cancelled. *See generally* Comment, *supra* note 14, at 906.

75. The Justice Department, representing CCC, relied upon 31 U.S.C. § 191 (1970), which provides, in relevant part: "Whenever any person indebted to the United States is insolvent . . . the debts due to the United States shall be first satisfied . . . ." Another statute provides that the CCC "shall have all the rights, privileges, and immunities of the United States with respect to the right to priority of payment with respect to debts due from insolvent, deceased, or bankrupt debtors." 15 U.S.C. § 714(b)(e) (1970).

76. Albright Address, *supra* note 66, at 12 (referring to the actions of his predecessor, Frank Wille).

77. This is the ultra vires defense. *See* notes 41–55 *supra* and accompanying text.

travenes the current interpretations of the Comptroller of the Currency[78] and for that reason the validity of the defense is doubtful. The second argument, while having some support in the case law,[79] is not logically persuasive. Generally, contingent claims are provable under bankruptcy law,[80] and where the beneficiary is a federal instrumentality like CCC there is strong authority that the federal priority would in any event override contrary state law contentions.[81] However, the immediate problem faced by the Superintendent was that the mere assertion of these claims delayed payment to depositors. Since it doubted the solvency of its principals, CCC was acting prudently by asserting its claims.[82]

This was the unhappy status of the Intra Bank matter when a *deus ex machina* appeared: another asset, one sufficient to offset CCC's claim and also not listed on the branch's balance sheet,[83] was uncovered by the Superintendent of Banks. This asset more than satisfied the claims of Intra Bank's New York customers and allowed the Superintendent to settle with CCC.[84] In essence, the compromise agreement provided that the Superintendent would first pay all valid claims of depositors and creditors of the New York branch and then pay the balance to CCC.[85] CCC subsequently became a shareholder of Intra Bank.[86]

---

78. *See* note 48 *supra*.

79. *See, e.g.*, Varick Spring Corp. v. Bank of United States, 264 N.Y. 297, 190 N.E. 647 (1934); People v. Metropolitan Surety Co., 205 N.Y. 135, 98 N.E. 412 (1912); *In re* Lawyers Title & Guaranty Co., 183 Misc. 294, 50 N.Y.S.2d 257 (Sup. Ct.), *aff'd mem.*, 268 App. Div. 975, 52 N.Y.S.2d 573 (1st Dep't 1944), *aff'd mem.*, 294 N.Y. 718, 61 N.E.2d 493 (1945); *In re* Nat'l Surety Co., 176 Misc. 53, 26 N.Y.S.2d 370 (Sup. Ct. 1941).

80. 3 J. Moore, Collier on Bankruptcy § 57d (14th ed. 1971). To be provable and allowable in bankruptcy, contingent claims must be capable of liquidation. 11 U.S.C. §§ 93(d), 103(a)(8) (1970).

81. *See* United States v. Knott, 298 U.S. 544 (1936); *In re* Phillips, 196 App. Div. 175 (1st Dep't), *aff'd*, 232 N.Y. 559, 134 N.E. 571 (1921). Moreover, the authorities which support the contention do not appear to rely on the rationale that it is unfair to other creditors to allow contingent claims, but they rely instead on the notion that liquidations should not wait upon the resolution of contingencies. Thus, the imminence of the due date on a guaranty letter of credit might conceivably affect the contingency determination.

82. This illustrates another practical distinction between guaranty and traditional letters of credit: beneficiaries of traditional letters of credit have not surrendered title to their goods prior to payment, and frequently will have alternative ways of protecting themselves. When they have, they will not need to file delaying claims in bank insolvency proceedings.

83. Because of certain intrigues by Intra Bank's president, the bank's office (a 21 story building) was not listed as an asset of Intra Bank. After several years of investigation and litigation, the Department of Banks established that Intra Bank was the true owner and the Superintendent, as liquidator, was able to sell the asset and utilize the proceeds to pay off depositors. Albright Address, *supra* note 66, at 7–9.

84. The unlisted asset sold for approximately $10 million, which was sufficient to meet the $2.1 million in depositor liabilities and finance a compromise of CCC's $21 million claim. *Id.* at 10.

85. The compromise agreement with CCC was attacked by creditor banks, insurance companies seeking to attach the branch's assets, and Intra Bank itself. These parties made the same arguments (ultra vires and unprovable contingent claims) that the Superintendent had asserted against CCC before the discovery of the $10 million asset. The agreement was approved by the New York County Supreme Court, pursuant to N.Y. Banking Law § 618(1) (McKinney 1971). Intra Bank v. Wille, *aff'd mem.*, 31 App. Div. 2d 721, 296 N.Y.S.2d 283 (1st Dep't 1968), *aff'd mem.*, 25 N.Y.2d 619, 254 N.E.2d 224, 306 N.Y.S.2d 7 (1969), *cert. denied*, 399 U.S. 910 (1970).

86. It was this interest in Intra Bank that Robert Vesco, a contributor to the Republican campaign of 1972, was alleged to have improperly tried to influence the purchase of from CCC. *See* Washington Post, Apr. 28, 1973, at A1, col. 4, A7, cols. 5–8.

B. *Residual Problems*

Resolution of this case was due solely to the fortuitous discovery of the unexpected $10 million asset, but this should not obscure the potential crises threatened by uncontrolled issuance—and unknown existence—of guaranty letters of credit. When a bank is able to accrue liabilities of 10 times its book assets—and not have that fact reflected on its books—any scheme of protection based on those book assets is likely to collapse. Moreover, even with the unexpected asset, it took three and one half years to pay off Intra Bank's depositors and creditors, and when they were paid it was at the statutory four percent interest rate.[87] If the letters of credit held by CCC had been of the traditional variety, compromise could have occurred at a much earlier time, either through modification of the underlying transaction or, if payment had been made, through liquidation of the security received by Intra Bank.

The New York State Superintendent of Banks has taken some immediate steps to reduce the potential liquidation problems arising from future foreign bank branch failures,[88] but the basic problem remains: guaranty letters of credit are still treated as off-balance sheet transactions.

Mr. ST GERMAIN. On page 7 of your statement you say that if interstate banking is foreclosed to foreign banks, States other than California, New York and Illinois will find it difficult to attract foreign banks. Isn't it fair to note, however, that currently the presence or absence of interstate branching has made little difference? Massachusetts has offered the opportunity for full service banking for years, but has attracted few foreign banks. Houston, despite restrictions on foreign banking, has attracted a number of foreign bank representative offices and nonbanking services. Houston is more of an international financial center than Boston. Given the present situation, why do you believe that interstate branching is necessary for further expansion?

Chairman LEMAISTRE. It maybe difficult to make a case under existing circumstances, Mr. Chairman, but we do not think that the ability of other cities to attract foreign banking institutions in the future should be made more difficult.

Mr. ST GERMAIN. Boston has been trying for many years, and hasn't really succeeded, so that that honey hasn't attracted—or whatever—the flies.

Houston, with such tight restrictions, has attracted them. Why? Because they want to be there and therefore the fact that their branching is allowed or not allowed is immaterial to them. They have gone in because that is where they want to go. I think there is a lot of room for augmentation here as to whether or not restrictions in the bill on interstate branching would be that harmful to the centers who might want to establish.

Let's face it. California, Chicago, New York. That is where they are now and have been for a long period of time.

Chairman LEMAISTRE. I believe, Mr. Chairman, that Chicago has only attracted foreign banks in recent years due to a change in State law permitting them to establish branches. It is true that most foreign banks have chosen to locate in California, Chicago or New York, and it seems to me that the proximity of Boston to New York may be responsible for the failure of Massachusetts to attract many foreign banks. It seems unlikely that foreign banks will at some time wish to enter every State, but under an interstate prohibition, it would be too costly to maintain a single presence outside of New York, Illinois or California. Certainly, the recent movement of foreign banks into the Atlanta and Houston regional financial market centers, the liberalization of Georgia State law concerning foreign bank entry, and speculation that Texas may follow suit indicate that foreign banks are interested in regional cities. It seems quite possible the same will happen to other regional cities in the future as their economies continue to develop. This bill would make it much more difficult for foreign banks to locate in such cities.

Mr. ST GERMAIN. Now this, without any restrictions on interstate banking, and for a reason, because that is where they want to be. They haven't really felt as though they want to go into any other areas, as against the question of some of these other areas wanting to attract them.

On page 8 you gave figures on the growth of branches. As you probably are aware, the share of foreign bank assets in branches was only 23 percent in 1974 while agencies had 52 percent of total assets. Now, however, the share of branches has risen to 36 percent and agencies have only 38 percent. Isn't it true that some of this shift is due to a large number of conversions by Japanese banks in New York from agencies to branches, partly because New York would no longer let the agencies issue acceptances and partly in anticipation of passage of this bill?

I might say with a grandfathering clause.

Chairman LEMAISTRE. There is probably some evidence that channeling business into the branch instead of the agency that has built up the size of the branches. With respect to the conversion of Japanese agencies to branches in New York, it is my understanding that this is the direct result of the removal of restrictions by the Japanese Ministry of Finance which prevented establishment of branches. Approximately 10 Japanese agencies have been converted to branches in New York. I think it is an interesting statistic that of the three largest banks we supervise, two are subsidiaries of foreign banks.

There is a method, as you have pointed out, by which they can grow other than the ones talked about here.

Mr. ST GERMAIN. Mr. Wylie.

Mr. WYLIE. Mr. Bloom, on page 5 of your statement you state, "We would suggest foreign banks should be allowed to charter a Federal branch in a State where it now has a State-chartered bank." Are you suggesting there that a foreign bank should continue to be permitted to establish a branch in a State in which a domestic out-of-State bank would not be permitted to do that?

Mr. BLOOM. No, sir. I was just talking there about permitting a single proprietor to have both a State-chartered and a federally-chartered branch or subsidiary in the same State.

That occurs today with holding companies occasionally. They will have both State and national subsidiaries within the same State. They have that choice. I was merely suggesting that Federal owners should have the same prerogative. I was not dealing with any interstate elements there at all.

Mr. WYLIE. I understand Chairman LeMaistre has to leave momentarily.

There has been some discussion of the merits of imposing FDIC insurance in order to equalize the competitive burdens upon foreign and domestic banks. On page 29 of the statement of the Institute of Foreign Bankers testimony this morning—it was said:

> We cannot believe that a serious argument is being made that insurance should be required of foreign bank branches not dealing with the public requiring FDIC protection in order to burden them with an unnecessary cost merely because their domestic competitors incur that cost.

Do you view FDIC insurance as a fairly priced program in which institutions can participate on a competitive basis, or is it a burden upon those institutions which do participate?

Chairman LEMAISTRE. Let me get the thrust of your view again. Do you view it as what?

Mr. WYLIE. Do you view FDIC insurance as a fairly priced program in which institutions can participate, where appropriate, or do you regard it as a competitive burden on those institutions which do participate?

Apparently the gentlemen this morning from the Institute of Foreign Bankers regarded it as somewhat of a burden.

Chairman LEMAISTRE. As a matter of fact, I suppose you could say that FDIC insurance is both an aid in competition and a burden to those who compete because it has a certain expense to it; but the bank which is seeking retail business, it seems to me, is almost necessarily going to seek coverage by the Federal Deposit Insurance Corporation.

For one who is largely involved in wholesale banking, it really wouldn't make a great deal of difference to that institution whether it were insured or not because it isn't dealing in the $40,000-and-under account.

Mr. WYLIE. I would suppose it does for retail banking purposes, though, I notice that most of the institutions which have FDIC insurance display a sign saying so in the window of the bank. I feel they feel it has some marketing advantage to them.

Would you agree with that?

Chairman LEMAISTRE. I think so. Although the FDIC requires each insured bank to display an official sign in each station or window where insured deposits are received, there is general consensus that deposit insurance is virtually a *sine quo non* for doing retail banking business.

Mr. WYLIE. How would you weigh the cost and benefits of the surety bond or pledge-of-assets plan which you have devised or suggested in your testimony? Put another way, are there problems resulting from the unavailability of FDIC insurance for foreign bank branches, agencies and commercial lending companies which demand that a solution be undertaken which involves the risk which you have described?

Are these risks worth taking in order to achieve competitive quality?

Chairman LEMAISTRE. I would think the attempt to protect the deposits by making a pledge of assets or putting up a surety bond would be so burdensome that if you put a bond big enough or pledge of enough assets to cover the entire ordinarily insured portion of deposits, that the expense to the bank would simply be more than it would be willing to undertake.

The proposal that we make in essence is that they use the same formula that is now used for American banks, plus some bond or some pledge to guard against the risk to the deposit insurance fund by reason of their foreign operation but not enough to cover the entire deposit structure.

The burden would be much less under this modified proposal, as I see it.

Mr. WYLIE. You don't necessarily suggest the surety bond as an alternative to deposit insurance then?

Chairman LEMAISTRE. Not as an alternative; as a supplement, but a smaller surety bond and a smaller pledge of assets if that is what they chose to do, because we would not be seeking enough of a bond or pledge to cover the entire risk of the deposits.

The only risk we would be trying to cover would be one that is difficult to measure, and that is: How much risk are you taking by reason of the fact that the parent of this bank is outside the United States and it may be difficult to deal with the parent bank?

Mr. WYLIE. I will get into an ancillary to that question, but what institutions would give the surety bonds? Do you think any surety bond agency would provide the surety bond? You have modified your suggestion a little bit from the way I thought you were talking about in your prepared statement here, in that you have said it would only be a small portion of the risk that would be covered by the surety bond; is that accurate?

Chairman LEMAISTRE. That is my understanding of the purpose of bond; it is not to protect the deposits but to protect the risk to the fund by reason of the operation of a foreign bank, and there is a big difference because the protection of deposits means that somebody has to come up with coverage of dollar for dollar of everything that is insured.

Mr. WYLIE. That was the point I was attempting to get at.

So this would be just supplemental or supplementary to Federal Deposit insurance?

Chairman LEMAISTRE. That is the proposal.

Mr. WYLIE. OK, and you don't see any problem with finding institutions to provide the surety bonds?

Chairman LEMAISTRE. I am not sure of the answer to that, whether any would be available. I am sure they would have to be prepared and approved by the companies. I doubt there are any in existence at the moment that would offer this sort of thing.

Mr. WYLIE. That is the thrust of my question now.

Chairman LEMAISTRE. It may be that the pledge of assets would be the only thing you could take until you got a surety bond contract worked out.

Mr. WYLIE. Do you think we need to concern ourselves with the rise of the Communist Party—and I ask this question advisedly— in various western European countries? Does that have any potential effect on foreign bank operations in the United States?

Chairman LEMAISTRE. I didn't hear the first part of your question. Does what have an effect on the foreign bank competition?

Mr. WYLIE. Does the rise of the Communist Party in western European nations cause concern with reference to certain foreign banks? Perhaps, that is a political question.

Chairman LEMAISTRE. You mean in France, Italy and places of that sort?

Mr. WYLIE. France and Italy and places of that sort. We had representatives of those two countries here this morning.

Chairman LEMAISTRE. Only to the extent that it would affect the operation of the banks of those countries. I suppose as long as they operate as a political party and that part of the government is running in a responsible fashion, it probably wouldn't affect our operations. I doubt that it has affected the operations of French banks and Italian banks to date. That is not to say they couldn't if they ever acquired control; but, frankly, I think I would be speculating to try to answer.

Mr. WYLIE. Do you think it is something that we should consider here? Do you think it is something that this committee should consider in drafting this legislation? I am thinking of protecting

American citizens who might deposit money or do business with foreign branches from those countries. Directly relating to that question is your suggestion that such branches have surety bonds as a supplement to Federal deposit insurance.

Chairman LeMaistre. We would hope that the Federal deposit insurance coverage would be sufficient to protect the American citizens who did retail banking with them. One thing that we do say in our statement is that we feel that this should be optional and to the extent that a foreign bank would choose to operate without insurance, it could do just as an American bank can do. It can operate without insurance if it wants to.

I don't think it is a very big problem, just to be candid about it, because there are not many States who will let a branch operate without insurance.

Mr. Wylie. That is the point I was trying to make. Can foreign branches operate in New York, Illinois and California without insurance?

Chairman LeMaistre. I don't think they can.

Mr. Wylie. I don't think they can either in New York, Illinois and California where the exposure is now the greatest.

Chairman LeMaistre. I think that is right, but let me check that and answer that for the record, if I may.

Mr. Wylie. All right. Thank you very much.

[The following information was furnished for the record by Chairman LeMaistre:]

Response Submitted By Chairman LeMaistre

Under existing law, U.S. branches of foreign banks cannot obtain Federal deposit insurance because they are not "banks" as that term is defined in section 3(a) of our act (12 U.S.C. 1813(a)). Accordingly, such branches in New York, Illinois and California are not insured. New York and Illinois allow foreign banks to operate branches without FDIC insurance but California requires deposit insurance for branches which receive domestic deposits. Because branches of foreign banks cannot accept domestic deposits without FDIC insurance, whereas subsidiaries can, the subsidiary has become quite prevalent in California.

Mr. St Germain. Does the FDIC examine banks in New York and California and Illinois? Do they examine State-chartered FDIC-insured banks? Does FDIC examine these banks in New York, Illinois and California?

Chairman LeMaistre. They examine the State nonmember banks in all those States. We have the right under the act as written to examine all insured banks, but as you know, we do not examine those which are under the supervision of the Comptroller or under the supervision of the Federal Reserve Board, except where, in the judgement of the FDIC's Board of Directors, after reviewing the Federal Reserve's or the Comptroller's examination reports, there are indications that the bank may be a problem case, or that it is in a condition likely to result in loss to the depositor or to the FDIC.

We do not ordinarily examine the ones that they supervise, but we do examine the State-chartered banks that are not members of the Federal Reserve in all three of those States.

Mr. St Germain. And the State authorities in those States also examine and supervise those banks; correct?

Chairman LeMaistre. Yes, they do.

Mr. ST GERMAIN. Why do you examine and supervise State nonmember banks in those three States, the FDIC?

Chairman LEMAISTRE. There are compelling reasons set out in the act and Congress mandated us to do that. They directed us to in the case of the nonmember State-chartered banks.

Mr. ST GERMAIN. Do you have an experiment going where you would have accepted the examinations performed by the State authorities in certain States had they come up to standards set by the FDIC?

Chairman LEMAISTRE. We have carried on an experiment in at least three States in which we withdrew from the examination process in a number of cases, about 50 percent in those three States, and we accepted their examinations.

Mr. ST GERMAIN. Therefore, the statute is not mandatory. The FDIC can if it so elects accept the examinations of the State authorities, correct, since you were doing that under the experiment?

Chairman LEMAISTRE. To the extent that we are allowed to let someone else do that work, yes; we cannot say that we have to examine it every year.

Mr. ST GERMAIN. That is right, yet over the years you have continued to examine them?

Chairman LEMAISTRE. And we have terminated that experiment in those three States incidentally. We no longer withdraw from those.

Mr. ST GERMAIN. Keeping that in mind, I ask you the following question: The Federal Reserve and the Comptroller have been criticized by GAO in the regulation of international banking. Yet it is clear that those two offices probably do a better job than any other banking authorities in the world in terms of regulating large multinational banks.

It is also clear that the regulation of international banking requires a high degree of sophistication. Many witnesses have argued that States' supervisors are doing a superlative job in regulating foreign banks. However, since the two Federal regulators are having trouble monitoring foreign operations in U.S. banks and sorting out the risks indicated in foreign loans, I become skeptical. Frankly, I don't agree with that contention. I wonder about the expertise that exists at the State level, given the very understandable budgetary problems many States have that limit the number as well as the qualification and expertise of the personnel that they can direct.

Keeping in mind the fact that FDIC itself examines in those States that we have been told, they do such a great job, you know, they can handle this; yet FDIC continues to perform its own examinations in New York and California as well as all other States.

Would you give us your views on the kind of expertise required to supervise international banking, and since you suggest FDIC become the Federal regulator of State-chartered foreign banks, please give us some indiction of the Corporation's experience, expertise, in this area? And after this question I am going to allow you to go on your merry way.

Chairman LEMAISTRE. Mr. Chairman, I think that the expertise that we have in this field is probably more concentrated in foreign bank subsidiaries than in the agencies, and what is it they call them in New York, the commercial lending companies, as mentioned in the bill, and loan production offices, and that sort of thing.

As I told you, of the three largest banks that we supervise, two of them are subsidiaries of foreign banks and I think that we would have to say that the principles of sound lending would not change whether performed by a bank whose parent was in Belgium or a bank in the United States; and the expertise which is available is available to all of the agencies, all of the three banking supervisory agencies; so I don't think it would be a great, insurmountable problem for any one of them to gear up to do this sort of work.

Mr. ST GERMAIN. However, to those who have contended that the States' supervisory authorities have all the expertise in the world, I hope that the FDIC will agree that we cannot just accept that because how could FDIC disagree with what I say? I don't accept it in view of the fact that you continue to examine in all 50 States.

Chairman LEMAISTRE. No, I don't disagree with you.

Mr. ST GERMAIN. We want to thank you kindly. We will have, and do have as a matter of fact, some additional questions that we will submit to you for the record, and will ask you to answer in writing.

Chairman LEMAISTRE. We will be glad to respond.

Mr. ST GERMAIN. Once again we want to thank you for rearranging this schedule you have. We note it was very inconvenient for you, but we are very appreciative.

Chairman LEMAISTRE. Thank you very much.

Mr. ST GERMAIN. Mr. Bloom, page 3 of your statement, you quote Mr. Heimann's testimony to this committee last year:

> It should be a central purpose of any system of regulation of foreign banking to sustain and invigorate the American centers of international trade and finance so as to facilitate thereby the flow of capital through the U.S. capital markets and the movment of trade into and out of the United States.

How many such centers of international trade are there currently?

Mr. BLOOM. In the country or in the world?

Mr. ST GERMAIN. In this country.

Mr. BLOOM. I think my answer would be three, but I would like to check with my colleague who is sitting in back of me, Mr. Bench, who is head of our International Division, and get his opinion.

Mr. ST GERMAIN. Why don't you have him join you?

Mr. BLOOM. Surely.

Mr. ST GERMAIN. Would you have him identify himself for the record?

STATEMENT OF ROBERT BENCH, ASSOCIATE DEPUTY COMPTROLLER FOR INTERNATIONAL BANKING, OFFICE OF THE COMPTROLLER OF THE CURRENCY

Mr. BENCH. Mr Chairman, my name is Robert Bench. I am Associate Deputy Comptroller for International Banking.

Mr. BLOOM. Do you agree, Mr. Bench, that we have three international banking centers in the country?

Mr. BENCH. Yes, I would. It is obvious that Chicago, San Francisco and New York are the primary international financial centers. If you look at the international assets of the regional banks, however, there is certainly activity in Boston, Philadelphia, and a growing presence in the Houston-Dallas area.

Mr. ST GERMAIN. Now, with the climate in the Houston-Dallas area, Mr. Bench, what are they allowed to do in the Houston-Dallas area, foreign banks?

Mr. BENCH. Mr. Chairman, I am not familiar with the—what they are allowed to do by statute.

Mr. ST GERMAIN. I mean under Texas law.

Mr. BENCH. As I understand it, they are quite limited as to what they can actually do with a physical banking presence in Texas but I do know there are a large number and active, representative offices of foreign banks which don't conduct the formal business of banking.

Mr. ST GERMAIN. That is what they are doing. They have representative offices and those offices cannot accept deposits?

Mr. BENCH. That is correct.

Mr. ST GERMAIN. And yet there has been a growing presence in Houston, despite the Texas law which precludes and prohibits the taking of deposits and limits them very severely?

Mr. BENCH. That is correct, Mr. Chairman.

Mr. ST GERMAIN. And as far as the Boston presence is concerned, that scene has not changed over a long period of time. Massachusetts has also done its utmost to try to attract, but as I stated earlier to Chairman LeMaistre, the foreign banks haven't just felt as though there was anything there they really wanted to get involved in?

Mr. BENCH. No, that is correct. I don't know the reason for that because I am sure if economic conditions in the New England area warranted there could be an incentive for foreign banks to go there.

Mr. ST GERMAIN. Mr. Bench, I want to assure you economic conditions in New England are like the weather in New England; they change every 24 hours. You know what our policy is in New England. If you don't like the weather, just wait a few hours. The same thing applies to economic conditions. If you grab it, my friend, it goes from one extreme to the other, very quick stages. So that I won't accept that one, having been a resident of New England for at least the past 49 years and studying and following this very closely.

Mr. BLOOM. Mr. Chairman, I guess we think that the past isn't necessarily the right indicator.

Mr. ST GERMAIN. You don't think the past is prolog?

Mr. BLOOM. Not in this case, because I have a feeling of many incipient regional changes in this country in terms of commercial centers. It seems like the timing of this is wrong in the sense of foreclosing places like Atlanta or Houston, or Minneapolis.

Mr. ST GERMAIN. Mr. Bloom, on page 4 of your statement you outline the expertise of the Comptroller's Office in regulating international banking. As a matter of fact, do you not in that instance make the case for Federal regulation of foreign banks?

Mr. BLOOM. Oh, yes, sir.

Mr. St Germain. Aren't you saying that it takes a large number of examiners with special training and expertise to regulate international banks?

Realistically speaking, how many State supervisory agencies have the necessary resources to do that job?

Mr. Bloom. Sir, I prefer not to put it in terms of an estimation or assessment of what my colleagues in the States have, but we certainly agree with the thrust of the bill, that foreign bank participation in the United States should be subject to Federal examination and supervision.

I think our posture in the rest of the world is probably remarkable in that regard and I think that a lot of foreign bankers probably, when they are asking their specialist to report to them how to enter the United States, must be surprised when they get the report back, well, you don't go to Washington; you go to the State capital where you want to enter; and we have no objection whatsoever with the thrust of the legislation and we certainly feel that the existing Federal agencies, the Federal Reserve and ourselves, are fully qualified; and without casting any doubts about the qualifications of any other entity, I know that we have and the Fed has the capability.

Mr. St Germain. I think we make that case pretty solidly with Chairman LeMaistre of the FDIC who has just left, so we won't ask you to comment any further in that area.

In weighing the need for Federal regulation of foreign banks, should we not consider the fact that some 88 percent of foreign bank assets are held by banks with operations in more than one State? Now I ask you, how many U.S. banks, and you were citing them, with multi-State operations, are not subject to Federal regulation?

Mr. Bloom. How many U.S. banks are not subject to Federal regulation?

Mr. St Germain. Which multi-State operations, such as you cited in your testimony, are not subject to Federal regulation?

Mr. Bloom. I guess there are no U.S. banks that are not subject to Federal regulation somewhere.

Mr. St Germain. Who are conducting multi-State operations?

Mr. Bloom. That is right.

Mr. St Germain. Therefore, shouldn't we consider the fact that, like U.S. banks with loan production offices, foreign banks tend to operate their multi-State offices as a network?

Mr. Bloom. Yes, sir.

Mr. St Germain. Mr. Wylie?

Mr. Wylie. Mr. Bloom, on page 7 of your testimony you suggested that to provide equality of treatment between foreign and domestic banks, deposit insurance should be mandatory for U.S. branches of foreign banks to the same extent that it is mandatory for State-chartered banks.

Does it make sense to treat U.S. branches of foreign banks in the same manner as State-chartered banks in light of the fact that the head officers of foreign banks are not subject to U.S. jurisdiction in light of FDIC's statement that "In the event of insolvency of a foreign bank, assets could be easily and quickly shifted from the

U.S. branch and out of U.S. jurisdiction, while deposits could be shifted to the U.S. branch."?

Mr. BLOOM. I think there is a shade of difference between the FDIC and ourselves on that. The FDIC is naturally troubled by their lack of complete control over the foreign-owned branch; however, as I understand their latest proposal, they proposed to remedy that by requiring the foreign bank to post collateral to insure not the depositors against the risk, but to insure the FDIC; in other words, to take the place of the control which the FDIC has over an American home office, and with that change, as I understand it, the FDIC is certainly willing to insure these foreign branches. However, there still may be this degree of difference.

We think that the foreign branch should be required to be insured. If it is in a State where a State requires all State banks to be insured, we think a foreign branch should also be required, but we understand the FDIC's practical difficulties and we think that they have to be recognized.

Mr. WYLIE. I am not too sure that I understood Mr. LeMaistre's position entirely, in that I don't know what form the surety would take. He suggested some sort of a surety bond, I think, but he wasn't really too explicit on that.

Did you think he was?

Mr. BLOOM. As I understood him, the FDIC would like to have some additional leverage over this foreign-owned branch because they do not have juridical jurisdiction over the foreign corporation; and the best way of doing that is to require that foreign-owned corporation to post in New York or whatever State it happens to be in certain assets or certain bonds which the FDIC could reach, if necessary.

Mr. WYLIE. Thank you.

Mr. ST GERMAIN. Mr. Wylie, if you have additional questions, could we submit them to the Comptroller's Office in writing? The same will be done by other members.

Mr. ST GERMAIN. I want to thank you, Mr. Bloom, and Mr. Bench, for joining him.

Mr. ST GERMAIN. The subcommittee will stand adjourned until the call of the Chair.

[The statements of Governor George Busbee and of Stroock & Stroock & Lavan, on behalf of the Bank Hapoalim B.M., follow:]

STATEMENT OF THE HONORABLE GEORGE BUSBEE

GOVERNOR

STATE OF GEORGIA

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION,

REGULATION AND INSURANCE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

RE: H.R. 7325 - THE INTERNATIONAL BANKING ACT OF 1977

Mr. Chairman, and members of this Subcommittee, I am George Busbee, Governor of Georgia. It is a privilege to have this opportunity to present my personal view as the chief executive officer of a sovereign state on certain aspects of The International Banking Act of 1977 which have a particular relevance to the legitimate interests of the people of Georgia and to the efficient and effective regulation of Georgia's state-chartered banks.

While I dislike starting from a negative posture, I must oppose the general thrust of (five) provisions of H.R. 7325 the net effect of which would be to establish a degree of federal control over foreign bank operations in the United States which I believe is both unnecessary and contrary to our national interests.

Interstate Banking Operations

Chief among these objectionable provisions is that segment of Section 5(a) which would prohibit multi-state locations of foreign bank branches until domestic, national and state member banks can branch interstate.

In the absence of some overriding national consideration, which I do not perceive here, I believe the states should be able to structure the financial services within their borders in a manner they believe will best serve their citizens. In 1974, for example, the Georgia legislature passed the International Banking Agency Act which was aimed at expanding Atlanta's role as an international financial center.

The chief sponsor and strongest supporter of this legislation was then-Governor Jimmy Carter. He took the lead in this matter because he realized, as I have come to realize, that the presence of foreign banking facilities is a very important factor to foreign investors and business concerns in considering whether or not to do business in a state.

As amended at my request in 1976, the Georgia Act is beginning to have the desired effect. Our banking department has licensed four international banking agencies--one in 1976 and three in 1977--and we also have two representative offices of foreign banks. In seeking to broaden Atlanta's role as an international banking center, we are acting in the best interests of the people of Georgia and the nation as a whole in terms of both market competition and the facilitation of the flow of capital through our markets and the movement of trade into and out of our state, region and country. But, under provisions of H.R. 7325, Georgia could not invite a foreign branch already established in another state to set up such a facility within our borders.

Another equally objectionable aspect of the one-state restriction provision is that it would tend to limit foreign banking activity in this country through branching to a few states, namely New York, California and to a lesser extent Illinois, which are our nation's current international money market centers. You can be assured that if this provision is adopted these few states would retain their preeminent positions at the expense of many other states which may wish now or in the future to increase their roles in international banking affairs. Thus, while the one-state restriction purports to correct an alleged competitive imbalance in favor of foreign banks, in reality it has the potential of discriminating against the citizens of many states by denying to them the economic advantages of foreign investment. And if this provision passed tomorrow, the discimination against the people of Georgia would not be theoretical or potential. It would be an existing fact.

Furthermore, if one analyzes the so-called competitive inequity that the provision seeks to eliminate, it appears to be more fiction than fact. According to Federal Reserve data, approximately 18 foreign banks presently have branches in more than one state; the majority in New York and Illinois with Massachusetts, Oregon, Washington, Puerto Rico and the Virgin Islands also involved to a limited extent.

Actually, the interstate activity of these foreign bank entities is de minimus when compared to the interstate operations of our domestic banking entities. Domestic banks utilize a wide range of multi-state bank holding company bank and nonbank affiliates, Edge Act Corporations, loan production offices, traveling loan and deposit-producing officers and a nationwide correspondent banking network to far outstrip foreign bank competition in this area.

Information taken from 1975 and 1976 issues of the American Banker newspaper serves to place in perspective the interstate activities of domestic bank holding companies.[1/] This data deals with many aspects of domestic bank holding company interstate activity, including the nationwide operation of nonbank subsidiaries, Edge Act Corporations and loan production offices by 13 major bank holding companies headquartered in seven states. These companies alone have nonbank affiliates in 43 states and operate approximately 1,483 nonbanking offices located outside their headquarter states. These offices engage in a wide range of bank-related activities such as factoring, investment management advice, trust services, marketing travelers checks, consumer and sales financing, commercial lending, mortgage banking, selling and reinsuring credit-related insurance, leasing, computer services and providing venture capital to small businesses. These same bank holding companies also conduct interstate operations through 35 Edge Act Corporations and 23 loan production offices.

In addition, there are several U.S. bank holding companies with banks in more than one state under the grandfather provisions of the Bank Holding Company Act of 1956. Section 3(d) of that Act also provides for the acquisition or establishment of commercial banks by bank holding companies located out of state, if the statute of the state in which the bank is located specifically authorizes such action.

1/ American Banker issues of: October 23 and 29, November 5, 13 and 20, December 4, 12, 22 and 29, 1975; and January 6, 13 and 21 and February 9, 1976.

The point of all this is simply that some large domestic bank holding companies are so heavily involved in interstate bank-related activities at the present time and are so far out-stripping the relatively few foreign branches in interstate activity that it cannot be argued rationally that they need protection from their foreign competitors at this time or for the forseeable future.

Finally, let me reiterate a point I touched on earlier concerning the nature of the foreign banking business in this country. In Congressional testimony last year on the Foreign Bank Act of 1975, former Federal Reserve Board Vice Chairman George W. Mitchell stated that the principal reasons that foreign banks have entered the U.S. have been "to service the needs of multi-national corporations (both U.S. and foreign based) which tend to be customers of these banks and to accommodate home country customers who do business in the United States. Servicing these customers is likely to remain the primary business of foreign banks operating in the United States."[2/] In other words, foreign bank branches as a whole pursue and will continue to pursue primarily a wholesale banking business in our financial centers. They do not as a general rule compete to any great extent with our domestic banks in local retail markets.

2/ Hearings before the Subcommittee on Financial Institutions of the Committee on Banking, Housing and Urban Affairs, U.S. Senate, on S. 958. The Foreign Bank Act of 1975, p. 163.

For example, agencies of the type we have in Georgia don't even take domestic deposits, but I want the option of inviting foreign branches into Georgia if I feel at some time in the future that it would serve the best interest of our citizens.

For all of the above-cited reasons, I consider the one-state restriction contained in Section 5 to be unnecessary and contrary to the interests of the vast majority of the citizens of this country. I urge the Subcommittee to reject this provision of the bill.

Federal Reserve Veto Power

I must also express strong opposition to those provisions in Section 7(e) of H.R. 7325 which require Federal Reserve Board approval of the establishment of any foreign bank branch, agency or commercial lending company pursuant to state law. What is the reason for subjecting state banking departments to Federal Reserve veto power over the establishment of new entities?

In its "Proposed Amendments To The International Banking Act Of 1977," the Board seems to suggest that such oversight is necessary "to ensure that foreign policy issues are considered when appropriate." I would like to know when they have not been so considered by the appropriate state authorities. I know that the Administration of the State of Georgia and the Georgia Department of Banking and Finance are just as concerned with the well being of the United States as are the federal bank regulatory officials and I am sure that this is equally true of the other states. In Georgia, we want to cooperate fully with the appropriate federal officials on the foreign policy implications of new entries. It is interesting to note that the Federal Reserve Bank of Atlanta periodically asks our banking department for reports on the condition of those foreign facilities operating in Atlanta--they did so about two weeks ago--and our department cooperates with them fully.

The banking departments of New York and California, which currently regulate approximately 95% of foreign banking assets in this country, have traditionally consulted with State Department personnel to assure that the interests of the United States are protected in connection with new entries. And I am sure that all state banking departments involved in the supervision of foreign banking facilities will wish to participate to the fullest in consultative procedures with appropriate federal officials in connection with requests for operating powers by foreign banks.

In other words, I am not aware of evidence that state banking departments have not exercised prudence in chartering foreign banks or licensing their branches, agencies and commercial lending companies. And I think the Federal Reserve Board has a considerable burden of proof here to make such a showing and to demonstrate that our national interests and/or monetary goals have been undermined before they are handed this sweeping authority over state banking departments.

Expanded Regulatory Authority For Federal Reserve

It is a sweeping, all pervasive authority that the Fed seeks because Section 7(e) must be read in conjunction with Section 7 Subsections (c) and (d) of H.R. 7325 which would authorize the Board to impose the same regulatory, reporting and examination requirements on state-chartered foreign bank facilities as are imposed on member banks. Again, I must ask why. The states have been regulating and supervising foreign banking operations in this country virtually without a federal presence for about one hundred years, and I know of no evidence that this regulation has proved inadequate, that foreign banking entities are guilty of unsafe or unsound practices or that our national interests have been contravened in any way.

I realize that the number of foreign banking facilities in this country have increased in recent years but, as I suggested earlier, this is healthy. It stimulates competition, provides employment opportunities, stimulates domestic production through the financing of foreign trade and is extremely important from the reciprocity standpoint to the growing presence of U.S. banks abroad. The Federal Reserve's own data indicates that as of April 1977, the assets of U.S. banking offices abroad totalled some $223 billion which is nearly 3 1/2 times greater than the $66 billion of assets of foreign banking offices operating in this country.

Once again, I believe a burden of proof exists to show that the present system is lacking before you adopt these sweeping federal controls-- controls that are duplicatory in many significant respects and could lead to many conversions to federal charters. Why retain a state charter when they would be regulated by a federal agency anyway. By converting, they could avoid one layer of duplicatory supervision--that imposed by a state.

I believe former Federal Reserve Vice Chairman Mitchell put the present situation vis-à-vis foreign bank regulation in proper perspective during Congressional testimony last year. He said: "There is nothing to indicate that foreign banks are 'abusing' their powers in the sense that they are using the opportunities available to them under the present system to engage in any improper or unsound banking practices. On the contrary, it has been the experience of the Board that foreign banks operating in the United States have scrupulously complied with existing U.S. laws and regulations and have been generally cooperative in their dealings with the Board." 3/

3/ Hearings before the Subcommittee on Financial Institutions of the Committee on Banking, Housing and Urban Affairs, U. S. Senate on S. 958, The Foreign Bank Act of 1975, p. 160.

Reserve Setting Authority

Section 7(a) of H.R. 7325 would impose Federal Reserve reserve-setting authority on the state-chartered branches, agencies and commercial lending companies of foreign banks with total worldwide consolidated bank assets of $1 billion or more. As the Governor of a state that is trying to encourage foreign investment, my primary objection to 7(a) is that it discriminates against these foreign banking institutions in a way that would motivate retaliation which would violate the best interests of the people of Georgia and the other states where such facilities are located. Reserve affiliation with the Fed is optional for domestic state-chartered banks, regardless of size, and until such time as this policy is changed, if it ever is, like treatment should be afforded foreign banks. Furthermore, it is my understanding that there is doubt as to whether reserve-setting authority is even needed by the Fed for its monetary policy purposes.

There is another broader issue involved here which deserves mention. Mr. Chairman, in his communications to you of May 25, Chairman Burns stated that one of the two basic purposes of the Board in recommending legislation to regulate foreign banks is to provide "for a comprehensive Federal presence in the regulation and supervision of foreign bank operations... in this country..." I have no objection to the stated goal Mr. Chairman. I fully support Section 2 of H.R. 7325 which provides for a federal chartering option and the attendant regulation and supervision for foreign bank facilities in this country. I think that it is appropriate that the FDIC now insures the deposits of foreign subsidiaries. I fully support consultation by the state banking departments with the State Department, Treasury Department and Federal Reserve on the broad national and international implications of foreign bank entry and operations within their borders. This, I suggest, constitutes "a comprehensive Federal presence."

On the other hand, when you consider the above-mentioned provisions of Sections 5 and 7 as a whole, H.R. 7325 goes far beyond such a presence to provide for a measure of federal control of foreign bank operations that would virtually obviate--except for minor caretaking responsibilities--the legitimate roles of the states. In the absence of any showing that the states are not doing an adequate job in this area, I believe said states should continue to have the right to structure the financial organizations within their borders in a manner which they believe best serves the needs of their residents.

It is my frank opinion after reviewing H.R. 7325 that the only provision that is valid and needed at this time is that providing for the federal chartering option.

Thank you Mr. Chairman.

Statement of Stroock & Stroock & Lavan

on behalf of Bank Hapoalim B.M.

We are United States counsel to Bank Hapoalim B.M., Tel Aviv, Israel (the "Bank"), a banking corporation organized under the laws of the State of Israel. In that capacity, we appreciate this opportunity to submit the Bank's views on H. R. 7325, the proposed International Banking Act of 1977, to the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

The bill raises a variety of major issues concerning foreign bank regulation, many of which lead to serious doubt as to wisdom of the regulatory scheme proposed. In this statement, however, we focus our specific comments on Section 5, which supplants presently existing state legislation in the area of foreign bank branching by effectively prohibiting interstate branching by foreign banks. We believe that the question of regulation concerning foreign bank branching is best left to the several states because it is an area in which the state interest is superior to the federal one.

Congress has always been concerned with preventing the development of a highly concentrated national banking system. It has traditionally sought to preserve the dual (federal-state) banking system which provides domestic banks with the choice of state or federal charter and rights. The McFadden Act and other federal statutes were intended to conform to this dual banking system by accomodating restrictive state banking policy towards encroachment by out-of-state domestic banks. Interstate banking is expressly prohibited under federal law for national banks, 12 U.S.C. §36, and for state banks which are members of the Federal Reserve System, 12 U.S.C. §321. Yet pursuant to this same regulatory structure, the basic authority for national banks and state member banks to establish a new branch within a state depends upon the permissive right declared by the state law of the state in which a bank is located.

Of equal importance, the McFadden Act leaves to the states the right to extend multistate banking privileges to nonmember domestic banks. 12 U.S.C. §36; 12 U.S.C. §321. A substantial portion of domestic banks are not members of the Federal Reserve System, and therefore this right is a potent one which should not be lightly dismissed. The McFadden Act restrictions were principally designed to give each state the right to determine whether it wishes to permit an out-of-state nonmember bank to enter and not to prohibit multistate operations *per se*. Although multistate banking operations have not yet developed, presumably if and when it becomes beneficial, states may effectively permit domestic banks to engage in multistate operations.

Congress has also recognized the predominance of the state interest in the provisions of the Bank Holding Company Act. 12 U.S.C. §1841 et seq. Pursuant to Section 3(d) thereof, the several states are authorized to formulate their own policies regarding the acquisition of in-state banks by out-of-state holding companies. The option is expressly left open to any state to invite a holding company from another state to acquire a bank within its borders. 12 U.S.C. §1842(d).

Concern for legitimate state interests supports existing arrangements. Several states have chosen by positive legislation to encourage the multistate possibilities for foreign banks by allowing foreign banks to operate within their borders. These states have deliberately chosen to exercise the option they possess to allow foreign bank branching and have deliberately chosen not to exercise their option to allow domestic banks from other states to operate within their borders. If a state believes it to be consistent with its interests (as several clearly do) to invite foreign banks to operate branches or agencies within its borders, the federal government should not preempt state policy when no signs of abuse or of preeminent federal interest have been shown. A state should have the authority, as recognized in other federal banking legislation, to structure the financial institutions within its borders in a manner which it believes best serves the needs and interests of its residents. In the absence of some compelling national interest the federal government, consistent with the principles of the McFadden Act, should not preempt state statutes and regulations in this area.

The passage of H.R. 7325 would contravene established policy of numerous states (Alaska, California, Florida, Georgia, Hawaii, Illinois, Massachusetts, New York, Oregon and Washington) in welcoming and admitting foreign banks although they have operations in other states. The presence of foreign banking operations within a state increases both domestic and international trade, encourages exports of the products of local industry and promotes international ties of understanding and friendship. By admitting foreign banking in one form or another (e.g. branches, agencies), each of the above named states has chosen to promote competition and the expansion of financial services to encourage its growth as a money market, as a source of jobs, income, and tax revenues and to encourage the foreign growth and profitability of local enterprises. Most importantly, each has sought by deliberate planning to attract foreign banks to an aspiring financial center city, planning which would be sharply curtailed by H.R. 7325.

93-031 O - 77 - 40

To restrict a foreign bank to operations in one state would likely result in foreign banks choosing New York as their single "home state" of operations in the foreseeable future. A substantial portion of the current financing of import and export transactions already takes place in New York and international customers may often prefer to make and receive payment in New York. For these reasons, most foreign banks would be unable to establish themselves elsewhere and, therefore, the passage of H.R. 7325 would impede the opportunities of all other states which seek to become financial and trading centers. The combination of the proposed restrictive legislation and market place realities may determine that New York alone would glean the advantages accruing to a state with a foreign banking presence and efforts by other states would effectively be restricted. Such a result raises the basic question of the extent to which it is appropriate for legislation to disturb market place determinations of the location of foreign banks within the United States.

In addition, limiting the possibility of development of such financial centers may work to the disadvantage of the international position of U.S. banking and commerce generally. Federally restricting a state's ability to invite out-of-state foreign banking operations into its borders may harm both the legitimate interests of the various states and the opportunities for U.S. banks to operate throughout the geographic borders of other countries without serving any compelling national interest.

If, upon due consideration, this subcommittee should reject the concept that foreign banking regulation should be left to the states, we strongly urge modification of Section 5, Subsection (b), which permanently "grandfathers" branches of foreign banks established or approved before May 1, 1976, but provides no exemptive protection for foreign banking operations established outside a bank's "home state" after that date but prior to the introduction of the proposed legislation on May 23, 1977.

The "grandfather" date of May 1, 1976 should be abandoned in favor of a more equitable provision, which might be either the date of passage of the legislation by the Congress or the date of its reporting out of your Committee. As we understand it, the choice by the sponsors of the bill of a date of more than a year prior to its introduction did not stem from equitable considerations, but resulted merely from the retention of the terms of the legislation introduced in the last Congress which was not enacted into law. No principle is at stake as far as the May 1, 1976 date is concerned, and its retention results in considerable hardship for the Bank.

Bank Hapoalim B.M. is the second largest bank in Israel in terms of total assets and deposits, with 270 branches in Israel and offices in a variety of cities throughout the world. The Bank is controlled by Hevrat Ovdim, the economic arm of the Histadrut, which is the general federation of labor in Israel. In the last few years the Bank has sought to service U.S.-Israeli trade by establishing branches in the United States. The Bank opened its first branch in the United States in November, 1974 when its Rockefeller Center Branch in New York City commenced operations. In addition, in April, 1977, it opened a second branch in the City of New York located in the Borough of Queens. An agency of the Bank was opened in Los Angeles, California early this year, but it does not have power to accept deposits from the general public in conformity with California law.

In the last year, the Bank has invested considerable effort and expense to expand its operations into two other major metropolitan areas. Licenses were recently granted to the Bank to operate branches in Chicago, Illinois and Boston, Massachusetts; these licenses were granted prior to the introduction of H.R. 7325. In addition to the expenditures incurred by the Bank in insuring strict compliance with the application procedures required by the Illinois Commissioner of Banks and

Trust Companies and the Massachusetts Board of Bank Incorporation, the Bank is incurring major expenses in selecting and preparing appropriate branch locations in downtown Boston and Chicago. The Bank's commitments to open branches in Boston and Chicago were made at a time when there was no indication that the maintenance of such branches might retroactively be declared illegal and that the considerable sums expended in connection with these branches might not be recouped. Such commitments were totally proper when made and were even encouraged by the states involved as part of their declared policies to stimulate the growth of their financial centers as areas of international activity.

The Bank's business is generated in large part by Israeli companies operating in the United States, private individuals having business contacts with Israel and American corporations trading with Israeli firms. The volume of Israel's trade with the United States has grown substantially in recent years and a major portion of Israel's imports are derived from the United States. The Bank has played a significant role in facilitating this trade and the new United States branches will enhance the Bank's capabilities to finance U.S.-Israeli trade. It should also be borne in mind that in many aspects the Bank's American operations are unique, and provide little competition to domestic banks and savings institutions.

[Whereupon, at 2:55 p.m. the subcommittee was adjourned, to reconvene subject to the call of the Chair.]

The purpose of a grandfather provision in legislation is to protect the enterprises of those who acted in reliance upon existing law. To use a protective grandfather date which would be more than a year in advance of even the introduction of the legislation into the 95th Congress, solely because that was the date utilized in proposed legislation which failed to pass an earlier Congress, is arbitrary and will prove to be unfair. If the Congress wishes to establish the principle that henceforth foreign banks should be limited to branches in one state, that objective can still be met by setting a more recent date as the cut-off for "grandfather" rights; at the same time such date would provide full protection for investments made in reliance on existing law.

We hope the foregoing views will be helpful to the Subcommittee.

Respectfully submitted,

STROOCK & STROOCK & LAVAN

APPENDIX A

QUESTIONS SUBMITTED BY LETTER FROM CHAIRMAN ST GERMAIN REGARDING H.R. 7325, "THE INTERNATIONAL BANKING ACT OF 1977" WITH ATTACHED REPLIES FROM THE FOLLOWING WITNESSES

FERNAND J. ST GERMAIN, R.I., CHAIRMAN
FRANK ANNUNZIO, ILL.
JAMES M. HANLEY, N.Y.
CARROLL HUBBARD, JR., KY.
JERRY M. PATTERSON, CALIF.
BUTLER DERRICK, S.C.
THOMAS L. ASHLEY, OHIO
NORMAN E. D'AMOURS, N.H.
JOHN J. LAFALCE, N.Y.
CLIFFORD ALLEN, TENN.
JOHN J. CAVANAUGH, NEBR.
MARY ROSE OAKAR, OHIO
JIM MATTOX, TEX.

U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
NINETY-FIFTH CONGRESS
WASHINGTON, D.C. 20515

JOHN H. ROUSSELOT, CALIF.
CHALMERS P. WYLIE, OHIO
GARRY BROWN, MICH.
HENRY J. HYDE, ILL.
GEORGE HANSEN, IDAHO
JAMES A. S. LEACH, IOWA

July 14, 1977

Mr. Edward I. O'Brien, President
Securities Industry Association
490 L'Enfant Plaza, S.W.
Washington, D. C. 20024

ATTN: Mr. A. J. Harris

Dear Mr. O'Brien:

On behalf of the Subcommittee, I wish to express our appreciation for your testimony Tuesday on the provisions of the International Banking Act of 1977, H.R. 7325. As I stated in my opening statement, we are most anxious to complete action as quickly as possible in order for the Senate to complete their deliberations in the 95th Congress.

It is the intention of the Subcommittee to mark up the bill during the week of July 25 through July 29 and, accordingly, I would request that I receive your response to the following questions no later than noon on Thursday, July 21. It is my intention to distribute copies of this letter and your response thereto to each of the Subcommittee Members prior to Subcommittee markup.

The questions are as follows:

1. In your testimony you have focused on upholding the principle of separating banking and commerce in the United States. Nevertheless, you note that "There may be practical considerations which will lead the Congress to temper the potentially disrupted impact of a sound but hard principle with certain modifications."

What do you see as the problems in Section 8 as currently written and what suggestions would you have in terms of modifying this section?

2. As you are aware, a number of witnesses testifying on the bill in the past have raised the specter of retaliation against U.S. commercial and investment bankers abroad as a justification for modifying certain provisions of the legislation.

Mr. Edward I. O'Brien, President
July 14, 1977
Page Two

How seriously do you consider this threat and could you give us some indication for the record of the extent of U.S. investment banking operations abroad as a means of measuring the potential for retaliation?

3. As you are aware, a number of witnesses are advocating that the securities operations of foreign banks be permanently grandfathered. If this suggestion were to be accepted, it would be necessary that the Congress know whether or not the regulatory framework would be adequate to insure that securities and banking business of foreign banks would be conducted at arms length.

In your view, is that framework as presently constituted adequate? And, if not, what suggestions would you have for improving it in terms of a permanent grandfathering provision? I am enclosing copies of testimony received yesterday from the Treasury, Department of State, New York Clearing House and the Conference of State Bank Supervisors, and ask you to comment as you determine appropriate on those points of vital concern to your industry.

Again, I do appreciate your assistance and look forward to your responses to the foregoing questions.

Sincerely,

Fernand J. St Germain
Chairman

FJSTG:aSb
Enclosures

SECURITIES INDUSTRY ASSOCIATION
20 Broad Street, New York, N.Y. 10005 (212) 425-2700

July 21, 1977

EDWARD I. O'BRIEN
President

The Honorable Fernand J. St Germain, Chairman
Subcommittee on Financial Institutions Supervision,
Regulation and Insurance
House Committee on Banking, Finance and Urban Affairs
2129 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

This letter is in response to the written questions you submitted to me regarding our testimony on H.R. 7325, the International Banking Act of 1977.

1. "What do you see as the problems in Section 8 as currently written and what suggestions would you have in terms of modifying this section?"

First, we are in full agreement that the provisions of the Bank Holding Company Act should apply to foreign banks and their subsidiaries.

Second, we believe that the December 31, 1985 cutoff date by which time prohibited nonbanking activities must be terminated should be adequate to prevent any adverse disruption. Nonetheless, we are not unmindful of the precedence for permanently "grandfathering" otherwise impermissible activities. If the Subcommittee members feel this approach is more equitable as it relates to the treatment of securities affiliates of foreign banks, even though it does erode to a limited extent the principle of separation of banking and nonbanking activities, the SIA would not object.

However, certain other limitations should be considered if the foreign affiliates are permanently grandfathered in order to insure that these affiliates do not unfairly utilize their advantaged position. In the case of U.S. broker-dealers which are wholly owned by foreign institutions with U.S. commercial banking interests, one possible approach would be to limit further injections of capital from the foreign parents other than to replenish capital losses of U.S. subsidiaries. Another restriction might require that any expansion of the capital of these broker-dealers should come from domestic sources, foreign sources without U.S. banking interests, or from retained earnings.

WASHINGTON OFFICE: 490 L'Enfant Plaza East, S.W., Washington, D C. 20024 · (202) 488-4664

In the case of broker-dealers partially owned by foreign institutions with U.S. banking interests, the percentage of capital contributed by foreign institutions should not increase. Further injections of capital would be allowed from foreign banks, but only under the condition that capital contribution from domestic sources increased at the same or a faster rate.

Regardless of what is done with respect to grandfathering, we believe it is necessary to define with greater precision the securities activities in which U.S. as well as foreign banks may engage. As was stated in our testimony, we do not think that the reference to paragraph seven of the Revised Statutes of the United States is sufficiently clear. The basic public policy behind the Glass-Steagall Act, as well as the two Bank Holding Company Acts, is to separate banking from other fields of commerce. In order to be consistent with that policy, it should be clearly stated that foreign banks can conduct only those securities activities specifically permitted under the Glass-Steagall Act. (See Attachment A.)

Moreover, we do not believe that the provision intended to permit foreign banks to participate in U.S. corporate underwritings for the purpose of resale to customers outside the United States is necessary. It is our understanding that when affiliated broker-dealers are involved in such an underwriting, the actual purchase and resale are conducted through the foreign parent banks in their respective countries.

2. "How seriously do you consider this threat (of retaliation) and could you give us some indication for the record of the extent of U.S. investment banking operations abroad as a means of measuring the potential for retaliation?"

The SIA is aware of no facts which lead us to believe that the threat of retaliation is real. We are not aware of any overt or covert pledges of reprisal if this bill is enacted. In fact, it is difficult to attribute much credence to such an argument when the legislation merely will require foreign banks to conduct their activities on the same basis as domestic banks. That requirement, it seems to us, can hardly be called discriminatory.

In terms of the extent to which U.S. firms are involved in underwritings abroad, I am submitting tables from the 1976 and 1977 Institutional Investor magazine's Annual Financing Directory, International Edition. (See Attachment B.)

3. If securities activities of foreign banks are permanently grandfathered, "(Is) the regulatory framework...adequate to insure that securities and banking business of foreign banks would be conducted at arm's length?"

It would be most appropriate for grandfathered affiliates to be required to furnish detailed reports on their activities, particularly in relation to their foreign dealings. In this regard the Federal Reserve Board, in cooperation with the Securities and Exchange Commission, should be directed to develop an effective monitoring system to insure that these affiliates operate in compliance with existing laws and regulations.

On behalf of the Board of Directors, I want to thank you for inviting SIA to testify and to urge you to demonstrate again the forceful leadership you exercised last year in expediting the passage of this important legislation.

Sincerely yours,

Edward I. O'Brien

Edward I. O'Brien
President

hlk

Attachments

ATTACHMENT A

Proposed Changes in Section 8(c)

Section 8(c) p. 24, lines 4 through 16. Words underlined are in lieu of the words contained in the bill; the words in brackets are deleted.

"United States <u>only</u> to the extent <u>specifically</u> <u>authorized</u> for national banks by paragraph Seventh of Section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) [and, in addition, may continue to engage in the United States in the business of underwriting and distributing securities to the extent necessary to participate in customary and usual syndicate activities in the United States by the managing underwriters or other underwriters on behalf of all syndicate members in connection with underwritings of such securities so long as the individual selling and distribution activities of any such foreign bank or company (whether direct or indirect through an affiliate) in connection with any such underwriting are confined to jurisdictions other than the United States.]"

ATTACHMENT B

1977

7 INTERNATIONAL LEADERSHIP

Like the U.S. leadership rankings in an earlier section of this directory, the international investment banking sweepstakes are measured three different ways — with full credit given to the lead manager only, with full credit given to all managers and with equal proportionate credit given to all managers. As you will see, the method of measurement can produce widely varying results.

To provide the broadest possible view of the complex international financing markets, we have applied these three ranking methods to seven different classifications of securities. The one headed "international market" is the broadest of all. The "Euromarket" classification includes all financings done by an international syndicate and sold mostly in countries other than the country of the currency in which an issue is denominated. The remaining five categories represent a close-up view of specific international markets: the big Deutsche mark market, the Eurodollar market, the Euro-Canadian market, the international dollar market and the American dollar market.

Euromarket

FULL CREDIT TO LEAD MANAGER

		$ VOLUME (MILLIONS)	# OF ISSUES
1	Deutsche Bank	$1,904.1	18
2	Morgan Stanley	1,129.7	22
3	S.G. Warburg	984.2	19
4	Credit Suisse White Weld	849.4	19
5	Westdeutsche Landesbank	509.4	15
6	Union Bank of Switzerland	493.0	6
7	Wood Gundy	382.1	14
8	Kidder, Peabody	360.0	10
9	Orion	326.0	8
10	Dresdner Bank	316.7	9
11	First Boston	305.3	9
12	Commerzbank	299.4	7
13	Paribas	270.6	7
14	Hambros Bank	265.0	7
15	Kuhn, Loeb	220.0	4
	Banque Nationale de Paris	220.0	4
17	European Banking Co.	215.0	4
18	Smith Barney	205.0	7
19	Amro Bank	185.5	5
20	Goldman, Sachs	141.1	4
21	Swiss Bank Corp.	135.0	2
22	Caisse des Depots	125.0	2
23	Societe Generale	117.5	4
24	Daiwa	105.0	3
	Salomon Brothers	105.0	2

FULL CREDIT TO EACH MANAGER

		$ VOLUME (MILLIONS)	# OF ISSUES
1	Credit Suisse White Weld	$5,980.5	110
2	Union Bank of Switzerland	5,671.1	105
3	Swiss Bank Corp.	5,611.8	106
4	Deutsche Bank	4,301.6	76
5	Kredietbank Luxembourgeoise	3,121.0	74
6	Paribas	2,924.8	49
7	S.G. Warburg	2,723.4	51
8	Westdeutsche Landesbank	2,710.3	65
9	Amro Bank	2,705.0	36
10	Commerzbank	2,356.3	46
11	Societe Generale de Banque	2,082.0	44
12	Societe Generale	1,952.7	31
13	Banque Nationale de Paris	1,816.0	35
14	Wood Gundy	1,785.3	40
15	Dresdner Bank	1,741.0	47
16	Morgan Stanley	1,720.4	36
17	Credit Lyonnais	1,451.0	34
18	Kidder, Peabody	1,337.4	23
19	Manufacturers Hanover	1,264.7	29
20	Banca Commerciale Italiana	1,189.2	17
21	Banque Bruxelles Lambert	1,159.8	33
22	Algemene Bank Nederland	1,150.1	19
23	Orion	1,065.7	29
24	Merrill Lynch	958.4	28
25	BAII	955.8	15

PROPORTIONATE CREDIT TO EACH MANAGER

		$ VOLUME (MILLIONS)	# OF ISSUES
1	Credit Suisse White Weld	$1,239.0	110
2	Union Bank of Switzerland	876.8	105
3	Swiss Bank Corp.	774.8	106
4	Deutsche Bank	557.6	76
5	Morgan Stanley	453.0	36
6	Wood Gundy	394.1	40
7	Kredietbank Luxembourgeoise	372.4	74
8	S.G. Warburg	353.0	51
9	Paribas	335.9	49
10	Westdeutsche Landesbank	333.2	65
11	Amro Bank	318.4	37
12	Banque Nationale de Paris	315.3	35
13	Commerzbank	285.8	46
14	Dresdner Bank	256.8	46
15	Societe Generale de Banque	225.1	44
16	Societe Generale	191.9	31
17	Credit Lyonnais	189.2	34
18	Kidder, Peabody	178.4	23
19	Orion	164.8	29
20	Merrill Lynch	143.6	28
21	Manufacturers Hanover	134.9	29
22	Banque Bruxelles Lambert	132.8	33
23	BAII	132.6	15
24	A.E. Ames	126.4	18
25	Hambros Bank	123.9	22

International Market

FULL CREDIT TO LEAD MANAGER

		$ VOLUME (MILLIONS)	# OF ISSUES
1	Deutsche Bank	$3,029.9	36
2	First Boston	2,080.3	18
3	Morgan Stanley	1,779.7	26
4	Salomon Brothers	1,500.0	11
5	Credit Suisse White Weld	1,413.9	37
6	Kuhn, Loeb	1,212.2	10
7	S.G. Warburg	984.2	19
8	Union Bank of Switzerland	940.0	20
9	Merrill Lynch	925.4	14
10	Westdeutsche Landesbank	601.7	17
11	Swiss Bank Corp.	591.0	16
12	Lazard Freres	525.0	5
13	Kidder, Peabody	472.5	12
14	Dresdner Bank	384.0	11
15	Wood Gundy	382.1	14
16	Commerzbank	367.3	9
17	Amro Bank	360.4	11
18	Dillon, Read	350.0	4
19	Orion	326.0	8
20	Paribas	305.2	9
21	Goldman, Sachs	291.1	5
22	Smith Barney	280.0	8
23	Hambros Bank	265.0	7
24	Algemene Bank Nederland	257.2	9
25	Nomura	251.2	8

FULL CREDIT TO EACH MANAGER

		$ VOLUME (MILLIONS)	# OF ISSUES
1	Credit Suisse White Weld	$6,864.3	138
2	Swiss Bank Corp.	6,544.3	134
3	Union Bank of Switzerland	6,529.9	130
4	Deutsche Bank	5,735.4	103
5	Salomon Brothers	4,705.1	40
6	First Boston	4,594.2	40
7	Merrill Lynch	3,678.4	54
8	Morgan Stanley	3,620.4	42
9	Kredietbank Luxembourgeoise	3,366.8	82
10	Westdeutsche Landesbank	3,349.7	76
11	Amro Bank	3,273.9	55
12	Paribas	3,090.2	57
13	Commerzbank	2,995.7	57
14	Wood Gundy	2,892.8	50
15	Dresdner Bank	2,862.0	64
16	S.G. Warburg	2,723.4	51
17	Kuhn, Loeb	2,650.7	32
18	Societe Generale de Banque	2,082.0	44
19	Societe Generale	1,952.7	31
20	Banque Nationale de Paris	1,893.5	37
21	Lazard Freres	1,795.5	20
22	A.E. Ames	1,668.7	28
23	Algemene Bank Nederland	1,652.2	37
24	Credit Lyonnais	1,611.5	37
25	Kidder, Peabody	1,449.9	25

PROPORTIONATE CREDIT TO EACH MANAGER

		$ VOLUME (MILLIONS)	# OF ISSUES
1	Credit Suisse White Weld	$1,484.8	138
2	Morgan Stanley	1,439.7	42
3	Union Bank of Switzerland	1,314.5	130
4	Swiss Bank Corp.	1,289.2	134
5	Salomon Brothers	1,171.1	40
6	Deutsche Bank	1,116.1	103
7	First Boston	1,108.8	40
8	Merrill Lynch	954.4	54
9	Wood Gundy	714.9	50
10	Dresdner Bank	648.8	64
11	Kuhn, Loeb	634.9	32
12	Westdeutsche Landesbank	491.1	76
13	Lazard Freres	457.3	20
14	Commerzbank	443.7	57
15	Amro Bank	432.9	55
16	Kredietbank Luxembourgeoise	411.0	82
17	A.E. Ames	369.0	28
18	Paribas	357.2	57
19	S.G. Warburg	353.0	51
20	Banque Nationale de Paris	329.9	37
21	Nomura	271.6	25
22	Algemene Bank Nederland	225.5	37
23	Societe Generale de Banque	225.1	44
24	McLeod, Young, Weir	219.1	13
25	Dillon, Read	217.9	9

1977

Deutsche Mark Market

FULL CREDIT TO LEAD MANAGER

		$ VOLUME (MILLIONS)	# OF ISSUES
1	Deutsche Bank	$1,562.9	28
2	Westdeutsche Landesbank	461.7	13
3	Dresdner Bank	344.9	10
4	Commerzbank	233.1	6
5	BHF-Bank	93.2	4
6	Deutsche Girozentrale-Deutsche Kommunalbank	60.0	3
7	Bayerische Vereinsbank	25.5	1

FULL CREDIT TO EACH MANAGER

		$ VOLUME (MILLIONS)	# OF ISSUES
1	Deutsche Bank	$2,205.6	46
2	Dresdner Bank	1,679.4	34
3	Westdeutsche Landesbank	1,226.8	29
4	Commerzbank	1,162.9	26
5	Kredietbank Luxembourgeoise	617.8	16
6	Union Bank of Switzerland	591.5	16
7	Swiss Bank Corp.	531.6	14
8	BHF-Bank	403.4	7
9	Credit Suisse White Weld	324.9	9
10	Banque Bruxelles Lambert	250.8	7
11	Merrill Lynch	240.5	6
12	Algemene Bank Nederland	227.6	5
13	Credit Lyonnais	226.6	6
14	S.G. Warburg	221.9	6
15	Deutsche Girozentrale-Deutsche Kommunalbank	180.3	6
16	Amro Bank	164.2	5
17	Orion	159.7	4
18	Credit Commercial de France	157.9	4
19	Paribas	154.5	5
20	Hill Samuel	148.9	4
21	Societe Generale	133.7	4
22	Hambros Bank	125.8	2
23	Kidder, Peabody	125.0	3
24	N.M. Rothschild	120.7	3
25	Christiania Bank	119.0	2
	Den norske Creditbank	119.0	2

PROPORTIONATE CREDIT TO EACH MANAGER

		$ VOLUME (MILLIONS)	# OF ISSUES
1	Deutsche Bank	$673.1	46
2	Dresdner Bank	515.8	34
3	Commerzbank	238.2	26
4	Westdeutsche Landesbank	233.0	29
5	BHF-Bank	116.6	7
6	Swiss Bank Corp.	87.3	14
7	Union Bank of Switzerland	81.3	16
8	Kredietbank Luxembourgeoise	79.6	16
9	Credit Suisse White Weld	48.2	9
10	Algemene Bank Nederland	39.5	5
11	Merrill Lynch	39.1	6
12	Credit Lyonnais	32.1	6
13	Banque Bruxelles Lambert	31.3	7
14	Amro Bank	28.4	5
15	Paribas	27.9	5
	S.G. Warburg	27.9	6
17	Privatbanken	22.8	3
18	Nomura	21.3	4
19	Daiwa	20.1	2
20	Bayerische Vereinsbank	19.5	3
21	Deutsche Girozentrale-Deutsche Kommunalbank	18.7	6
22	Orion	18.1	4
23	Credit Commercial de France	17.9	4
24	N.M. Rothschild	17.6	3
25	Kidder, Peabody	17.0	3

Eurodollar Market

FULL CREDIT TO LEAD MANAGER

		$ VOLUME (MILLIONS)	# OF ISSUES
1	Deutsche Bank	$1,467.0	8
2	S.G. Warburg	908.0	17
3	Credit Suisse White Weld	829.0	18
4	Morgan Stanley	640.0	13
5	Union Bank of Switzerland	443.0	5
6	Kidder, Peabody	360.0	10
7	Hambros Bank	265.0	7
8	First Boston	255.0	7
9	Banque Nationale de Paris	220.0	4
10	European Banking Co.	215.0	4
11	Smith Barney	205.0	7
12	Kuhn, Loeb	170.0	3
13	Wood Gundy	160.0	4
14	Orion	140.0	3
	Paribas	140.0	4
	Westdeutsche Landesbank	140.0	4
17	Swiss Bank Corp.	135.0	2
18	Amro Bank	130.0	3
19	Commerzbank	105.0	2
	Daiwa	105.0	3
	Salomon Brothers	105.0	2
22	Citicorp International	100.0	3
	Greenshields	100.0	1
	Lazard Freres	100.0	1
	Nomura	100.0	4

FULL CREDIT TO EACH MANAGER

		$ VOLUME (MILLIONS)	# OF ISSUES
1	Credit Suisse White Weld	$5,079.0	83
2	Union Bank of Switzerland	4,513.0	72
3	Swiss Bank Corp.	4,439.0	74
4	Deutsche Bank	2,990.0	39
5	Paribas	2,538.0	37
6	Amro Bank	2,423.1	27
7	Societe Generale	2,313.0	23
8	S.G. Warburg	2,238.0	37
9	Kredietbank Luxembourgeoise	2,210.0	46
10	Westdeutsche Landesbank	1,800.0	36
11	Societe Generale de Banque	1,773.0	32
12	Commerzbank	1,627.0	23
13	Banque Nationale de Paris	1,625.0	29
14	Kidder, Peabody	1,192.0	19
15	Credit Lyonnais	1,165.0	23
16	Morgan Stanley	1,111.0	24
17	Banca Commerciale Italiana	1,083.0	14
18	Manufacturers Hanover	1,055.0	20
19	Dresdner Bank	953.0	22
20	Wood Gundy	872.0	15
21	BAII	860.0	11
22	Algemene Bank Nederland	790.0	9
23	Banque Bruxelles Lambert	760.0	18
24	First Boston	728.0	14
25	Hambros Bank	717.0	19

PROPORTIONATE CREDIT TO EACH MANAGER

		$ VOLUME (MILLIONS)	# OF ISSUES
1	Credit Suisse White Weld	$842.4	83
2	Union Bank of Switzerland	692.0	72
3	Swiss Bank Corp.	576.2	74
4	Deutsche Bank	347.0	39
5	Banque Nationale de Paris	294.9	29
6	S.G. Warburg	278.4	37
7	Paribas	277.3	37
8	Amro Bank	274.5	27
9	Kredietbank Luxembourgeoise	259.6	46
10	Morgan Stanley	244.1	24
11	Westdeutsche Landesbank	220.0	36
12	Societe Generale de Banque	188.0	32
13	Commerzbank	184.8	23
14	Wood Gundy	165.7	15
15	Societe Generale	165.5	23
16	Kidder, Peabody	158.0	19
17	Credit Lyonnais	143.7	23
18	Hambros Bank	107.0	19
19	Dresdner Bank	106.4	22
20	Banca Commerciale Italiana	103.7	14
21	Manufacturers Hanover	101.4	20
22	Orion	100.6	14
23	BAII	93.0	11
24	Salomon Brothers	89.4	13
25	Banque Bruxelles Lambert	87.5	18

1976

7 LEADERSHIP INTERNATIONALLY

Because of the complexity of international financing, underwriters in this section are not only ranked three ways — full credit to each manager, proportionate credit to each manager and full credit to the lead manager — but they are calculated in six different classes of securities. "Euromarket" encompasses all financings done by an international syndicate and sold mostly in countries other than the country of the currency in which the issue is denominated. "International market" presents international bond leadership in the broadest sense — that is, including not only the Euromarket (above) but also so-called "foreign bonds," deals for a foreign borrower sold primarily within one country in its currency and by a syndicate of that nationality. The results here can be surprising but understandable. America's Salomon Brothers, for example, comes out on top when full and proportionate credit is given because of deals done by that firm for Canadian clients in the U.S.; other U.S. bankers for similar reasons, also show strongly. If Canadian deals were excluded, however, Kredietbank would be the leader, though the relative standing of the top three non-U.S. underwriters — Kredietbank, Deutsche Bank and UBS — could remain unchanged.

Since last year was such a big one for financing in German markets, the feature examines this area in greater detail under the heading of "Deutsche mark market." While it might be expected that German banks would dominate this sector, Luxembourg's Kredietbank finished third, ahead of Westdeutsche Landesbank and Commerzbank (full credit), and fifth (proportionate credit), with the Amsterdam-Rotterdam bank placing fourth in the latter category.

Because of the continued importance of the U.S. dollar in international financing, the remaining three sections focus on underwritings denominated in that currency. "Eurodollar market" deals exclusively with deals denominated in dollars and done in the Eurobond market; it excludes foreign deals done in the U.S. "International dollar market" includes international issues done both in the U.S. and in the Euromarket. And "American dollar market" examines international issues done in the U.S. more closely, and in two parts. The first reports on all foreign dollar deals done in the U.S., and the second shows what happens if Canadian deals are removed from the tabulation.

In preparing this feature, several difficulties were encountered in fitting certain deals into a category, particularly in the "Euro" or "foreign" ones. A Swedish company may sell bonds through a Swiss syndicate, but they may be bought by Swiss banks for investors all over the world. *II* has chosen to categorize such deals as "foreign." Another problem involves Dutch guilder issues. Since many international bankers view them essentially as private placements, they are usually characterized as "foreign" deals — even if they are sold by an international syndicate. However, *II* includes those internationally syndicated deals in the "Euro" category. Yet another problem occurs when a foreign borrower enters the U.S. market. Most people would readily characterize such an issue as a "foreign" deal because it is sold primarily in one market (the U.S.) in the currency of that country (dollars). Many Americans, though, say that these deals have international characteristics that make them at least borderline "Euro" deals — in many cases, the syndicate is international in scope, and substantial portions of the deals may be distributed in other countries. In these rankings, *II* has continued to characterize these deals as "foreign" deals.

Euromarket

FULL CREDIT TO EACH MANAGER

		$ VOLUME (MILLIONS)	# OF ISSUES
1	Kredietbank	$2,744.2	88
2	Deutsche Bank	2,142.0	55
3	Union Bank of Switz.	1,874.6	54
4	Credit Suisse White Weld	1,745.6	49
5	Swiss Bank Corp.	1,664.3	47
6	Dresdner Bank	1,423.0	39
7	Westdeutsche LB	1,398.3	44
8	Paribas	1,336.8	38
9	S.G. de Banque	1,322.6	47
10	Commerzbank	1,293.4	40
11	Credit Comm. de France	1,162.8	41
12	S.G. Warburg	1,088.0	29
13	Amro Bank	948.1	29
14	Societe Generale	935.0	30
15	Banque Brux. Lambert	908.1	36
16	Algemene Bank	877.6	31
17	Banque Nat. de Paris	875.5	28
18	Credit Lyonnais	871.9	29
19	Morgan Stanley	743.2	26
20	Merrill Lynch	742.1	23
21	Banca Comm. Italiana	507.2	10
22	Nomura	488.6	14
23	BHF Bank	465.7	16
24	First Boston	454.9	17
25	Kuhn, Loeb	450.7	11

PROPORTIONATE CREDIT TO EACH MANAGER

		$ VOLUME (MILLIONS)	# OF ISSUES
1	Deutsche Bank	$514.6	55
2	Dresdner Bank	293.8	39
3	Kredietbank	284.7	88
4	Union Bank of Switz.	267.7	54
5	Swiss Bank Corp.	252.9	47
6	Paribas	235.3	38
7	Morgan Stanley	227.1	26
8	Credit Suisse White Weld	222.4	49
9	Amro Bank	221.3	29
10	Banque Nat. de Paris	203.3	28
11	Westdeutsche LB	186.6	44
12	Commerzbank	150.8	40
13	S.G. Warburg	148.6	29
14	S.G. de Banque	148.5	47
15	Algemene Bank	144.2	31
16	Credit Comm. de France	125.7	41
17	Credit Lyonnais	117.8	29
18	Banque Brux. Lambert	115.3	36
19	Societe Generale	108.2	30
20	Nomura	105.3	14
21	Merrill Lynch	104.3	23
22	Banque Arabe II	102.7	13
23	Kuhn, Loeb	86.6	12
24	BHF Bank	72.4	16
25	Wood Gundy	71.5	15

FULL CREDIT TO LEAD MANAGER

		$ VOLUME (MILLIONS)	# OF ISSUES
1	Deutsche Bank	$838.5	18
2	Morgan Stanley	562.0	17
3	Kredietbank	449.3	17
4	Westdeutsche LB	402.6	12
5	Dresdner Bank	323.5	9
6	Kidder, Peabody	285.0	8
7	Commerzbank	284.9	7
8	Banque Nat. de Paris	264.9	7
9	Paribas	248.3	7
10	Credit Suisse White Weld	243.9	4
11	Amro Bank	225.8	9
12	Banque Arabe II	199.0	2
13	BHF Bank	195.5	6
14	Algemene Bank	183.3	6
15	Union Bank of Switz.	170.0	3
16	Banca Comm. Italiana	135.0	2
17	Kuwait Investment	129.1	5
18	Wood Gundy	124.3	17
19	Credit Comm. de France	123.8	4
20	First Boston	115.0	5
21	Daiwa	107.0	3
22	S.G. Warburg	100.0	4
23	Credit Lyonnais	90.7	3
24	Orion	84.0	3
25	Kuwait FTC&I	78.7	4

International Market

FULL CREDIT TO EACH MANAGER				PROPORTIONATE CREDIT TO EACH MANAGER				FULL CREDIT TO LEAD MANAGER			
		$ VOLUME (MILLIONS)	# OF ISSUES			$ VOLUME (MILLIONS)	# OF ISSUES			$ VOLUME (MILLIONS)	# OF ISSUES
1	Salomon Bros.	$3,885.7	27	1	Salomon Bros.	$1,221.7	27	1	Morgan Stanley	$1,687.0	26
2	First Boston	3,579.9	35	2	Morgan Stanley	999.4	39	2	First Boston	1,615.0	15
3	Merrill Lynch	3,067.1	45	3	First Boston	956.5	35	3	Deutsche Bank	1,205.0	22
4	Kredietbank	2,775.2	90	4	Merrill Lynch	792.7	45	4	Salomon Bros.	1,175.0	8
5	Morgan Stanley	2,718.2	39	5	Deutsche Bank	697.9	60	5	Kuhn, Loeb	710.0	4
6	Deutsche Bank	2,569.6	60	6	Union Bank of Switz.	643.2	68	6	Merrill Lynch	660.0	11
7	Union Bank of Switz.	2,250.1	68	7	Swiss Bank Corp.	556.9	59	7	Credit Suisse White Weld	526.7	15
8	Credit Suisse White Weld	2,028.4	60	8	Wood Gundy	513.5	23	8	Kredietbank	480.3	19
9	Swiss Bank Corp.	1,968.3	59	9	Credit Suisse White Weld	505.2	60	9	Dresdner Bank	384.6	10
10	Dresdner Bank	1,850.6	44	10	Dresdner Bank	477.1	44	10	Kidder, Peabody	356.5	10
11	Westdeutsche LB	1,520.6	46	11	Kuhn, Loeb	383.1	14	11	Union Bank of Switz.	345.5	17
12	Wood Gundy	1,444.5	23	12	Kredietbank	315.7	90	12	Amro Bank	315.0	13
13	Commerzbank	1,415.6	42	13	Amro Bank	281.4	36	13	Swiss Bank Corp.	304.0	12
14	Paribas	1,377.4	39	14	Lazard Freres	258.3	3	14	Westdeutsche LB	289.1	9
15	S.G. de Banque	1,363.4	48	15	Paribas	243.4	39	15	Commerzbank	284.9	7
16	Kuhn, Loeb	1,210.7	13	16	Westdeutsche LB	217.2	46	16	Algemene Bank	266.5	8
17	Amro Bank	1,168.1	36	17	Algemene Bank	204.3	40	17	Banque Nat. de Paris	264.9	7
18	Credit Comm. de France	1,162.8	40	18	Banque Nat. de Paris	203.3	28	18	Paribas	248.3	8
19	Algemene Bank	1,097.6	40	19	Nomura	201.0	18	19	Lazard Freres	225.0	3
20	S.G. Warburg	1,088.0	29	20	Commerzbank	181.4	42	20	Banque Arabe II	199.0	2
21	Banque Brux. Lambert	989.7	38	21	S.G. de Banque	156.6	48	21	BHF Bank	195.0	6
22	Societe Generale	935.0	30	22	S.G. Warburg	148.6	29	22	Banca Comm. Italiana	135.0	2
23	Banque Nat. de Paris	875.5	28	23	Smith, Barney	136.2	14	23	Kuwait Investment	129.1	5
24	Credit Lyonnais	871.9	29	24	Banque Brux. Lambert	131.5	36	24	Wood Gundy	124.3	7
25	Lazard Freres	840.5	13	25	Credit Comm. de France	125.7	41	25	Credit Comm. de France	123.8	4

Deutsche Mark Market

FULL CREDIT TO EACH MANAGER				PROPORTIONATE CREDIT TO EACH MANAGER				FULL CREDIT TO LEAD MANAGER			
		$ VOLUME (MILLIONS)	# OF ISSUES			$ VOLUME (MILLIONS)	# OF ISSUES			$ VOLUME (MILLIONS)	# OF ISSUES
1	Deutsche Bank	$1,518.5	32	1	Deutsche Bank	$544.2	32	1	Deutsche Bank	$1,070.7	22
2	Dresdner Bank	1,504.2	32	2	Dresdner Bank	427.7	32	2	Dresdner Bank	384.6	10
3	Kredietbank	724.6	20	3	Westdeutsche LB	118.3	15	3	Westdeutsche LB	338.8	10
4	Westdeutsche LB	659.6	15	4	Amro Bank	95.7	4	4	Commerzbank	284.9	7
5	Commerzbank	655.5	14	5	Kredietbank	93.4	20	5	BHF Bank	195.5	6
6	Swiss Bank Corp.	386.7	10	6	Commerzbank	77.7	14				
7	BHF Bank	354.2	11	7	Swiss Bank Corp.	71.5	10				
8	Credit Suisse White Weld	350.1	10	8	BHF Bank	61.1	11				
9	Credit Comm. de France	305.1	9	9	Union Bank of Switz.	49.1	7				
10	S.G. Warburg	272.7	7	10	Credit Suisse White Weld	43.4	10				
11	Credit Lyonnais	272.7	7	11	Credit Lyonnais	41.7	7				
12	Union Bank of Switz.	268.6	7	12	Algemene Bank	37.4	3				
13	Merrill Lynch	219.8	6	13	GB Oster. Sparkassen	36.7	5				
14	Skandinaviska Enskilda	207.6	6	14	S.G. Warburg	36.5	2				
15	PK Banken	207.6	6	15	Credit Comm. de France	35.7	9				
16	GB Oster. Sparkassen	203.5	5	16	Skandinaviska Enskilda	34.0	6				
17	Banque Brux. Lambert	187.2	5	17	Merrill Lynch	32.1	6				
18	Svenska Handelsbanken	187.2	5	18	Paribas	31.3	4				
19	Amro Bank	162.8	4	19	PK Banken	30.0	6				
20	Paribas	154.7	4	20	Svenska Handelsbanken	28.5	6				
21	Christiana Bank	154.7	5	21	Banque Brux. Lambert	24.8	5				
22	Kuhn, Loeb	150.6	4	22	Creditanstalt Bank	20.8	4				
23	Creditanstalt Bank	146.5	4	23	Christiana Bank	20.4	5				
24	Algemene Bank	122.1	3	24	Kuhn, Loeb	18.9	4				
25	Societe Generale	122.1	3	25	Societe Generale	16.4	3				

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
NINETY-FIFTH CONGRESS

WASHINGTON, D.C. 20515

July 14, 1977

The Honorable Anthony M. Solomon
Under Secretary for Monetary Affairs
U.S. Department of the Treasury
Washington, D. C. 20220

Dear Mr. Secretary:

On behalf of the Subcommittee, I wish to express our appreciation for your testimony yesterday on the provisions of the International Banking Act of 1977, H.R. 7325. As I stated in my opening statement, we are most anxious to complete action as quickly as possible in order for the Senate to complete their deliberations in the 95th Congress.

It is the intention of the Subcommittee to mark up the bill during the week of July 25 through July 29 and, accordingly, I would request that I receive your response to the following questions no later than noon on Thursday, July 21. It is my intention to distribute copies of this letter and your response thereto to each of the Subcommittee Members prior to Subcommittee markup.

The questions follow:

1. You state on page 1 that foreign banking operations in the U.S. have increased competition in the financial services industry here. Could you be more specific. How do you evaluate increased competition and wouldn't you agree that foreign banks have a competitive advantage over domestic banks -- no reserves, no insurance and examination costs, ability to multi-state branch?

2. On page 2, you assert that "...our regulation of foreign banks <u>may</u> affect foreign government treatment of U.S. banks operating overseas". During the hearings, you made reference to several memoranda from, I believe, foreign governments and indicated that you would be happy to furnish copies of those memoranda for the record, provided, of course,

The Honorable Anthony M. Solomon
July 14, 1977
Page Two

that there are no security classification problems. As I indicated, this will be the first concrete evidence we have had of any such possibility and, therefore, we do consider this matter of crucial importance to our deliberations.

3. As the discussion developed during the hearings, the need for more precise information on the limitations on banking powers of U.S. banks in various countries became apparent. Could you provide information to the Subcommittee regarding their powers overseas, indicating where operations of U.S. banks differ from those of local banks due to factors other than the preferences of the U.S. banks themselves.

4. I appreciate your statement on page 2 rejecting a reciprocity policy and supporting a policy of competitive equality. There are those, however, in certain academic circles and certain regulatory circles who express delight over the geometric increase in foreign bank operations in this country. They believe this trend serves as a "stalking horse" to force substantial changes in our own banking laws, reprehensible to them, such as the McFadden Act, reserve requirements, insurance and examination costs, etc. Should we fail to act on this measure, how real do you regard the threat that our domestic banking laws will ultimately be determined by foreign bank practices in order to meet the unfair competitive advantages they now enjoy here?

5. Can you be more specific concerning the issues being addressed by the Administration to which you refer on page 2 and give us some ideas to when we might expect those recommendations?

6. Given today's hodge podge of state laws impacting on foreign banks and intense competition among the states to attract foreign investments, what possible advantages could there be for a foreign bank to establish a national bank? In the state's zeal to attract foreign banks, isn't there a danger of regulatory laxity? With respect to your discussion of interstate branching, isn't it true that if we leave open the possibility that state-chartered branches can branch interstate if state nonmember banks are permitted to do so, we would effectively preclude the possibility of foreign banks seeking federal charters?

7. Could you be more explicit when on page 5 you state "...a small foreign presence which <u>may</u> have a pro-competitive effect on our large domestic securities industry", by explaining how competitive effects are measured and by giving us some feel for the figures involved.

The Honorable Anthony M. Solomon
July 14, 1977
Page Three

8. In discussing the insurance provisions of the bill, you seem concerned about the burden of cost for foreign banks. You are also concerned about the possibility that this burden may infringe upon competitive equality. Are you also concerned about the burden of insuring foreign banks on the insurance pool?

Are their risks over and above those for domestic banks?

Will the FDIC proposal for a pledge of assets take care of those risks?

9. On page 2 of your statement you say that the basic objective of the bill, to treat foreign banks operating here equally vis-a-vis domestic banks, is consistent with U.S. treaty obligations. Nevertheless you seem to imply that there are areas in which specific provisions are not consistent with treaty objectives. Both as spokesman for the Treasury last year and in his testimony as Federal Reserve spokesman yesterday, Governor Gardner said he saw no conflict between this legislation and treaty obligations.

Could you elaborate on specific inconsistencies and give us your judgment as to whether this possible conflict is real or a matter of splitting hairs? I believe you indicated that you had only received a second-hand report of Vice Chairman Gardner's testimony. I assume and trust that there was coordination between the Federal Reserve, Treasury and the State Department prior to their appearance before the Subcommittee. Please confirm whether or not this was the case. That was the basic purpose of the Subcommittee's adoption of Section 9 of last year's bill, to insure that the conflicting perspectives are, in fact, known by all three entities, i.e., State, Treasury and the Federal Reserve Board.

In addition, the following questions are posed on behalf of Congressman Annunzio, and I would appreciate a copy of your response to these questions being sent directly to Mr. Annunzio.

1. You do not support Section 9 which would grant the Federal Reserve special review authority over state-chartered banks. What is your view of Section 7 which would give to the Federal Reserve an unprecedented authority to veto the States' decision in determining whether to grant a license to a foreign bank?

2. You state on page 5 of your testimony that our relations with other countries might be damaged as a result of forced divestiture. What, in your estimate, will be the effect of not allowing new foreign banks in this country to engage in securities activities?

The Honorable Anthony M. Solomon
July 14, 1977
Page Four

3. The State Department has offered a suggestion to make FDIC insurance optional for State nonmember foreign banks rather than requiring mandatory deposit insurance. What is your opinion of this suggestion?

Again, I do appreciate your assistance and look forward to your responses to the foregoing questions.

Sincerely,

Fernand J. St Germain
Chairman

FJSTG:aSb

THE UNDER SECRETARY OF THE TREASURY
FOR MONETARY AFFAIRS
WASHINGTON, D.C. 20220

JUL 20 1977

JUL 21 1977

Dear Mr. Chairman:

I am pleased to enclose written replies to the questions you and Congressman Annunzio posed in your letter of July 14.

Sincerely,

Anthony M. Solomon

Anthony M. Solomon

The Honorable
Fernand J. St Germain, Chairman
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
Committee on Banking, Finance and Urban Affairs
House of Representatives
Washington, D.C. 20515

Enclosures

cc: The Honorable
Frank Annunzio

TREASURY DEPARTMENT RESPONSES TO QUESTIONS POSED BY CHAIRMAN ST GERMAIN AND REPRESENTATIVE ANNUNZIO IN CHAIRMAN ST GERMAIN'S LETTER DATED JULY 14, 1977 TO UNDER SECRETARY SOLOMON

A. Responses to Chairman St Germain's Questions.

1. We have not attempted to measure statistically the competitive impact of foreign bank operations here on our domestic financial services industry. However, their mere presence is believed to enhance the competitive environment.

   Foreign bank activities here have been concentrated in international banking in our major money centers, an environment in which there are a smaller number of U.S. competitors than in commercial banking generally.

   As I mentioned during my testimony, the Administration is strongly committed to free movement of international capital and believes that system will produce the greatest prosperity.

   All foreign banks in the United States are subject to state banking regulation. They are controlled by state reserve requirements, insurance, examinations, and other regulations that apply to domestic state bank operations. While a few states have separate legislation on these issues covering foreign branch and agency operations, we do not believe they place the foreign banks at a significant competitive advantage.

   Foreign banks may enjoy an advantage over domestic banks in that they may operate branches in more than one state. Such multi-state branching for foreign banks is confined to a few states. Moreover, domestic banks have numerous non-deposit-taking operations in many states. There are also disadvantages to foreign bank operations here, such as the existing barrier to FDIC insurance at branches, which discourages deposits at these institutions.

2. In the last year or so, the Treasury Department has received communications from several foreign government officials expressing uneasiness over certain aspects of the proposed International Banking Act. In particular, the German and Swiss Governments have submitted the views of their private bankers, have asked us to consider these views carefully, and generally have endorsed these views. I am pleased to enclose a copy of the memorandum which the Swiss Embassy presented in August 1976 and a copy of the official correspondence of the German Government dated June 1977.

3. My comments last week on foreign governments' general treatment of U.S. banks abroad were based upon information we obtained from discussions with the staff of the Federal Reserve Board. The reports issued by your Committee in connection with the FINE study, of course, contained an extensive discussion of foreign treatment of U.S. banks operating abroad. We do not have additional current information on limitations on U.S. bank operations in various countries.

4. We do not believe that the foreign bank presence here will create a significant competitive imbalance, much less force reconsideration of domestic banking laws.

5. The statement on page 2 of my testimony referred to reviews of branching and the securities activities of commercial banks conducted by Congress, and independent regulators. Additionally, the issues of interstate branching, Federal supervision and regulation of banking, and financial institutions reform in general, have been reviewed in the recent past and continue to be considered in a variety of forums. The Administration is taking part in these reviews. There are, however, no formal Administration studies in progress that have scheduled completion dates.

6. A foreign bank would choose a Federal charter or license over the state option on the same grounds as a domestic bank -- that is, according to the regulatory environment best suited to the operation being established. For example, a foreign bank might prefer to deal with the Comptroller due to his extensive international experience with foreign

branches of U.S. banks, just as a domestic bank with foreign operations might prefer to do. The dual banking system is premised on the notion that state and Federal regulation can be different; that does not mean that either of them must be lax. Even though desirous of attracting foreign banks, states would be limited by the need of their domestic banks for comparable treatment and the need to maintain a sound banking system. Likewise, in regard to branching laws, were there an overriding advantage to being a state bank, both foreign and domestic national banks could be expected to consider changing charters, which would presumably result in a change of policy by the Federal Regulators (or a change in law, if necessary). In summary, we believe your question pertains to issues inherent in the dual banking system and not particular to foreign banks.

7. The statement meant that the existence of foreign banks in the securities industry provides additional competitors to domestic securities operations. We have not attempted to measure the extent of competition in the securities industry. Furthermore, we are not saying that the maintenance of foreign bank securities activities is necessary to maintain competition in the securities industry. But, to the extent that H.R. 7325 would eliminate existing U.S. securities operations of foreign banks, the Congress should be aware that it would be reducing the number of firms active in securities operations and would eliminate a source of capital for an increasingly capital-intensive securities industry.

8. We believe the FDIC's proposed modification of Section 6 successfully deals with several very important considerations: (1) making deposit insurance available to domestic depositors of U.S. branches of foreign banks, (2) ensuring that such deposit insurance will not be unduly burdensome for the foreign banks, and (3) providing that the insurance of these U.S. operations of foreign banks will not be an undue burden on the FDIC insurance pool. We believe the modest pledge of assets or surety bond which the FDIC would require in addition to the regular insurance premiums under this proposal should take care of the additional risks to the insurance fund that arise from insuring deposits

of a U.S. branch of a foreign bank as opposed to an entire bank situated in the U.S., especially in light of the FDIC's ability to set the amount of assets pledged in accordance with its assessment of the additional risk involved.

9. U.S. commercial treaties with major banking countries (Belgium, Denmark, France, Federal Republic of Germany, Japan and the Netherlands) generally require signatories to accord national treatment to foreign-owned enterprises. Nevertheless, a number of these treaties reserve the right to limit banking involving depository or fiduciary functions. This exception, however, covers only the establishment of a banking enterprise. Once established, a foreign bank must be accorded national treatment (unless otherwise justified by inherently differing circumstances). Finally, the signatories may not forbid foreign banks to maintain branches and agencies to perform "essentially international operations" other than by generally applicable law.

For these reasons, we believe amendments to the following sections are important:

(a) Section 6 contains a potential for burdensome deposit insurance requirements for foreign banks already having establishments in the U.S. Unless and to the extent that foreign bank operations differ from U.S. bank operations in a way that affects the security of depositors, such requirements which are more burdensome than insurance requirements for domestic banks could well violate treaty obligations.

(b) Section 9 calls for a special screening of foreign bank applications. To the extent that this requirement would apply to operations of an essentially international character which do not involve depository or fiduciary functions, it could well violate FCN treaty obligations.

I believe that my testimony and the testimony of Vice Chairman Gardner are consistent with respect to Sections 6 and 9. I also believe that the possible conflict between Sections 6 and 9 and our treaty obligations is real and could well give rise to charges of treaty violation from other countries if these sections were implemented in their present form. Since, in my view, these inconsistencies can be easily remedied without adversely affecting our ability to regulate foreign banks adequately, I see no reason why such remedies should not be undertaken.

There was coordination between the Federal Reserve, Treasury and the State Department prior to their appearance before the Subcommittee. Drafts of testimony were exchanged and discussed at a staff level. Furthermore, Treasury and State, through the OMB, cleared each other's testimony.

B. Responses to Representative Annunzio's Questions:

1. In the hearings, Vice Chairman Gardner agreed to a change in the bill to eliminate the veto power over state-licensed foreign bank operations. We support the Federal Reserve in this change.

2. We support the application of the Glass-Steagall Act to new foreign banks because the result will be to place foreign and domestic banks in the future on equal footing in this regard. While this would represent a change in operating regime for foreign banks, we do not believe that foreign countries will view this prospective change in the same inimical manner as they would a change in the rules for established securities activities, which would be contrary to our treaty obligations.

3. As I indicated in my statement, we support making FDIC insurance optional for foreign banks in those few cases where it is optional for domestic banks. Thus, we are in agreement with the State Department proposal.

Treasury Department
July 20, 1977

MEMORANDUM

The Swiss Embassy hereby transmits for consideration the views adopted by the Swiss banks relating to the proposed International Banking Act of 1976, H.R. 13876. That bill would have a significant impact on the activities of the Swiss banking industry in the United States.

It is understood that the bill intends to equalize the treatment of foreign banking entities in the United States with U.S. domestic banks and to subject such foreign banking entities to appropriate U.S. regulation. However, some provisions cause serious concern, as shown in the attached position paper -- primarily, the failure to permit the permanent retention of established securities affiliates.

The bill would require the abandonment of current securities affiliates by 1986, imposing significant financial impact on their parent Swiss banks. These securities affiliates were entirely lawful when established, and there has been no demonstration that their continuation would be harmful. While it is true that U.S. domestic banks cannot maintain such affiliates, the U.S. banking industry has not asked for the abolition of these securities firms, and indeed their role is so minor that no significant inequality would result from their continuation.

The Swiss Embassy shares the concerns of the Swiss banks respecting the bill and it is suggested that careful consideration be given to the views expressed in the attached position paper.

SWISS BANKS' POLICY POSITION
ON
INTERNATIONAL BANKING ACT OF 1976

The general views of the Swiss banks with respect to H.R. 13'876, 94th Cong., 2d Sess. (1976) (To provide for Federal regulation of participation by foreign banks in domestic financial markets) which would provide for the "International Banking Act of 1976" (the "Act"), are set forth below:

Introductory Note: To put the matter in perspective from the Swiss point of view, it should be noted that all Swiss banks have a combined total of eight banking offices in the United States - located only in the major financial centers of New York City, Chicago, Los Angeles and San Francisco. (Source: American Banker, July 31, 1975). Despite the enormous disparity between the relative sizes and importance of the U.S. and Swiss economies and financial markets, American banks, by contrast, have 36 banking offices and banking affiliates in Switzerland - located in Basle, Geneva, Lausanne, Lugano, Zug and Zurich. While Switzerland has a Federal system of Cantons which is similar to the U.S. Federal system of States, a single U.S. bank conducts multi-Canton banking activities in Geneva, Lausanne, Lugano and Zurich, with the approval of U.S. Federal authorities, i.e., in more Swiss Cantons than the number of U.S. States in which all Swiss banks combined conduct business. (Source: American Banker, February 27, 1976).

1. Multi-State Banking Operations: Nonbanking Operations (Glass-Steagall Act.) - "Reciprocity":
   Branching across State lines and engaging in nonbanking activities (including the ownership of securities affiliates) involve the international "reciprocity" question.

   As the basic philosophy of international banking reciprocity, the Swiss banks would prefer legislation which adopts the principle of "reciprocity" under which Swiss banks would be treated in the United States in the manner in which U.S. banks are treated in Switzerland. The Swiss banks recognize, however, that this philosophy of reciprocity is not acceptable to many in the United States.

So far as branching across State lines is concerned, the Swiss banks find acceptable the principle of "nondiscrimination", as now applied at the State level, which permits a foreign bank to operate in a particular State in return for a comparable privilege in the foreign bank's home country. Although few States have enacted enabling legislation to grant full banking powers to branches of foreign banks or indeed to permit any entry by foreign banks, this system has worked reasonably well because entry has been authorized by States in which are located some of the major financial centers (primarily New York, Illinois and Massachusetts). Swiss banks are not interested in establishing nationwide branch systems, but, rather, are interested in being permitted to operate in the principal centers of banking in the United States as American banks operate overseas. A provision which would permit a foreign bank to establish a branch or agency outside its "home State" with the approval of the State banking authorities in the States involved, would be acceptable to Swiss banks. In light of the manner in which U.S. banks operate in the various Swiss Cantons, the Swiss banks do not understand why branch operations of a Swiss bank should be confined in the United States to its "home State" - as would be the effect of the Act - even in cases where a particular State involved has legislation which permits the operation of such a branch in the State.

With respect to "nonbanking" activities, the Swiss banks feel that restrictions which the Act would impose on the selling and distribution activities of their securities affiliates would be unfair to the banks which have at great expense established securities affiliates in the United States in full compliance with the existing laws of the United States. The scope of whatever advantage a foreign bank with a U.S. securities affiliate may be said to have in the United States over domestic banks is narrow, in view of the widely recognized fact that U.S. banks engage in the United States in a wide variety of securities-related activities, such as brokerage services, automatic investment plans, dividend reinvestment plans, portfolio management services, investment advice and private placement activities, as well as certain underwriting activities. Further, the Glass-Steagall Act, which is designed to separate U.S. commercial banking from investment banking, has not prevented American banks from engaging in one fashion or another in extensive underwriting activities outside the United securities activities in the U.S. of a type not permitted to domestic banks, which are not conducted by the foreign banks themselves but by separately incorporated independent affiliates, are so minimal as to have minor impact in the United States.

As is recognized in the "Foreign Bank Act of 1975" proposed by the Federal Reserve Board (H.R. 5617, S. 958, 94th Cong., 1st Sess. (1975) which would "grandfather" activities existing on December 3, 1974, it is of paramount importance that existing foreign bank activities be protected. Having permitted foreign banks to establish legitimate operations in the United States in complete conformity with the laws of the United States, it would be extremely unfair and harsh to change the rules retroactively in a way which would require discontinuance of any existing operations of affiliated companies engaged in the securities business. Such activities which were established in good faith in accordance with existing U.S. laws should, in the interest of fairness, receive permanent grandfather status.

2. Federal Reserve Regulations: Swiss banks do not oppose vesting in the Federal Reserve Board the power to regulate such aspects of their operations in the United States as may have a bearing upon the international or domestic monetary and credit policies of the United States and, as a procedure for implementing such regulation, agree with the approach embodied in the Act that problems associated with the Federal Reserve's monetary and credit policy operations are capable of satisfactory resolution without making membership in the Federal Reserve system mandatory for foreign banks. The Swiss banks therefore do not oppose giving the Federal Reserve Board specific statutory authority to make branches and agencies of foreign banks subject to reserve requirements, interest rate ceilings on deposits and reporting requirements, although it has been freely conceded that the foreign banks have fully cooperated with all requests in this regard which have been made of them by the Federal Reserve Board. The banks also support the provisions in the Act which would give authority to the Federal Reserve Board to permit branches and agencies of foreign banks to have access to the clearing, discount and advance facilities of the Federal Reserve System.

3. Deposit Protection: The Swiss banks oppose legislation which would change existing law in a discriminatory fashion. Requiring foreign banks to post a "surety bond or pledge of assets" with the Federal Deposit Insurance Corporation - notwithstanding the fact that FDIC insurance is optional for State-chartered domestic banks which are not members of the Federal Reserve System or subsidiaries of bank holding companies and despite the fact that such non-insured banks are not required to post any bond or "pledge" - would discriminate unfairly against foreign banks. As FDIC Chairman Wille pointed out in his letter of December 22, 1975, to the Honorable Fernand J. St. Germain: "Even more importantly, a sincere attempt to impose meaningful restrictions of this type, such as requiring the domestic branch to maintain a substantial portion of its assets in the custody of a third party or in the form of obligations of domestic obligors or requiring a fidelity bond to guarantee the presence in the U.S. of a stipulated amount of the foreign bank's assets, could prove so onerous or costly for the foreign bank to comply with as to make such restrictions tantamount to a bar against the foreign bank's operating through a domestic branch, if deposit insurance is mandatory, or against opting for insurance, if deposit insurance for branches is optional".

4. Establishment of National Banks; Edge Act Corporations; Federal Branches: The Swiss banks welcome steps in the direction of liberalizing the U.S. laws affecting the entry of foreign banks, including Swiss banks, into the United States. The Swiss banks therefore wish to express their support for the provisions of the Act which would permit foreign banks to establish Edge Act corporation subsidiaries for the conduct of international banking and financing operations in U.S. centers of international trade financing, as in the case of domestic banks; would permit foreign controlled national banks to have directors of non-US nationality; and would authorize a foreign bank to obtain a Federal branch license as an alternative to a State branch license.

5. <u>Extraterritorial Examination and Regulation of Foreign Offices</u>: As provided in Section 8 of the Federal Reserve Board's proposed "Foreign Bank Act of 1975", the Act should similarly recognize that the authority of U.S. banking authorities to examine and regulate a foreign bank does not extend to examining the bank's home office or its non-U.S. foreign offices or to regulate the organization or internal affairs of the foreign bank, since a foreign bank's home office and non-U.S. foreign offices are subject to examination and regulation by the banking authorities in the foreign jurisdictions.

June 1976

93-031 O - 77 - 42

Manfred Lahnstein
Staatssekretär
im
Bundesministerium der Finanzen

5300 Bonn 1, June 30, 1977
Rheindorfer Straße 108
Fernsprecher: (02221) 79 4293
Telex: 886 645

Dear Mr. Solomon,

when back in 1976 the discussions on the International Banking Act of 1976 entered into a decisive stage, Undersecretary Yeo was kind enough to respond on Aug. 17, 1976 to a letter in which my predecessor, Undersecretary Pöhl, had outlined the German Gouvernment's hesitations about the bill.

As regards the 1977 International Banking Act as it has been presented to the House of Representatives, I am afraid the same reservations concerning a number of regulations continue to apply.

Our primary concern refers to the envisaged treatment of German banks in conformity with the Bank Holding Company Act of 1956 and Sec. 105 and 106 of the 1970 Bank Holding Company Act Amendments. I was very pleased to note that Mr. Yeo had shared our concern and had offered his support to avert possible disadvantageous consequences for German Banks in the US, but also in the Federal Republic of Germany and third countries. His view was reflected in the Treasury's statement of Aug 31, 1976 made before the Subcommittee on Financial Institutions of the Senate Committee on Banking, Housing and Urban Affairs.

Information available to me suggests that the Board of Governors of the Federal Reserve Systems could go along with foreign banks not being placed under the Bank Holding Company Act in cases where a (foreign) parent bank's equity holding in a (german) foreign industrial company, owns a subsidiary in the US. Such a case should not be in conflict with the Bank Holding Company Act.

German banks are also deeply concerned about regulations terminating grandfathering of investment banking by 1985. I feel there is good reason to believe that all of the investment by banks in this field might prove useless, if these regulations were enacted.

Moreover, the Association of German Banks is anxious of repercussions of the 1977 International Banking Act which could go beyond the intended equal treatment of US- and foreign bank's and which could assume discriminatory pro-portions. The Association has therefore prepared a position paper summarizing the possible, precarious consequences. Please find enclosed a copy of this paper.

In the common interest of promoting closer economic ties between our two countries the Federal Government feels it appropriate to support the position of the German bank's should it become evident, that, contradictory to the declared objective, the legislation turns out to result in discriminations.

I would appreciate it very much if you could communicate to me your view on this problem.

With kind regards,
yours sincerely

Manfred Lahnstein

27. 6. 1977

MEMORANDUM
ON THE PROPOSED LEGISLATION FOR FOREIGN BANKS
IN THE UNITED STATES (HR 7325)

Foreign banks in the United States are in several respects distinguished from the status of the American banks:

1. Besides commercial banking they can also engage in investment banking if they establish, besides a branch for commercial banking, a subsidiary solely concerned with securities business or if, besides having a subsidiary confining its activities to securities transactions, they take an interest of not more than 25 per cent in a U.S. bank in such a manner that it does not enable them to control the U.S. bank.

2. No regional limitation exists for them, provided the laws of the various States - at present nine - make it possible to enter those States.

3. The State charter is a typical kind of charter for them.

4. They are not members of FDIC.

5. They are not members of the Federal Reserve System.

Some of the foreign banks which in the United States are active in commercial banking and/or investment banking through branches or legally independent companies come from countries where banks have to meet requirements different from those applied in the United States. This holds good particularly in countries with a universal bank system such as the Federal Republic of Germany.

All these banks were given an unrestricted charter when they set up in the United States so that they made in good faith substantial investments. As far as they are active in investment banking they got themselves registered at the National Association of Securities Dealers, Inc. (NASD) and the Securities and Exchange Commission (SEC), as it is customary for American investment banks, and acquired membership in the appropriate regional stock exchanges.

It is now claimed on the American side that the foreign banks are in a more favourable position in the United States than the U.S. banks. The principle of equal treatment is invoked and especially the following aims can be noticed which are also discernible in the International Banking Act.

1. Prohibition of participations outside the areas of commercial and investment banking.
2. Prohibition of simultaneous activity of foreign banks in commercial banking and investment banking in the United States.
3. Prohibition of interstate banking or multistate branching.
4. Subjection to Federal Law.
5. Compulsory membership in the Federal Deposit Insurance Corporation (FDIC).
6. Subjection to the Federal Reserve Act.

1. Prohibition of participations outside the commercial and investment banking sectors

The International Banking Act will bring about a severe restriction of participations in enterprises which are active outside commercial and investment banking. The act does so by having Section 8 subject any foreign bank with a branch or agency in the United States to the provisions of the Bank Holding Company Act of 1956 (BHCA) and to Sections 105, 106 of the Bank Holding Company Act Amendments of 1970.

This applies not only to participations in U.S. companies but also in foreign companies which are engaged in business in the United States through subsidiaries or branches.

Exceptions from these restrictions were established by the Board of Governors in Regulation Y on the basis of the authorization in Sec. 4 (c) BHCA. Further exceptions might result from Sec. 8 of the International Banking Act for those participations that were held by a foreign bank on December 3, 1974 (grandfathering without time limit). However, the wording of this provision is not very clear as regards details.

Comments:

(a) The structures of the banking system in each country have developed over the years and as a rule they have proved themselves within their national borders. This fact should be taken into account by any modification in the United States. If not, any move to put domestic and foreign banks on a solely formally equal footing could easily lead to discrimination of the latter. This applies in particular to banks from countries where the so-called universal bank principle is customary.

(b) To subject the participation relations outside the United States - i.e. those between foreign parent banks and foreign non-banks which are engaged in business in the United States through subsidiaries or branches - to the rules of the Bank Holding Company Act would mean applying American law directly to the parent banks having their seat in Frankfurt, Paris, or Zurich. This would be an infringement of the internationally recognized territoriality principle.

(c) In substantive respects the participations of foreign banks in foreign non-banks active in the United States are not of any relevance worth mentioning for the American economy. No American interest is therefore recognizable that would be protected or promoted by applying the Bank Holding Company Act to foreign banks active in the United States.

(d) The application of the Bank Holding Company Act to the foreign banks would certainly not affect only those but also many foreign enterprises in which a foreign bank active in the United States holds an interest and which can under the law at present in force establish without any difficulties a branch or place of manufacture in the United States. Unless a bank holds the majority of the capital of an enterprise active in the United States it cannot exercise any substantial influence on its business policies. Therefore, if such an enterprise already is represented in the United States or sets up in business there it has only the choice of either ending its activity in the United States or disposing of its participation. Even in the cases where it does hold a majority of the capital there would be legal objections if the bank were to exercise its influence so that the enterprise gives up its activity in the United States in favour of the bank. A waiver of activity in the United States enforced by application of the Bank Holding Company Act would also run counter to the interests of the States which do attach importance to capital investments, not least because these would create jobs. In any case international economic interlinking would be seriously impaired.

(e) Although the Federal Reserve Board has been granted a certain degree of discretion by the Bank Holding Company Act for permitting certain participations this is no satisfactory solution for the foreign banks if only because the participations would not be permitted to them by operation of law but only on the basis of regulations (Regulation Y) of an authority that can change them at any time. Incidentally, the exception that is the most important one in actual practice - participation in a company more than one half of whose activity takes place outside the United States - is limited to participations of less than 25 per cent.

(f) In the hearing on August 31, 1976 the Fed suggested that the parent banks should be exempted from the Bank Holding Company Act if the emphasis of their activity is outside the United States and if their U.S. branches or subsidiaries grant to the U.S. branches or subsidiaries of the foreign industrial companies in which the bank holds an interest no more favourable terms and conditions in lending than to other borrowers in the United States (cf. statement of the Vice Chairman of the Board of Governors of the Federal Reserve System of August 31, 1976). This is not likely to be practicable. Such a clause concerning terms would amount to at least potential interference with business policy, would create new problems (levelling of terms) and a possibility of discrimination against U.S. institutions. Moreover, its effects in practice cannot be assessed.

(g) Sufficient justice would be done to American Banking Law and the underlying philosophy as well as to the needs of protection felt in the United States if the legislation of the host country is observed in the activities there without the activities of the parent bank in the country of origin being practically subjected to U.S. law. This principle has so far been uncontested for foreign institutions, both in the United States and in the countries of the European Economic Community. It is only in this way that all extraterritorial consequences can be avoided which would be bound to disturb international relations.
Accordingly the American interests as well as those of the banks of the Federal Republic of Germany and other countries would be served if the application of the Bank Holding Company Act of 1956/70 would in regard to foreign banks be restricted to cases where participation in American enterprises is acquired directly, i.e. by a subsidiary with domicile in the United States of a foreign bank, or a branch, as part of its operating assets. Only in this way would the justified interest of both sides be protected and would German direct investments in the United States not be impeded. The establishments of the foreign banks in the United States do not possess any participations in non-banks that would be impermissible under the Bank Holding Company Act. In regard to both formal law and facts therefore they are not favoured as compared with the United States banks.

2. Prohibition for foreign banks to operate simultaneously in commercial banking and in investment banking in the United States

Comments:

(a) A foreign bank operating in the United States in the commercial banking as well as investment banking areas is always using two legally separate units, as for example, two legally separate corporations or one branch and one legally independent company. The terms of a license in the United States always require that the individual unit in the United States limit its operations either to commercial banking or to investment banking just like American institutions. A conflict of interest between the two is therefore a priori impossible because of the legal construction. The capital connection between the two US-units through their parent bank in the country of origin is in its practical meaning no different than the parent bank's equity participations in other corporations outside the United States or the parent bank's own operations in both business-sectors in the home country. If at all, the connection could have effects only in the country of origin of the parent bank. It is the responsibility of the legislatures in these countries of origin to deal with such consequences. [1] It follows that US-banks with units outside the United States may operate there in the business sectors which are prohibited to them in the United States. Here, too, the United States are not drawing any consequences whatever from those commercial activitites which theoretically might lead to certain risks outside the United States.

[1] For this purpose the banking supervisory authorities in the Federal Republic have extensive and detailed control powers at their disposal.

(b) The importance of investment banking of foreign banks in the United States is very small as measured by the total volume of the US-market. For the individual institution, however, it is a substantial factor in its total business volume.

(c) Confronted with the alternative to operate only in either investment banking sector or the commercial banking sector the foreign banks as a rule would have to surrender their investment banking. Specialized brokers are unusual in the continental European countries and it is the universal banks which perform this function. As a result the institutions active in the brokerage business in those countries would not be allowed to operate in the United States, whereas American brokers are free to do so in Europe, a liberty which, as we know, they actively use and want to keep. In other words, because of the mere fact that in several countries there is a different organisational form of investment banking than in the United States those institutions which are active in investment banking in the continental European countries would be denied reciprocity. In actual practise, foreign institutions from countries with a universal banking system would be denied admission to the US-market.

(d) The consequences for the United States would be a reduction in the number of competitors in the securities business whereas the American banking legislation has been aiming at strengthening competition, as for example, through the 1975 Securities Act Amendments.

(e) Those German institutions which are active in the investment banking sector in the United States have undertaken substantial investments in capital and expertise in this business which now would be made worthless as a result of unexpected governmental infringements.

(f) A limited grandfathering would not improve the situation. First, clients want a relationship with "their" investment-bank which is based on continuity rather than being limited in time; this is an area where trust plays an especially large role. Secondly, we must assume that the highly qualified staff of the foreign investment banks will leave their positions long before the end of the phasing-out period. Indeed, we have to conclude that a grandfathering limited in time will lead to an evaporation of business for the investment banks long before the deadline. In actual practise, therefore, this would constitute an immediately effective prohibition to do business. "Limited grandfathering is no grandfathering."

(g) The unlimited permission - within this limited grandfathering - to continue in the underwriting business while limiting at the same time the selling business to customers outside the United States would hardly be practical as the capacity to underwrite in the securities business always depends on the selling capacity.

(h) A solution, in which the unlimited grandfathering would be tied to "good behavior" of the foreign institutions which is to be examined at certain intervals (Rees-Murphy Amendment), would be an equally unsatisfactory solution. The result of such an examination would not be predictable, as it would be at the discretion of the Federal Reserve so that the permanent presence of the foreign institutions would be permanently questioned. In actual practise, we would see similar negative consequences as in the case of limited grandfathering.

(i) A permanent grandfathering would, of course, lessen the problems for those institutions which are already active in the United States in the commercial and the investment banking sector. However, it would not comply with the principle of reciprocity as newcomers to the US-market would be largely denied entry while American banks and brokers are allowed to operate in the European countries through branches, subsidiaries or affiliates not only in commercial banking but also in investment banking almost without limitation. Permanent grandfathering would constitute a preferential treatment for those foreign institutions which commanded the necessary capital or volume of business earlier than others and thus were able to enter the United States in this business sector. Such a provision would conflict with the principle of equal treatment for all foreign institutions.

(j) Concluding we may say that there is no reason to change the legal status. Until now there were no complications or objections to the investment banking of foreign banks which had any connection at all with their concurrent activity in commercial banking in the United States. In other words, there is no American interest which would warrant a special shelter. Rather, it is the foreign investment banks which so far have developed positive effects on the development of the regional financial centers. You can see this very clearly in their share of the turnover of the regional exchanges in the United States. The importance which some regional exchanges have reached is due to a large degree to the activity of foreign investment banks.

3. Prohibition of interstate and multistate branching

Comments:

(a) The large foreign instutions are largely represented already at several financial centers in the United States. If in the future they would not be allowed to be present in more than one State there would be far-reaching consequences for these institutions as a result of losses connected therewith.

(b) Many States of the Union would have to expect a severe limitation of their importance as banking places. By far the largest number of foreign banks would then maintain branches or subsidiaries only in New York. The relative importance of some regional financial centers where they had been represented would be substantially reduced.

(c) A permanent grandfathering for the institutions which are already active in the commercial banking in the United States in several States of the Union - as may probably be expected - would continue to permit the existing regional presence of the foreign banks, but those States of the Union which because of the existing legal status might in future years have attracted foreign banks would now have to relinquish such hopes. For one, this would affect those centers which in the last few years have tried very hard, and not without success, to attract foreign banks, as for example Los Angeles, Chicago and San Francisco. They could not continue this development which to some degree they had initiated through special legal measures. Then, of course, there are a number of further regional centers like Houston, Boston, Atlanta, Philadelphia, Seattle, Minneapolis, New Orleans, which probably would be interested in attracting foreign banks. No federal law should prevent them and other leading cities to attract foreign banks so that their economy might become more international-oriented and that they might profit from a growing competition in the banking business.

(d) The efforts directed against multistate branching have been put forward on the grounds that American banks are not allowed to engage in it. This is overlooking the fact that the large American banks de facto are active far beyond their home States and are cultivating their customers from other States of the Union through the so-called Edge Act Corporations for the international banking business and through Loan Production Offices and Bank Holding Companies. According to data provided by the "American Banker" 12 Bank Holding Companies in the United States are maintaining 1,550 "non banking offices" in 43 States of the Union outside their home States. A large number of these are offering so-called specialised financial services which correspond fully to the services of domestic commercial banks. In practise, the presence of a few foreign banks in several States of the Union does not present a preferential treatment. Despite the prohibition to engage in multistate branching foreign institutions are supposed to be enabled to initiate similar steps in the future (for example, through Edge Act Corporations). But there is no need to prohibit the direct activity through multistate branching, if, at the same time, loopholes are established to circumvent this prohibition.

(e) A permanent grandfathering regarding multistate branching would reduce these problems. But it would violate the principle of equal treatment as those foreign banks already represented in several States would have an advantage vis-a-vis other foreign banks which in diverse centers of their own country would continue to face the competition of American banks. Reciprocity could not be guaranteed through grandfathering which, in addition, would violate the interest of a number of individual States of the Union. A satisfactory solution would be one where foreign banks would be allowed to be represented in several States of the Union if the law of these States should permit this ("Stephens Amendment").

2

4. Application of "Federal ...

Comments:

Since foreign banks may obtain only federal charters in the future this would constitute a discrimination as against U.S. banks which may choose between a federal and State charter.

5. Compulsory membership in the American deposit insurance, the Federal Deposit Insurance Corporation (FDIC)

Comments:

(a) Foreign banks are largely active only in the wholesale business. On the other hand, the insurance limited to 40.000 Dollars per depositor at the FDIC is geared primarily to the private depositors with the respective amounts. A compulsory membership of foreign banks with the FDIC would amount to little for this class of clients but would present a substantial burden.

(b) If there exists already a deposit insurance in the home countries of these banks which would also insure the deposits of foreign branches, as in the case of German banks, this should certainly be considered. Otherwise costs would be doubled.

(c) U.S. banks with a State charter which are not connected with the Federal Reserve System are under no obligation to become a member of the FDIC. Accordingly, at the end of 1975 more than 400 American banks were not members of the FDIC.

(d) In order to avoid any impression of discrimination, membership of foreign banks with the FDIC should be on a voluntary basis. We should expect, of course, that the possibility of joining the FDIC should be utilised whenever the structure of deposits would make an insurance of the deposits desirable, particularly, if these deposits have not been insured in the home country of the foreign bank.

6. Application of the Federal Reserve Act

Comments:

(a) Basically, the Federal Reserve determines the volume of the reserve requirements
   - for all domestic institutions with a national charter,
   - for the domestic institutions with a State charter, which voluntarily joined the Federal Reserve System.

   Any compulsion to make the foreign banks with a State charter subject to the regulations of the Federal Reserve Act would constitute a discrimination.

(b) Those domestic banks with a State charter which do not belong to the Federal Reserve System are subject to the regulations of their home state as far as reserve requirements are concerned. This is also true of foreign banks.

(c) Insofar as the practical necessities of monetary and credit controls require stringent ties of foreign banks to the Federal Reserve System there would be no objections. However, until now such a necessity could not be proven. On the basis of the so-called "voluntary compliance" the Federal Reserve was able to influence the foreign banks' loan policies without any difficulties. Beyond that the Federal Reserve has the possibility, used several times with success in the past, to vary the reserve requirements for the foreign banks in cooperation with the state regulators.

(d) By way of the voluntary compliance the Federal Reserve has always been able to obtain the statistical data it desired.

(e) There is thus no distinct necessity to subject foreign banks to the legal jurisdiction and the economic policy tools of the Federal Reserve.

Last not least, the legislative efforts have been influenced to no small degree by the intention to equalize competitive preconditions. For this reason it should certainly be avoided that the foreign banks themselves will now be discriminated against in the competitive struggle. Treaties of Friendship, Commerce and Navigation which the United States have concluded with a number of countries, for example, the Federal Republic of Germany, provide that every party to the treaty must treat companies which belong to citizens of the other party in a manner "no less favorable than that afforded" similar companies which are controlled or established by its own citizens. The initiatives put forward so far seem rather inconsistent with the language of these principles.

How complex and how vague this notion of the so-called equal treatment is, can be shown in the fact that in the deliberations on the International Banking Act of 1976 in the House of the Representatives proponents as well as opponents of the bill had stated their intention that they wanted to ensure equal treatment of foreign and domestic banks. The problem rests on the fact that it is extremely difficult to assure equal treatment between two basically different types of banks. Indeed, it is not clear at all what would be the long-run consequences of regulations which would follow the efforts seen so far.

Originally, special regulations for foreign banks were seen as part of an overall reform of American banking laws. These efforts at reform have met substantial resistance in Congress and as a result will be delayed. It does not seem opportune to establish new regulations specifically for foreign banks at this time if at the same time we can expect that the American banking system itself will sooner or later be subject to substantial modifications. In any case, developments point in the direction that the American banking system is now in a process of a very lively re-orientation and reform which the legislators still have to give shape to. Until this has happened, any new legal regulations for foreign banks seem premature. Irasmuch as the responsible authorities have left no doubt that the current U.S. banking regulations are greatly in need of reform it makes little sense to adapt the status of foreign banks to a concept already under review for a reform.

If in spite of this the American Congress still intends to produce a reform of the legal status of foreign banks four points should be respected:

a) Sufficient attention should be paid to the different structures of the banking systems;

b) one should ensure that the formal equal treatment of foreign banks does not effectively lead to a discrimination;

c) the principle of reciprocity and

d) the principle of territoriality should be respected.

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
NINETY-FIFTH CONGRESS

WASHINGTON, D.C. 20515

July 15, 1977

The Honorable Paul H. Boeker
Deputy Assistant Secretary for
Economic and Business Affairs
Department of State
Washington, D. C.

Dear Mr. Secretary:

On behalf of the Subcommittee, I wish to express our appreciation for your testimony Wednesday on the provisions of the International Banking Act of 1977, H.R. 7325. As I stated in my opening statement, we are most anxious to complete action as quickly as possible in order for the Senate to complete their deliberations in the 95th Congress.

It is the intention of the Subcommittee to mark up the bill during the week of July 25 through July 29 and, accordingly, I would request that I receive your response to the following questions no later than noon on Friday, July 22. It is my intention to distribute copies of this letter and your response thereto to each of the Subcommittee Members prior to Subcommittee markup.

The questions follow:

1. I continue to be concerned about what appears to me at least to be a red herring, the reference to possible retaliation by foreign governments or foreign central bank regulators. My instincts certainly are confirmed by your clear statement that the Department of State "perceives no major foreign policy problems." Therefore, I think the appropriate question is how serious do you regard hypothetical possibilities in the future to be insofar as our relationships with foreign governments are concerned? Said another way, can you possibly elaborate on how you would define major versus minor?

You were present when Under Secretary Solomon made reference to memoranda reflecting the concern of several foreign governments. I am enclosing a copy of our letter to Under Secretary Solomon and would like to call your attention to question #2, in particular, for such comment as you deem appropriate.

The Honorable Paul H. Boeker
July 15, 1977
Page Two

2. Last year there seemed to be general satisfaction with the grandfather provisions on interstate branching. This year, a new series of proposals have emerged which seem to reflect the concerns you express on page 4 of your statement. Yet, you say that concern that this section violates our treaty obligations is minor. Is that because the reality of the situation -- the fact that there are no U.S. banks branching interstate -- is more important in interpreting our treaty obligations than the theoretical situation?

3. Both Treasury and State, in objecting to Section 9, appear to have misunderstood or have misconstrued what the Committee hoped to accomplish by Section 9. Basically, what we have been seeking and continue to seek is a closer coordination and relationship between State, Treasury and the Federal Reserve Board. Too often in the judgment of this Committee actions taken by one entity is often not known or the basic rationale for such actions is not fully comprehended by each other until after the fact. Certainly, there doesn't appear to be the type exchange of information which would assist bank examiners, as well as policymakers.

I need only refer to our hearings on lesser developed countries and the recently concluded GAO Performance Survey insofar as consistent policies and knowledge of bank examinations of our branches overseas are concerned. Thus, absent Section 9, which both Treasury and State have somewhat different reasons for objecting to, how do we achieve meaningful coordination and cooperation?

4. You will recall the exchange that I had with Under Secretary Solomon on the issue of any Department of Government supporting a policy of noninsurance for any financial institution. I would ask that you comment as well, since I believe your statement clearly seems to express support for such a policy. I would hope that you would reconsider and that the State Department will modify their views in this regard after reflecting on the comments made during the hearings.

5. With respect to your discussion of Section 9, could we say that it is contrary to our treaty obligations only as it relates to guidelines for agencies which do not accept deposits and are primarily engaged in international operations? Since branches do accept deposits, it presumably would not be contrary to our treaty obligations to limit the establishment of branches or to limit the kinds of deposits branches can accept. Branches could be restricted to foreign deposits as in California, or non-U.S. dollar deposits, as has been the case in other countries, without violating our treaty obligations. Is that not the case?

The Honorable Paul H. Boeker
July 15, 1977
Page Three

6. I want to thank you for providing to the Committee an outline of the relevant information regarding U.S. treaty obligations. I am particularly interested in the distinction between banking functions necessary to international operations as opposed to depository and fiduciary functions. You note that the various treaties forbid actions which discriminate against foreign banks as opposed to domestic banks which are already established. It would appear from this that requiring divestiture of securities affiliates would not be contrary to treaty obligations, since U.S. banks are not allowed to operate securities affiliates. Is that a correct interpretation?

7. As the discussion developed during the hearings, the need for more precise information on the limitations on banking powers of U.S. banks in various countries became apparent. Could you provide information to the Subcommittee regarding their powers overseas, indicating where operations of U.S. banks differ from those of local banks due to factors other than the preferences of the U.S. banks themselves.

In addition, the following questions are posed on behalf of Congressman Annunzio, and I would appreciate a copy of your response to these questions being sent directly to Mr. Annunzio.

1. Your list of suggested amendments to H.R. 7325 does not include reference to Section 7 which would give the Federal Reserve a veto power over States in determining whether foreign banking institutions could be organized under State law. Do you find no objection with this provision?

2. Specifically, would the provision of H.R. 7325, which would give the Federal Reserve the authority to set reserves on foreign-owned state-chartered banks, conflict with our existing treaties?

Again, I do appreciate your assistance and look forward to your responses to the foregoing questions.

Sincerely,

Fernand J. St Germain
Chairman

FJSTG:aSb
Enclosure

DEPARTMENT OF STATE

Washington, D.C. 20520

July 25, 1977

Honorable Fernand J. St Germain
Chairman, Subcommittee on Financial
Institutions Supervision, Regulation
and Insurance of the Committee on
Banking, Finance and Urban Affairs
House of Representatives.

Dear Mr. Chairman:

I appreciated the opportunity to appear before your Subcommittee on July 13, and I am pleased to reply to the additional questions in your letter of July 15. I shall respond in the same order that the questions were listed.

1. The basis for my statement that I perceive no major foreign policy problems with the International Banking Act of 1977, H.R. 7325, is twofold. First, I believe that foreign governments have considerable understanding for the basic principle underlying the bill -- that foreign banks in the U.S. should be accorded treatment comparable to that of domestic banks. Second, while there are some difficult issues that arise in trying to apply this principle fairly to foreign banks in the U.S. (how in some specific points to take account of our dual, state - and federally-chartered banking system and of some existing activities of established foreign banks, particularly securities, set up in good faith under current laws, but not permitted for domestic banks), I believe these can be resolved without impairing the effectiveness of H.R. 7325 in meeting its objectives. I hope the committee will find acceptable the Administration's suggestions for dealing with these issues, as presented in Under Secretary Solomon's and my testimony. As I stated, H.R. 7325, with these changes, should not provide a basis for retaliation by foreign governments.

2. Inasmuch as current state laws do not allow interstate branching, the proposed prohibition against foreign bank branches in the United States provides national treatment. My concern is with the future. What would be current national treatment under the bill would cease should state laws change to allow branching interstate.

I would urge that we eliminate this possibility by applying to state non-member branches of foreign banks the same regulations as apply to U.S. banks. In this way we will not have the problem - be it minor or major.

3. I appreciate the Committee's desire to assure thorough coordination between the Department of State and Treasury, and the Federal Reserve Board. We are working to strengthen that cooperation. However, Section 9 goes beyond this objective and appears to establish a formal screening or review process for foreign banks which is different from the process of Federal Reserve consideration of domestic banks' applications to establish offices. In this regard Section 9 would appear to conflict with the freedom of establishment and national treatment provisions of our treaties of Friendship, Commerce and Navigation as well as with long-standing U.S. policy of neither encouraging or discouraging inward investment, regardless of treaties.

4. There are a few states where FDIC coverage is not required of non-member state banks. As long as these exist, national treatment would seem to require that foreign state bank branches in those states also not be required to arrange FDIC coverage. We do not mean by this to support a policy of non-insurance for financial institutions, but rather to express our concern for comparable treatment. Hopefully, offering FDIC insurance on an attractive basis would assure that state-chartered non-member banks engaged in acceptance of deposits from the public would secure such insurance and thus meet the objective of H.R. 7325.

5. Our commercial treaties do generally reserve the right of each party to determine the extent to which the other party may enter into banking activities involving fiduciary or depository functions, subject to the right of the other party to maintain banking branches and agencies necessary for essentially international operations. Qualifications or limitations on the right of national treatment can be applied prospectively to agencies and branches not presently in operation. However, such qualifications or limitations cannot be applied to enterprises already in operation.

6. Our treaties do not generally preclude the imposition of new regulations which apply equally to domestic and foreign-owned banks. However, we do find persuasive the argument presented by Under Secretary Solomon in his testimony in favor of permanent grandfathering for the existing securities operations of foreign banks.

7. We have no current comprehensive information on the limitations on banking powers of U.S. banks abroad imposed by foreign governments. We are, of course, in possession of the FINE studies of the House Committee on Banking, Currency and Housing.

Mr. Annunzio's questions:

1. Section 7(e) of H.R. 7325 provides for approval by the Board of Governors prior to the establishment of a foreign-owned branch, agency or commercial lending establishment pursuant to state law. It is at least arguable that this provision constitutes a new limitation on national treatment contrary to our treary obligations. We therefore support Vice Chairman Gardner in his testimony before the Committee agreeing to its deletion.

2. National treatment provides for comparable treatment of foreign and domestic banks in similar circumstances. Reasonable application of this principle to reserve requirements entails difficult judgments of what is comparable treatment and what are similar circumstances. H.R. 7325 does not require formal membership in the Federal Reserve System, but does subject foreign banks that have $1 billion or more in worldwide bank assets to certain controls of the Federal Reserve System, including reserve requirements. The great majority of the largest U.S. banks are Fed members, and those under state jurisdictions are already subject to reserve requirements set by the states, although these vary. Section 7 would have the effect of making reserve requirements uniform for all foreign banks with assets over $1 billion. The discrimination involved here between foreign and domestic banks is quite limited and centers largely on the question as to why that small number of domestic, state-chartered non-member banks is not subject to such reserve requirements, if indeed they are in similar circumstances as the foreign owned banks. This is a question which the Committee has no doubt considered. In fact, I believe only 16 banks with assets of $1 billion or more are not members of the Fed, five of which are foreign ovned. In any event,

the importance of the setting of reserve requirements for monetary policy, combined with the existing state-imposed reserve requirements, allays our concern with that section of the bill.

Please let me know if I can provide further information.

Sincerely,

Paul H. Boeker

Paul H. Boeker
Acting Assistant Secretary
for Economic and Business
Affairs

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
NINETY-FIFTH CONGRESS

WASHINGTON, D.C. 20515

July 15, 1977

Mr. John F. Lee
Executive Vice President
New York Clearing House
100 Broad Street
New York, New York 10004

Dear Mr. Lee:

On behalf of the Subcommittee, I wish to express our appreciation for your testimony Wednesday on the provisions of the International Banking Act of 1977, H.R. 7325. As I stated in my opening statement, we are most anxious to complete action as quickly as possible in order for the Senate to complete their deliberations in the 95th Congress.

It is the intention of the Subcommittee to mark up the bill during the week of July 25 through July 29 and, accordingly, I would request that I receive your response to the following questions no later than noon on Friday, July 22. It is my intention to distribute copies of this letter and your response thereto to each of the Subcommittee Members prior to Subcommittee markup.

The questions are as follows:

1. On page 6 of your statement you argue that foreign banks should not be required to maintain a surety bond or pledge of assets with the FDIC because their business is primarily money-center oriented, relating to so-called big ticket transactions. You know that deposit insurance is limited to $40,000 and, therefore, does not offer such banks a significant advantage nor does it offer significant protection to their customers. Couldn't one make the same argument with respect to the large money market U.S. banks? Isn't it true that a very substantial proportion of their liabilities could be similarly described?

Do you think we should exempt large denominated CDs from deposit insurance altogether?

Mr. John F. Lee
July 15, 1977
Page Two

2. On page 5, you state, "The unsubstantiated premise that reserve requirements are needed to make banks operating in the United States responsive to its monetary policies is undercut by the fact that no such mandatory membership requirement is imposed on domestic banks."

You are well aware, are you not, that the absence of mandatory membership requirement for domestic banks is not a result of the Federal Reserve's lack of trying. Several times in recent years it has sent up proposals that would impose the equivalent of membership requirement upon domestic banks, albeit by abolishing "membership."

3. On page 4, you note that "Nearly 40 states do not permit branches or agencies of foreign banks."

Would it make sense, therefore, to eliminate the disparity between current provisions applicable to foreign and domestic branches by permitting interstate branching by domestic banks wherever branching by foreign banks is permitted (10 states)?

4. With reference to Section 8, we have heard arguments that foreign banks that now have securities affiliates have enjoyed important competitive advantages over U.S. banks. In your experience over the past 10 years, has this been the case?

Again, I do appreciate your assistance and look forward to your responses to the foregoing questions.

Sincerely,

Fernand J. St Germain
Chairman

FJSTG:aSb

NEW YORK CLEARING HOUSE

100 BROAD STREET, NEW YORK, N. Y. 10004

JOHN F. LEE
EXECUTIVE VICE PRESIDENT

July 20, 1977

The Honorable Fernand St Germain, Chairman
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
Committee on Banking, Finance and Urban Affairs
United States House of Representatives
Washington, D. C. 20515

Dear Mr. St Germain:

Pursuant to your request, the following responses are submitted to the questions raised in your letter of July 15, 1977:

Question 1. Branches of foreign banks are almost exclusively engaged in non-retail banking business. As a result, we continue to feel that deposit insurance, with its maximum coverage of $40,000, offers such banks no advantage and their customers no significant protection.

As to the large certificates of deposit issued by money center banks, we feel that public policy reasons support the exclusion of such certificates from deposit insurance. In effect, these banks are paying for insurance which as a practical matter will be of no value to customers purchasing these certificates.

Question 2. We have over the years carefully followed the various legislative proposals of the Federal Reserve Board requiring manadatory membership in the Federal Reserve System. More significantly, we have also observed that Congress has been disinclined to impose such membership on state chartered

Fernand St Germain, Chairman July 20, 1977
Page -2-

banks which have elected not to join the Federal Reserve System. In view of this history, we feel that the imposition of reserve requirements and related provisions of the Federal Reserve Act on foreign banks would clearly be discriminatory.

Question 3. The ten states which have enacted legislation permitting entry by foreign banks have made a deliberate choice to augment their banking system in this particular respect. Such states, if they chose to, could also authorize branches of non-member banks incorporated in other states. Moreover, under Section 3(d) of the Bank Holding Company Act such states may permit entry of out-of-state bank holding companies. This recognition of the right of a state to make its own election allows experimentation and development on a state-by-state basis. There is no need to abandon such principles when dealing with foreign banks. We would also note that domestic banks are not in fact prejudiced by this limited degree of interstate banking permitted foreign banks. Foreign banks are competing in a sophisticated international market and their domestic counterparts have the ability to establish Edge Act Corporations and loan protection offices in such states.

Question 4. Clearing House banks have not encountered any competitive disadvantage as a result of the existence of securities affiliates of foreign banks. Moreover, we have no knowledge of other domestic banks throughout the country experiencing any competitive disadvantage. The securities business conducted by such affiliates is largely confined to servicing their foreign customers in the United States market. Such securities activities have been modest in scope with only a minimal impact when compared to the size of the United States market.

Fernand St Germain, Chairman

July 20, 1977
Page -3-

We would again like to express our appreciation for the opportunity you have provided us to present our views on H.R. 7325. Please contact me if we can be of any further assistance.

Very truly yours,

John E. Lee

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
NINETY-FIFTH CONGRESS

WASHINGTON, D.C. 20515

July 15, 1977

Honorable William E. Whitesell
Secretary of Banking
State of Pennsylvania
c/o Conference of State Bank Supervisors
1015 Eighteenth Street, N.W.
Washington, D. C. 20036

ATTENTION: MR. ALEXANDER NEALE

Dear Mr. Secretary:

On behalf of the Subcommittee, I wish to express our appreciation for your testimony Wednesday on the provisions of the International Banking Act of 1977, H.R. 7325. As I stated in my opening statement, we are most anxious to complete action as quickly as possible in order for the Senate to complete their deliberations in the 95th Congress.

It is the intention of the Subcommittee to mark up the bill during the week of July 25 through July 29 and, accordingly, I would request that I receive your response to the following questions no later than noon on Friday, July 22. It is my intention to distribute copies of this letter and your response thereto to each of the Subcommittee Members prior to Subcommittee markup.

The questions are as follows:

1. On page 4 of your statement, you outline the interstate activities of U.S. bank holding companies and state that "most of these lending and service-related functions help generate deposits for banks." But isn't it true that none of these out-of-state offices can <u>directly</u> accept deposits while multi-state branches of foreign banks can?

Do you view the power to accept deposits as significant or not significant?

2. Governor Gardner has noted that over half of the 94 foreign banks active in the U.S. have multi-state operations. Actually, some 88 percent of total foreign bank assets in the U.S. are held by these banks. At

Honorable William E. Whitesell
July 15, 1977
Page Two

year-end 1975, fifteen foreign banks had U.S. banking assets of over $1 billion and their aggregate assets were $32.5 billion, an increase of $4 billion over the previous year. Can we afford to ignore any competitive advantage possessed by fifteen huge banks with over $1 billion of U.S. assets who added $4 billion to their aggregate assets in only one year?

3. In your discussion of reserve requirements for foreign banks, you note that reserves are a tax on banks, but you do not discuss the fact that this tax, like any other, can operate as an incentive or disincentive for certain kinds of behavior. Since 1970, the Federal Reserve has imposed this tax on Eurodollar borrowings of U.S. banks to discourage inflows of funds into the U.S. during periods of tight money. It has worked well, but flows of funds between the U.S. offices of foreign banks and the Eurodollar market is quite substantial. Between March and April of this year, there was an outflow of $3 billion from these offices and a $6 billion reduction in total foreign banking assets to $66 billion. There have been flows of similar magnitude in the past. Doesn't the Federal Reserve need this tool to discourage the extreme volatility in credit markets which these flows create?

Should it use other tools instead, for example, such as the prohibition on payment of interest on nonresident deposits such as are commonly used by the central banks of other developed countries?

4. You object to the Federal Reserve having veto power over state-chartered offices of foreign banks. You are, of course, aware that the FDIC now has that authority with respect to insured domestic banks. It is my understanding that one of the virtues of the dual banking system is that there is a system of checks and balances. Is that not true?

If the Federal Reserve is not to have this role, and the FDIC cannot have it over agencies which accept no deposits, how might we provide a system of checks and balances for foreign bank operations?

5. On page 4 of your statement, you note that seven U.S. bank holding companies own banks in more than one state through the grandfathering provisions of the Bank Holding Company Act of 1956. Isn't it true that three foreign banks -- The Bank of Tokyo and two Canadian banks -- also have banking subsidiaries in more than one state because these activities were grandfathered in 1956? Doesn't this mitigate against some of the supposed competitive advantages of U.S. bank holding companies in that foreign banks have already been accorded equal treatment in this area?

Honorable William E. Whitesell
July 15, 1977
Page Three

Again, I do appreciate your assistance and look forward to your responses to the foregoing questions.

Sincerely,

Fernand J. St Germain
Chairman

FJSTG:aSb

JUL 29 1977

CSBS
CONFERENCE OF STATE BANK SUPERVISORS

OFFICE OF THE EXECUTIVE VICE PRESIDENT-ECONOMIST

July 26, 1977

Honorable Fernand J. St Germain
Chairman
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
2128 Rayburn House Office Building
Washington, D. C. 20515

Dear Representative St Germain:

RE: International Banking Act of 1977
(H.R. 7325)

In accordance with the request contained in your letter of July 15, 1977, I am submitting the following comments in response to certain questions which you have asked relative to the above bill.

(1) You have noted that none of the out-of-state offices of our domestic bank holding companies can directly accept domestic deposits while multi-state branches of foreign banks can do so. You ask whether I view the power to accept deposits by these foreign branches in multi-state locations as being significant or not significant?

The deposit-taking function of foreign branches is, of course, of some significance because this is what actually distinguishes them from foreign agencies. However, this deposit-taking function is certainly <u>not</u> highly significant when viewed in the context of providing such institutions with a competitive advantage over our domestic banks which cannot branch interstate, but which utilize the bank holding structure to carry out bank-related activities in virtually every part of our country. As you know, the preponderance of multi-state foreign banking offices are confined to New York, Chicago and California. In California domestic deposits cannot be taken by foreign branches. So, realistically we have only <u>two</u> states in this country in which multi-state foreign branches are actively engaged in direct deposit-taking activities, New York and Chicago where foreign branches are confined to the Loop area.

Honorable Fernand J. St Germain
July 26, 1977
Page Two

In contrast to this rather restricted multi-state presence of a relatively few foreign branches, our large domestic banks engage in far more extensive de facto interstate banking. As pointed out during testimony by CSBS, there are 13 bank holding companies alone with 1,642 bank-related offices, approximately 1,483 of which are located in states other than that of the anchor bank of the holding companies. These 13 bank holding companies through their bank-related subsidiaries are engaged in a wide range of deposit-generating activities. Although it is true these activities are not direct deposit-taking functions, the end result is in large degree the same for the parent bank. And, as a matter of fact, our domestic interstate bank-related activities undoubtedly result in a greater volume of deposits for their parent banks than do the direct deposit-taking operations of multi-state foreign branches.

(2) With respect to the question, "Can we afford to ignore any competitive advantage possessed by 15 huge banks with over $1 billion of U.S. assets," I must reject the contention that these foreign banks actually do enjoy a net competitive advantage over our domestic banks. Foreign banks, as you point out, have increased their assets in this country in recent years. This has been due in large part to the enlightened open door economic policies of this country. And, these same policies have undoubtedly assisted our banks which have continued to expand their operations abroad until their assets are about three times as large as the assets of foreign banks operating in this country. It is to our advantage to continue such policies and not become identified with restrictive, isolationist policies which are reflected in certain provisions of H.R. 7325.

(3) With respect to the question as to whether or not the Federal Reserve Board needs reserve-setting authority over foreign banks to discourage extreme volatility in credit markets caused by flows of funds between U.S. offices of foreign banks, one might observe that efforts by the Fed to discourage inflows or outflows of funds have not worked well, and can never work well over long periods of time given an excessive accumulation of U.S. dollars abroad. A super abundance of U.S. dollars abroad largely reflect excesses in U.S. monetary policies which unfortunately will always be a threat to monetary stability in the United States until authorities here maintain moderate monetary policies over an extended period of time.

One part of your question states that the flows of funds between the U.S. offices of foreign banks and the Eurodollar market are quite substantial. Obviously this phrase, in itself, is true. However, it misses the more important point that flows of funds between U.S. domestic banks and foreign banks abroad are far more

Honorable Fernand J. St Germain
July 26, 1977
Page Three

substantial and, additionally, that such flows between financial institutions located in this country and financial institutions abroad should be quite substantial if the United States is to maintain its role in foreign trade. The challenge implied by your question is that the U.S. should partially withdraw from international trade, including exports which are greatly facilitated by the presence of foreign facilities in the United States. Certainly that is not the type policy that would be in our national interests.

Regarding the concept of excess flows of funds beyond those made to accommodate foreign trade, this in the long run must be done by moderate monetary policies implemented through the Federal Open Market Committee. Unfortunately, we are still suffering from monetary excesses of 1965-1972 - excesses largely responsible for the overabundance of dollar ownership accumulated abroad.

(4) The veto power proposed for the Fed under Section 7(e) appears to be greater than that exercised by the FDIC with respect to those institutions which choose FDIC insurance. Even with respect to the FDIC, however, it is the position of CSBS that the competence of state banking departments is such that the chartering of a bank by a state banking department should automatically carry with it insurance in the same way as it does for the Comptroller of the Currency. Legislation introduced by Senator William Proxmire - S. 684, the Federal Bank Commission Act of 1977 - could result in automatic insurance being granted to state-chartered banks.

It is interesting to note that during the discussion of this bill, FRB Vice Chairman Stephen Gardner, when being questioned about Section 7(e) and its adverse effects on the dual banking system, stated that he considered this provision unnecessary.

The checks and balances inherent in our dual banking system do not bestow authority to curtail a fundamental power of a primary regulator, which would be the practical effect of 7(e). I believe that H.R. 7325 through its dual chartering and licensing provisions will afford the federal government a greater "presence" in the oversight of foreign banking institutions operating in this country. The FDIC already exercises supervisory responsibility with the states in the oversight of foreign banks organized as subsidiaries and CSBS is on record as offering to furnish the Fed with data which it demonstrates it needs in carrying out its responsibilities regarding foreign banks operating in this country.

(5) You pointed out in your letter of July 15 that three foreign banks have banking subsidiaries in more than one state as a result of grandfathering provisions of the Bank Holding Company Act, and

Honorable Fernand J. St Germain
July 26, 1977
Page Four

inquire as to whether this does not in fact mitigate against some of the supposed advantages of U.S. bank holding companies which have seven banks in more than one state through these same grandfathering provisions.

It is true that both foreign banks and our domestic bank holding companies have been accorded equal treatment in the multi-state grandfathering provisions of the Bank Holding Company Act. This aspect, however, is but one part of a much larger picture that involves the multi-state operations of a number of bank holding companies operating in virtually every state in this country. In comparison to this nationwide network of bank-related activities, the multi-state presence of a relatively small number of foreign bank branches and agencies is confined predominantly to New York, California and to Chicago. It is our contention that in the overall light of such activities, our domestic banks through these bank holding company activities carry out far more extensive banking activities than do the foreign-owned banking institutions.

Sincerely,

Lawrence E. Kreider

Lawrence E. Kreider
Executive Vice President -
Economist

LEK:drj

BRITISH BANKERS' ASSOCIATION

10 LOMBARD STREET · LONDON EC3V 9EL

TELEPHONE: 01-623 4001
TELEX: 888364

22nd July, 1977

Dear Mr Chairman,

I am writing to say how much I and my colleagues appreciated the opportunity to appear before you and your Sub-Committee on Tuesday last and to thank you sincerely for the very kind and courteous way you received us.

We feel that we have had an opportunity to explain to your Committee the difficulties which the banks from Europe envisage if H.R. 7325 is adopted without some amendment and we hope that in appearing before you we may have made a constructive and helpful contribution towards the achievement of a satisfactory solution.

You invited us at the hearing to send a written proposal concerning F.D.I.C. insurance and this is expected to have reached you by the time you receive this letter.

Yours sincerely

Leslie O'Brien

Congressman Fernand J. St.Germain,
Chairman,
Sub-Committee on Financial Institutions
Supervision, Regulation and Insurance
of the Committee on Banking, Finance
and Urban Affairs,
U.S. House of Representatives,
2129 Rayburn House Office Building,
Washington, D.C. 20515,
U.S.A.

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
NINETY-FIFTH CONGRESS

WASHINGTON, D.C. 20515

July 21, 1977

William D. Rogers, Esquire
Partner
Arnold & Porter
1229 19th Street, N.W.
Washington, D. C. 20036

Dear Mr. Rogers:

Please express to Lord O'Brien of Lothbury, Dr. Wolfgang Jahn, and Mr. Paul Fabre the Subcommittee's appreciation for their testimony on the provisions of H.R. 7325, the International Banking Act of 1977. We certainly recognize the sacrifice these gentlemen made, and once again we do regret, as I expressed fully in the hearings, the necessity for rescheduling.

The Subcommittee, of course, is anxious to continue its study of the provisions of this bill and, to assist the Subcommittee in reflecting on the suggested amendments, I would appreciate an early response to the questions which follow. It would be helpful to have your response by Friday, July 29; however, I can appreciate difficulties which you may have in contacting each of the witnesses. Therefore, could you please let me know when I can expect your response if you cannot meet the requested deadline.

The questions follow:

1. (Dr. Jahn). In your testimony before the Subcommittee, you noted that German banks hold equity investments in commercial corporations as a result of historical developments and as a matter of public policy. You argue that Section 8 of the International Banking Act will have an adverse impact on German banking traditions and government policy. Last year, the American press reported that an anti-monopoly commission had been formed in Germany and had made a report to the government advocating a reduction in bank holdings of equity in German corporations to broaden the base of ownership in the industrial sector. Could you provide information on the role of the Commission and its recommendations?

William D. Rogers, Esquire
July 21, 1977
Page Two

2. (Lord O'Brien). Appearing before the Senate Subcommittee in January, 1976, Lord O'Brien stated: "I think it is fair to say that the foreign banks who realize that in some respects they have been allowed to do things which are not ordinarily allowed to domestic banks are content with the present position and hope that it won't be changed.

"On the other hand, we all recognize that national authorities have an unquestioned right to regulate their own banking system in any way which they see fit.

"Since all banking systems differ somewhat one from the other, it is natural that authorities should wish to regulate in a way which suits their system.

"If they decide that your system requires new regulations, it would certainly be the hope of those I represent that any new regulations would be applied in a nondiscriminatory manner.

"That is to say that foreign banks operating here will do so under the same terms as domestic banks. This is the objective in most countries. I think we can claim in Europe that it is largely achieved.

"I come back to the fact that we hope and strongly believe that anything new which you may introduce should be on a nondiscriminatory basis.

"I am aware, however, that even if it is on a nondiscriminatory basis there will be nexus from the past. New regulations might now allow things which foreign banks have been doing in the United States of America up to date, for example, interstate branching which some do now, or the combination of deposit and securities business which some others do.

"That those activities should be more restricted in the future, if you so wish, is obviously your perfect right to legislate for.

"We do hope, however, that insofar as those activities have been developed in the past, they shall not be brought to a halt."

Does Lord O'Brien hold these same views today?

William D. Rogers, Esquire
July 21, 1977
Page Three

3. (Lord O'Brien). In January, 1976, testimony, Lord O'Brien made the following comment:

"So that, although we would very much regret the absence of permanent grandfathering, I would not say that it would lead to specific retaliation. It would, however, spoil the climate of opinion and do something to close up attitudes toward American banks abroad which would be prejudicial to the internationalization of the banking system, which as I say, we think has been beneficial to the system as a whole."

Does Lord O'Brien still hold this view?

4. (Appropriate member of the panel). The comments on interstate branching on Page 8 of the EEC prepared statement are puzzling. It is stated that restrictions on foreign banks before the issue is decided for U.S. banks will cause uncertainty and disruption. Members of this Committee, the Federal Reserve Board, and others think that permanent grandfathering of interstate branching of foreign banks will avoid this. Although further interstate branching will be denied foreign banks, they will be under no more uncertainty and disruption in planning future expansion than are U.S. banks also awaiting the resolution of this important question, the outcome of which is by no means certain. What special uncertainty and confusion for foreign banks is seen?

5. (Appropriate member of the panel). In commenting on the proposed Federal Reserve Board amendments affecting Section 8, the EEC prepared statement asserts that there are some elements which improve the bill, but are not sufficient to meet many of the concerns and raise new complex problems. Why are they not sufficient and what new problems do they raise?

During the course of the hearings, I suggested that the EEC panel could be most helpful to us if they would submit supplemental views, after having an opportunity to consult with each other further, on the most appropriate means to resolve the insurance dilemma confronting the Subcommittee. I trust you will provide the panel with FDIC LeMaistre's testimony, copies of which are enclosed. Possibly, using this alternative suggestion of FDIC as a starting point, we can evolve a system satisfactory to all concerned.

Again, I do appreciate your assistance and look forward to the responses to the foregoing questions.

Sincerely,

Fernand J. St Germain
Chairman

FJSTG:aSb
Enclosures

ARNOLD & PORTER
1229 NINETEENTH STREET, N. W.
WASHINGTON, D. C. 20036
TELEPHONE: (202) 872-6700
CABLE: "ARFOPO"
TELEX: 89-2733

WILLIAM D. ROGERS

DIRECT LINE (202) 872-6915

July 25, 1977

The Honorable Fernand J. St. Germain
U.S. House of Representatives
Chairman, Subcommittee on Financial
Institutions of the Committee on
Banking, Finance and Urban Affairs
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your gracious letter of July 21. I know that I speak for each of the witnesses and their supporting colleagues when I say again that they were deeply gratified by the cordial atmosphere of the hearings and the constructive attitude you and the other members of the Committee are bringing to these complex issues.

I have telexed your letter to each of the three witnesses, and have consulted with several of them by telephone. They are making every effort to complete the answers to your questions as quickly as possible.

On page three of your letter you refer to your suggestion that the EEC panel submit supplemental views on the insurance dilemma. I had already advised the panel of the Lemaistre testimony, and by now you should have the EEC group's letter which was hand delivered to your office on Friday.

Again, thank you for your kind letter.

Sincerely yours,

Wm. Rogers

William D. Rogers

ARNOLD & PORTER
1229 NINETEENTH STREET, N. W.
WASHINGTON, D. C. 20036
TELEPHONE: (202) 872-6700
CABLE: "ARFOPO"
TELEX: 89-2733

July 29, 1977

Fernand J. St. Germain, Chairman
U.S. House of Representatives
Subcommittee on Financial Institutions
of the Committee on Banking, Finance
and Urban Affairs
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find the responses of the EEC Banking Federation to the five questions in your letter of July 21, 1977.

These responses are being transmitted by the law firms of Arnold & Porter and Leva, Hawes, Symington, Martin & Oppenheimer on behalf of the EEC Banking Federation of which their clients, the French Banking Association and Commerzbank, A.G. respectively are members. Since the French Banking Association and Commerzbank, A.G. are foreign organizations, the law firms are registered with the Department of Justice under the provisions of 22 U.S.C. Section 611, et seq. , as agents of such foreign principals, and this letter and the enclosures are also being filed with the Department of Justice.

Copies of the firms' registration statements are available for public inspection at the Department of Justice. Registration does not indicate approval of this material by the U.S. government.

Sincerely yours,

W. Rogers

William D. Rogers
Arnold & Porter

Franz M. Oppenheimer

Franz M. Oppenheimer
Leva, Hawes, Symington,
Martin & Oppenheimer

RESPONSES OF THE EEC BANKING FEDERATION TO THE SUPPLEMENTAL QUESTIONS OF CHAIRMAN ST. GERMAIN

The EEC Banking Federation respectfully submits the following answers to the five supplemental questions posed by Chairman St. Germain in his letter to William D. Rogers dated July 21, 1977:

RESPONSE TO QUESTION 1

In his statement about the ownership by banks of shares of nonbanking companies in the Federal Republic of Germany, Dr. Jahn noted that German banks were at times requested by their governments, or forced by economic necessity, to acquire such shares. Dr. Jahn simply noted the historic development and the possibility of similar developments in the future.

The basic facts on the formation of the Monopoly Commission in the Federal Republic and the report of that Commission to the Federal Government of July 22, 1976, are as follows:

The Monopoly Commission was appointed by the Federal Government, and consists of five independent persons, two university professors and three experts from industry. The Commission is not an agency of the Federal Government, but an independent consultative body with the task of making a report on the development of corporate concentration in industry, and the right to make recommendations for maintaining and improving competition in the German economy. Such recommendations are advisory only.

The Commission's report dealt only briefly with the ownership by banks of shares of nonbanking companies, and the recommendations dealt not with present ownership but with future acquisitions. A majority of the Commission recommended that new acquisitions of shares not connected with underwriting be limited to five percent of the total capital of the issuer, except for special circumstances such as a restructuring of corporate debt.

The Federal Government has not endorsed the Commission's report, but stated that its recommendations will be examined. The relevant government departments think the recommendations are in general too extreme. Public opinion and the media also considered the recommendations inadequate. As a consequence, these recommendations are not now an issue in public debates or in the deliberations of German political councils.

Neither any legislation nor any trend towards a change in the public policy of the Federal Republic of Germany can be expected as a result of the report of the Monopoly Commission.

RESPONSE TO QUESTION 2

The views which Lord O'Brien expressed on behalf of the EEC Banking Federation before the U.S. Senate Subcommittee on Financial Institutions on Friday, 30th January 1976, concerning the unquestioned right of the United States to regulate its banking system and the principle that in all events any new legislation should not discriminate against foreign banks, remain unchanged.

Lord O'Brien's views are more fully developed in his statement before the House Subcommittee on Financial Institutions, Supervision, Regulation and Insurance on Tuesday, 19th July last, and in the EEC Banking Federation written statement submitted to the Subcommittee on 14 July 1977.

RESPONSE TO QUESTION 3

Lord O'Brien does indeed continue to hold the views quoted by you which he expressed before the U.S. Senate Subcommittee in January 1976, and these views reflected those of the European banks he was representing. Lord O'Brien would like to add, however, that he has since learned that certain U.S. officials acknowledge that the present legislation may conflict with international treaties between the U.S. and various European countries and that H.R. 7325 as presently drafted is not without discriminatory features.

The important growth of international banking in the last decade or so has encouraged banks from numerous countries to establish themselves in the main financial centers and U.S. banks have done this more than any others. The good relationships existing between domestic and foreign banks in those centers would deteriorate if any one of the countries concerned introduced discriminatory legislation or took steps which resulted in foreign banks in that country having to reduce operations which they had legitimately undertaken in the past. The question posed by Senator McIntyre referred to permanent grandfathering and in that context we still hold the view that action on the part of the U.S. authorities which might result in the forced divestiture of branches, or the termination of the nonbanking activities of their affiliates, would seem likely to harden the attitudes in Europe to the American banks operating there and "spoil the climate of opinion."

RESPONSE TO QUESTION 4

Paragraph 19 of the EEC Statement attempted to point out that regulation of foreign banking in the

United States is in reality only a part of the much larger policy question of how U.S. financial institutions should be regulated.

To illustrate the point, the statement referred to the proposals now current in the U.S. to permit interstate branching for all banks. It could also have cited other examples. Section 7 of the bill, for instance, would subject all foreign banks to federal reserve requirements. It is said that this is necessary to make the Fed's monetary policy effective. However, foreign bank assets in the United States are dwarfed by the assets of state non-member banks, and the foreign bank issue is therefore only a minor part of a much larger question.

We did not mean to suggest that foreign banks are made any more uncertain than domestic banks by the debate over general financial institutions policy. We sought, instead, to question separating out what are logically inseparable -- the foreign bank issues -- from the far larger, and linked, issues of national

93-031 O - 77 - 45

financial institutions policy, and to point out the disruptive consequences of forcing changes now in the business practices of foreign banks when the rules of the total game might be changed again a few years hence.

RESPONSE TO QUESTION 5

The following are illustrations of the kinds of difficulties we had in mind in referring to the proposed Federal Reserve Board amendments:

1. The Fed amendments would block new European banks, established in the United States, from entering the U.S. securities industry, depriving the U.S. of valuable future competition and an important source of new capital flows to commerce and industry.

2. The Fed proposal would pose substantial difficulties for foreign-owned securities firms already operating in the U.S., several of which are owned by groups of European banks, because grandfathering would interfere with changes in the ownership percentages, future transfers of shares, or changes in the nature of the subsidiary's business.

3. As to commercial and industrial companies in which foreign banks have an equity interest, the "principally engaged in business outside the United States" test would preclude such companies from expanding their U.S. activities to meet new market

opportunities beyond an arbitrary level set by the scope of their foreign operations. Such a restriction could place the foreign concerns at a disadvantage in competing with their U.S. counterparts.

4. The Fed amendments provide that no domestic office or subsidiary of a bank holding company or subsidiary thereof holding shares of such company may extend credit to a domestic office or subsidiary of such company on terms more favorable than those afforded similar borrowers in the United States. While this simplistic test may seem unobjectionable in principle, in practice it would give rise to complex questions of what are "more favorable" terms and who are "similar borrowers" and would thus introduce unusual interference (i.e., price control), by supervisory agencies in the business relations between banks and their customers.

ARNOLD & PORTER
1229 NINETEENTH STREET, N. W.
WASHINGTON, D. C. 20036
TELEPHONE: (202) 872-6700
CABLE: "ARFOPO"
TELEX: 89-2733

July 29, 1977

Mr. Richard L. Still
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
Room B303
Rayburn House Office Building
Washington, D.C.

Dear Mr. Still:

Since the time that I accompanied the EEC Banking Federation panel at the hearings held by your Subcommittee on July 19, 1977, I have filed a registration statement pursuant to the Foreign Agents Registration Act of 1938 as amended. While I did not testify before the Subcommittee on behalf of any foreign principal, I thought that you might nevertheless want to include the enclosed registration statement in the records of the Subcommittee.

Sincerely yours,

W. Rogers

William D. Rogers

Enclosure

OMB
No. 43-R2263
Approval Expires Oct. 31, 1981

UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

Form OBD-68
(Rev 10-14-76)
Formerly DJ-307
for

AMENDMENT TO REGISTRATION STATEMENT

Pursuant to the Foreign Agents Registration Act of 1938, as amended.

1. Name of Registrant	2. Registration No.
Arnold & Porter	1750

3. This amendment is filed to accomplish the following indicated purpose or purposes:

☐ To correct a deficiency in

☐ Initial Statement

☐ Supplemental Statement for ______

☐ To give notice of change in an exhibit previously filed.

☒ To give a 10-day notice of a change in information as required by Section 2(b) of the Act.

☐ Other purpose (specify) ______

4. If this amendment requires the filing of a document or documents, please list-

Exhibit A and Exhibit B

5. Each item checked above must be explained below in full detail together with, where appropriate, specific reference to and identity of the item in the registration statement to which it pertains. If more space is needed, full size insert sheets may be used.

This amendment to Registrant's Registration Statement is to give notice of a new foreign principal of the Registrant, Association Francaise des Banques (French Bank Association), 18, rue LaFayette, 75009 Paris, France and to file the necessary Exhibits A and B.

The undersigned swear(s) or affirm(s) that he has (they have) read the information set forth in this amendment and that he is (they are) familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his (their) knowledge and belief.

(Both copies of this amendment shall be signed and sworn to before a notary public or other person authorized to administer oaths by the agent, if the registrant is an individual, or by a majority of those partners, officers, directors or persons performing similar functions who are in the United States, if the registrant is an organization.)

W. Rogers

Subscribed and sworn to before me at District of Columbia

this 26th day of July, 1977 Susan G. Weissberg (Notary ~~or other officer~~) in and for the District of Columbia

My commission expires November 30, 1980

FORM OBD - 67
JAN. 1977

UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

OMB No. 43-R0218
Approval expires Oct. 31, 1981

EXHIBIT A

TO REGISTRATION STATEMENT

Under the Foreign Agents Registration Act of 1938, as amended

Furnish this exhibit for EACH foreign principal listed in an initial statement and for EACH additional foreign principal acquired subsequently.

1. Name and address of registrant	2. Registration No.
Arnold & Porter 1229 19th St., N.W., Washington, D.C. 20036	1750

3. Name of foreign principal	4. Principal address of foreign principal
Association Francaise des Banques (French Bank Association)	18, rue LaFayette 75009 Paris, France

5. Indicate whether your foreign principal is one of the following type:

☐ Foreign government

☐ Foreign political party

☒ Foreign or ☐ domestic organization: If either, check one of the following:

☐ Partnership ☐ Committee

☐ Corporation ☐ Voluntary group

☒ Association ☐ Other (specify) ________

☐ Individual - State his nationality ________

6. If the foreign principal is a foreign government, state:

a) Branch or agency represented by the registrant.

N/A

b) Name and title of official with whom registrant deals.

7. If the foreign principal is a foreign political party, state:

a) Principal address

N/A

b) Name and title of official with whom the registrant deals.

c) Principal aim

8. If the foreign principal is not a foreign government or a foreign political party,

a) State the nature of the business or activity of this foreign principal

The foreign principal is an association of French banks.

b) Is this foreign principal

Owned by a foreign government, foreign political party, or other foreign principal .....Yes [X] No [ ]

Directed by a foreign government, foreign political party, or other foreign principal....Yes [X] No [ ]

Controlled by a foreign government, foreign political party, or other foreign principal..Yes [X] No [ ]

Financed by a foreign government, foreign political party, or other foreign principal...Yes [X] No [ ]

Subsidized in whole by a foreign government, foreign political party, or other foreign principal.....Yes [X] No [ ]

Subsidized in part by a foreign government, foreign political party, or other foreign principal.....Yes [X] No [ ]

9. Explain fully all items answered "Yes" in Item 8(b). (If additional space is needed, a full insert page may be used.)

We believe, without knowledge, that the principal, as an association of French banks, is owned, directed, controlled and financed by such firms.

10. If the foreign principal is an organization and is not owned or controlled by a foreign government, foreign political party or other foreign principal, state who owns and controls it.

N/A

Date of Exhibit A	Name and Title	Signature
July 26, 1977	William D. Rogers Partner	W. Rogers

FORM OBD-65
7-27-76
FORMERLY DJ-304

Budget Bureau No. 43-R435
Approval Expires Oct. 31, 1977

UNITED STATES DEPARTMENT OF JUSTICE
Washington, D.C. 20530

EXHIBIT B

TO REGISTRATION STATEMENT
Under the Foreign Agents Registration Act
of 1938, as amended

INSTRUCTIONS: A registrant must furnish as an Exhibit B copies of each written agreement and the terms and conditions of each oral agreement with his foreign principal, including all modifications of such agreements; or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is acting as an agent of a foreign principal. This form shall be filed in duplicate for each foreign principal named in the registration statement and must be signed by or on behalf of the registrant.

Name of Registrant	Name of Foreign Principal
Arnold & Porter	Association Francaise des Banques (French Bank Association)

Check Appropriate Boxes:

1. [ ] The agreement between the registrant and the above-named foreign principal is a formal written contract. If this box is checked, attach two copies of the contract to this exhibit.

2. [ ] There is no formal written contract between the registrant and foreign principal. The agreement with the above-named foreign principal has resulted from an exchange of correspondence. If this box is checked, attach two copies of all pertinent correspondence, including a copy of any initial proposal which has been adopted by reference in such correspondence.

3. [X] The agreement or understanding between the registrant and foreign principal is the result of neither a formal written contract nor an exchange of correspondence between the parties. If this box is checked, give a complete description below of the terms and conditions of the oral agreement or understanding, its duration, the fees and the expenses, if any, to be received.

(see answer to number 4, below)

4. Describe fully the nature and method of performance of the above indicated agreement or understanding.

The Registrant will advise the foreign principal with respect to proposed legislation dealing with the regulation of participation by foreign banks in U.S. domestic financial markets, and will engage in certain political and other activities on behalf of the principal. The fee for such representation is to be determined periodically, based on hourly charges and other usual criteria for legal fees, plus out-of-pocket expenses. The duration of the agreement is indefinite.

- 2 -

5. Describe fully the activities the registrant engages in or proposes to engage in on behalf of the above foreign principal.

The Registrant will advise the foreign principal with respect to proposed legislation dealing with regulation of participation by foreign banks in U.S. domestic financial markets.

The Registrant will engage in political activity and such other activities as required on behalf of the foreign principal, some of which may require registration under the Act.

6. Will the activities on behalf of the above foreign principal include political activities as defined in Section 1(o) of the Act?1/ Yes [X] No [ ]

If yes, describe all such political activities indicating, among other things, the relations, interests or policies to be influenced together with the means to be employed to achieve this purpose.

The Registrant will engage in political activity on behalf of the foreign principal. Such activity will include the representation of the foreign principal in hearings before Congressional committees, and preparing memoranda for submission to, and discussing the interests of that foreign principal with various members of Congress, congressional staff, and executive branch officials.

Date of Exhibit B	Name and Title	Signature
July 26, 1977	William D. Rogers Partner	W. Rogers

1/ Political activity as defined in Section 1(o) of the Act means the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

OMB No. 43-R0215
Approval Expires Oct. 31, 1981

UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

SHORT-FORM REGISTRATION STATEMENT

Under the Foreign Agents Registration Act of 1938, as amended

Each partner, officer, director, associate, employee and agent of a registrant is required to file a short form registration statement unless he engages in no activities in furtherance of the interests of the registrant's foreign principal or unless the services he renders to the registrant are in a secretarial, clerical, or in a related or similar capacity.

1. Name William D. Rogers	Registration No. 1750
2. Residence Address 2 Jefferson Run Road Great Falls, Va. 22066	3. Business Address 1229 19th Street, N.W. Washington, D.C. 20036
4. Date and Place of Birth May 12, 1927 Wilmington, Delaware Present Citizenship U.S.A.	5. If present citizenship was not acquired by birth, indicate when, where, and how acquired. N/A

6. Occupation: Attorney

7. What is the name and address of the individual or organization whose registration made it necessary for you to file this statement?

Name Arnold & Porter Address 1229 19th Street, N.W. Washington, D.C. 20036

8. List every foreign principal of the individual or organization named in Item 7.

See attachment 1

9. Indicate your connection with the individual or organization named in Item 7:

- [X] partner
- [ ] director
- [ ] employee
- [ ] officer
- [ ] associate
- [ ] agent
- [ ] other (specify)

10. Describe in detail all services which you have rendered or will render to the individual or organization named in Item 7. If you are no longer rendering such services, indicate period of past services. (If space is insufficient, a full insert page must be used.)

I am engaged in the general practice of law as a partner of the Registrant law firm. Some of my work includes rendering advice and providing representation to the Registrant's foreign principals.

11. Do any of the above described services include political activity as defined in the footnote below?
[x] Yes [ ] No

If yes, fully describe such political activity

Representation of one of the Registrant's foreign principals in hearings before Congressional committees, and preparing memoranda for submission to, and discussing the interests of that foreign principal with various members of Congress, congressional staff, and executive branch officials.

12. The services described in Item 10 are to be rendered on a

[ ] full time basis [X] part time basis [ ] special basis

13. What compensation are you receiving or will receive for above services?

[ ] Salary: Amount $________ per________ [ ] Commission at ________% of ______

[ ] Fee: Amount $____________ [X] Other thing of value */

14. What compensation or thing of value have you received to date for above services?

Date *From Whom Received* *Amount*

I receive a regular draw and distribution of partnership profits plus out-of-pocket expenses.

15. During the period beginning 60 days prior to the date of your obligation to register to the time of filing this statement, did you make any contributions of money or other things of value from your own funds or possessions and on your own behalf in connection with an election to political office or in connection with any primary election, convention, or caucus held to select candidates for political office? Yes [ ] No [X]

If yes, furnish the following information:

Date	*Amount of thing of value*	*Name of political organization*	*Name of candidate*

*/ A draw from, and a distribution of, the partnership profits realized by the Registrant.

7/26/77
Date of Signature

Signature

Subscribed and sworn to before me at District of Columbia

this 26th day of July, 1977

Signature of notary or other officer
in and for the District of Columbia

My commission expires November 30, 1980

Footnote: Political activities as defined in Section 1(o) of the Act means the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

Attachment 1

8. List every foreign principal or organization named in Item 7.

Association Francaise des Banques
Camara de la Industria del Calzado
Ambassador of the Swiss Confederation
Swiss Cheese Union, Inc.
Switzerland Gruyere Processed Cheese Manufacturers' Association
Federation Suisse des Associations de Fabricants d'Horologorie

FÉDÉRATION BANCAIRE
DE LA COMMUNAUTÉ ECONOMIQUE
EUROPÉENNE

Le Président

Frankfurt (Main), July 21, 1977

The Honourable
Fernand J. St. Germain
Chairman
Committee on Financial
Institutions Supervision,
Regulations and Insurance
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

You raised the question at the July 19th hearings on H.R. 7325 of whether foreign banks might have a solution to the problem raised by Section 6 of that bill.

After a careful review of the matter, we have concluded that the Chairman of FDIC, in his testimony following ours, has suggested a well considered proposal that can be supported by the EEC banks. His proposal is that insurance be made available under security arrangements to protect the FDIC fund from foreign risks but that the inevitable discriminatory features of this proposal be offset by making the insurance optional for foreign bank branches.

Foreign bank subsidiaries are already subject to mandatory FDIC insurance and foreign bank agencies are not insurable because they have no domestic deposits.

We commend the FDIC proposed amendment to you and subscribe to it without reservation.

Respectfully yours,

(Helmut Haeusgen)

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
NINETY-FIFTH CONGRESS

WASHINGTON, D.C. 20515

July 21, 1977

Mr. Thomas L. Farmer, General Counsel
Bankers' Association for Foreign Trade
Room 501
1101 16th Street, N.W.
Washington, D. C. 20036

Dear Mr. Farmer:

On behalf of the Subcommittee, I wish to express our appreciation for the testimony of the Bankers Association for Foreign Trade on the provisions of H.R. 7325, the International Banking Act of 1977. As I stated during the hearings on Tuesday, July 12, we are especially appreciative of BAFT's cooperation with the Subcommittee by agreeing to reschedule its appearance for Tuesday, July 19.

The Subcommittee, of course, is anxious to proceed expeditiously with our consideration of H.R. 7325 and a number of suggested amendments that have been proposed. Accordingly, a response by Friday, July 29, will be appreciated.

The questions follow:

1. From a review of the transcript, it is not entirely clear as to the reasons for BAFT's disagreement with the Federal Reserve Board's recommendations concerning the treatment of agencies under H.R. 7325. As you know, the Federal Reserve has suggested an Edge Act corporation approach to this problem. Would you elaborate on your Association's reasons for objecting to this approach.

2. Please elaborate on your Association's statement appearing on page 4, as follows: "Many foreign countries have changed the rules for U.S. investment in their country after such investments have been in place....". Could you be more specific, one as to the countries involved, and the nature of the changes?

Mr. Thomas L. Farmer, General Counsel, BAFT
July 21, 1977
Page Two

3. In advocating the permanent grandfathering of securities activities in violation of Glass-Steagall, BAFT suggested that our perspective should be governed by basic policy considerations with respect to foreign investment. Please elaborate on this statement.

4. I greatly appreciate BAFT's support for this bill and especially the statement at the conclusion of your statement that, "The legislation before you represents a liberal and farsighted approach to a complex and very technical problem." As you know, a number of amendments have been proposed. Which of these amendments do you deem necessary to accomplish the purposes of the bill and which are suggestions intended merely to diffuse opposition and expedite passage?

5. BAFT's recommendations seem consistent with the present system of State regulation of foreign banks, except on page 3 of your testimony where you recommend giving authority to the Federal Reserve Board to impose reserve requirements on foreign banks. Wouldn't this provision create inequality in the national treatment of foreign banks, since the federal Reserve has no such authority over domestic state-chartered banks?

6. BAFT states on page 4 of your testimony that foreign banks, through interstate branching, have unfair advantage over domestic banks. Is this really the case when statistics show most foreign branches are in New York and Illinois and conduct mainly wholesale banking, while 13 of the large domestic bank holding companies, alone, have 1,483 offices located in states other than that of the anchor bank of the holding company?

7. I notice that on the question of retaliation, BAFT's views would appear to differ from those of the New York Clearing House Association. Is this because those members which support your position are less involved in international banking, or is it because they see, as do other witnesses, that the threat of retaliation is not a reality?

8. In BAFT's statement, you suggest that the liberalization of the National Banking Act provided by the bill does not go far enough and suggest that there be no requirement that U.S. citizens sit on the boards of national banks owned by foreign banks. There is a history of concern about the accessibility of directors of foreign-owned banks to U.S. courts. This has been particularly a matter of concern in the State of California. Since national banks are involved in retail banking and are the most important components of the U.S. banking system, isn't it reasonable to require that some portion of their directors be responsible in the full sense of the law?

Mr. Thomas L. Farmer, General Counsel, BAFT
July 21, 1977
Page Three

9. In your statement, BAFT indicates that the securities activities of foreign banks should be construed in terms of foreign investment as a matter of principle. Would you not concede that financial services in general, and banking services in particular, are a special case?

Banking is a key industry which affects all other industries in the domestic economy. The current share of commercial and industrial loans of foreign banks is 14 percent of all commercial and industrial loans now, up from 10 percent two years ago. Doesn't this require a special concern for the implications on the traditional American view upholding separation of banking and commerce?

Again, I do appreciate your assistance and look forward to the responses to the foregoing questions.

Sincerely,

Fernand J. St Germain
Chairman

FJSTG:aSb

AUG - 9 1977

BANKERS' ASSOCIATION FOR FOREIGN TRADE
1101 SIXTEENTH STREET, N.W.
WASHINGTON, D. C. 20036

(202) 833-3060

August 5, 1977

The Honorable Fernand J. St. Germain
Chairman
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
of the Committee on Banking, Finance
and Urban Affairs
Room B-303
Rayburn Building
Washington, D.C.

Dear Mr. Chairman:

On behalf of the BAFT I wish to thank you for this opportunity to address in more detail some of the important issues presented by H.R. 7325, the International Banking Act of 1977, and some of the amendments proposed thereto. We have given careful consideration to the questions raised in your letter of July 21 and have numbered each of our replies to correspond with the number of the relevant question.

1. While it is probably not possible to achieve perfect equivalency of operating authority for foreign banks in the U.S. and domestic banks, we feel that the legislation proposed by you comes very close. This is also our view with respect to the treatment proposed in the Committee bill for foreign bank agencies. In our view, the amendment with respect to the treatment of agencies proposed by the Federal Reserve Board is a step in the wrong direction.

The BAFT does not favor further expansion of multi-state activities by foreign banks over and beyond what is permitted in this area under H.R. 7325. The foreign banks question this BAFT position by asserting that since U.S. banks engage in extensive multi-state banking activities through the mechanism of the bank holding company, it is inaccurate to claim that multi-state activities permitted under present conditions to foreign banks give those foreign banks a competitive advantage. Our contention is that the competitive advantage lies principally in the ability of foreign banks to collect deposits in more than one state by virtue of multiple subsidiaries and branches in a variety of states. On the other hand, agencies are not permitted to take deposits and therefore give foreign banks powers not greatly different in character from the powers available to U.S. banks through loan production offices, finance companies, and other activities carried on by U.S. banks outside of their home state under bank holding company authority. Therefore, we feel there is a rough equivalency between powers of agencies as authorized under H.R. 7325 and the multi-state activities of U.S. banks.

The proposal of the Federal Reserve with respect to agencies would prevent these agencies from making domestic loans. We do not see that the ability of foreign banks to make domestic loans outside of their home state would give foreign banks a significant competitive advantage. Furthermore, a number of states like Georgia, Florida, etc., which have specifically authorized the establishment of agencies, feel that the ability of foreign banks to make domestic loans in competition with U.S. banks would benefit consumers in their states by strengthening competition in that area. We see no public purpose to be served by depriving foreign banks of the ability to make such domestic loans. Also, H.R. 7325 provides authority for foreign banks to establish Edge Acts on the same basis as U.S. banks. Thus, foreign banks which want to enter a state for the purpose of participating in international banking would have such authority if H.R. 7325 were enacted and would not benefit from the enactment of the Fed's proposed amendment with respect to agencies.

2. Although our statement with respect to the international rules for foreign investment was intended to apply to commercial as well as banking investments, we have decided to respond to your request for specific examples by reference only to investments related to banking. If we were to give you examples from a broader range of U.S. foreign investments, this letter would be excessively lengthy.

The most spectacular examples of expropriation of U.S. bank branches occurred in the Soviet Union in the 1920's, Mainland China in 1950, and Castro's Cuba in 1957. In all of those cases the host country totally expropriated U.S. banks, preventing all U.S. banking activities in that country, and denying competition. In a slightly less extreme step, Egypt under Nasser in 1957 nationalized all U.S. bank branches but paid compensation. Similarly, Canada in the mid-50's ordered foreign banks to reduce their ownership in Canadian banks from 100 percent to a maximum of 20 percent over a 10-year period.

This process of divestiture of control interests has pretty much been completed. However, the Canadian Parliament is now considering new legislation which would again make it possible for U.S. banks to own and control branches in that country. Chile under Allende in 1971-72 followed a course similar to Egypt under Nasser, i.e. nationalizing foreign banks with compensation.

Two recent examples of serious limitations on existing U.S. bank investments are Colombia and Nigeria. Colombian legislation provides for a mandatory sell-down of U.S. ownership in bank branches in that country from 100 percent to a 49 percent maximum, over a three-year period ending in December 1978. Nigeria recently enacted legislation providing for the government to take over a sixty percent ownership interest in foreign-owned commercial and merchant banks. This drastic change is to be accomplished in only six months. On the other hand, Brazil and Mexico in the 1950's enacted legislation prohibiting foreign bank operations. It should be noted, however, that in Mexico Citibank was the only bank grandfathered, and in Brazil the only banks benefiting from the grandfather provision were Citibank and the First National Bank of Boston.

3. BAFT suggested that the U.S. attitude toward the grandfathering of securities operations in violation of the Glass-Steagall Act should be considered primarily from the standpoint of foreign investment policy. Our position in this area is part of our general attitude towards grandfathering of foreign bank operations, which is based on the belief that the U.S. as a principal exporter of capital has an overriding interest in the stability of foreign investment. For foreign investment to succeed, the investor must have reasonable assurance that the rules under which his investment will operate are not going to be changed suddenly to his detriment. In order to induce other countries to stabilize their rules for foreign investment, it is necessary for the U.S. to set a good example. The existing exemption of the Glass-Steagall Act with respect to securities activities of foreign banks cannot be terminated without damaging our national interest with respect to stability of foreign investment. We therefore feel that grandfathering these activities is the best way to resolve the public policy issues.

4. The amendments to H.R. 7325, which in the view of the BAFT are necessary to accomplish the goals of the bill, are as follows:

(a) Eliminate Section 7(e) of the bill which gives the Federal Reserve Board excessive authority with respect to state charters.

(b) Amend Section 8 to permit complete grandfathering of securities activities.

(c) Amend Section 5 to advance the grandfather date for multi-state operations of foreign banks to the date on which H.R. 7325 is reported out of Committee.

At the same time, we want to reiterate that amendments to substantially alter Section 5 are in direct opposition to the purposes of the bill. We therefore urge that Section 5 not be amended except with respect to the grandfather date.

5. Granting authority to the Federal Reserve Board to impose reserve requirements on foreign banks would not violate the principle of national treatment despite the fact that no such authority exists with respect to domestic state chartered non-member banks. The fact of the matter is that as far as we are able to ascertain, there is no U.S. bank with even a minimal commitment to international banking which is not a member of the Federal Reserve system, and therefore subject to the Fed's reserve requirements. The BAFT membership consists of 142 U.S. member banks. We believe that this represents virtually all of the U.S. banks involved in international banking. There is not a single member of the BAFT which is not also a member of the Federal Reserve system. It is clear, therefore, that foreign banks operating in the U.S. are competing almost exclusively with U.S. banks subject to the Fed's reserve requirements. It is therefore a meaningless legalism to say that foreign banks are competing unfairly with U.S. banks in this country by having the option of being non-member banks.

6. In analyzing competition between foreign banks operating in the U.S. and U.S. banks operating in the domestic market, one needs to consider both wholesale banking and retail banking. U.S. and foreign banks compete in the wholesale market as well as the retail market.

Furthermore, in considering the competitive position of U.S. foreign banks, one needs to look at not only branches but the whole range of facilities available to foreign banks for purposes of multi-state banking, such as subsidiaries, branches and agencies. For example, there are some foreign banks operating in the U.S. which have a network consisting of subsidiaries in one or more states with a number of branches in those states, plus branches in additional states and agencies in other states.

If we look first of all at competition in the wholesale market, it is clear that a foreign bank able to serve a U.S. domestic corporate customer in five or six states through a combination of subsidiaries, branches and agencies, is able to provide to that U.S. wholesale customer a range of services much broader than a U.S. bank restricted to banking operations in one state and bank holding operations in other states. Furthermore, one needs to remember that H.R. 7325 would grant to foreign banks the powers now available to U.S. banks through the bank holding company mechanism.

Also, it is important to remember the point which we made earlier in this letter, that there is intense competition among banks in the area of deposit collection which is absolutely essential to a bank's ability to extend its operations. By virtue of the aforementioned network of subsidiaries and/or branches, some foreign banks are able to collect deposits in five or six states, thereby achieving a significant advantage in this crucial area of bank competition where U.S. banks are restricted to single-state operations.

7. With respect to the difference in attitude between the BAFT and the New York Clearing House banks related to retaliation by foreign governments on U.S. banks, it is true that the New York Clearing House member banks have more extensive branch networks than most of the other BAFT member banks. This does not, however, mean that BAFT members outside New York are necessarily "less involved in international banking." It seems to us that the essential difference between the BAFT members outside New York and those belonging to the New York Clearing House is a difference in the evaluation of the very muted comments of retaliation which we have observed. In general, the BAFT membership feels that they have not heard any credible threats of retaliation -- especially no such comments from foreign governmental or bank regulatory authorities.

8. We believe that concern with respect to accessibility of directors of foreign-owned banks to U.S. courts is a legitimate problem. However, we do not believe that citizenship of directors on boards of national banks is the relevant issue. The relevant issue is residency rather than citizenship, and we have no quarrel with residency requirements in this area. A foreign citizen resident for example in California can be reached through U.S. and state courts in California as readily as a U.S. citizen resident in California, and in fact can be reached more readily than a U.S. citizen resident in New York or in a foreign country. We have no objection therefore to a requirement that some portion of the directors of a foreign-owned bank in the U.S. be residents of the U.S.

9. We do not believe that financial services, and banking services in particular, are a peculiarly sensitive aspect of foreign investment.

The history of foreign investment legislation in this country goes back many years and there have been many instances where the Executive or Legislative branches have viewed one activity or another

93-031 O - 77 - 47

as particularly sensitive if carried on by foreigners. For example, there are absolute prohibitions against foreign ownership in coastal and fresh water shipping, commercial aviation, telecommunication facilities, public land, exploration and leasing of valuable mineral deposits, hydro-electric power sites, and licenses for operation of atomic energy utilization or production facilities.

This is indeed a long list of commercial activities denied to foreigners. As far as we are aware, there has been no serious effort to add financial or banking services to that proscribed list of activities, and we see no reason why banking or financial services should be considered peculiarly sensitive and therefore in some ways limited with respect to foreign ownership or participation.

Let me repeat again the importance we attach to this legislation and stress our feeling of appreciation to the Committee for its thoughtful and diligent consideration of these important issues. If you feel that the BAFT can be of any further assistance in the Committee's work, please do not hesitate to call upon us.

Very truly yours,

Thomas L. Farmer

Thomas L. Farmer

TLF:clg

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
NINETY-FIFTH CONGRESS

WASHINGTON, D.C. 20515

July 21, 1977

Mr. James E. Dowd, President
Boston Stock Exchange, Inc.
53 State Street
Boston, Massachusetts 02109

Dear Mr. Dowd:

On behalf of the Subcommittee, I would like to express our appreciation to you and Mr. Kenneth Rosenblum, who appeared on behalf of the Midwest Stock Exchange, for your testimony on the provisions of the International Banking Act of 1977, H.R. 7325.

The Subcommittee, of course, is anxious to proceed expeditiously with our consideration of H.R. 7325 and a number of suggested amendments that have been proposed. Accordingly, a response by Friday, July 29, will be appreciated.

The questions follow:

(Questions #1 through #3 directed to Mr. Dowd; questions #4 through #9 directed to Mr. Rosenblum)

1. On page 8 of your statement, you say that it "...would indeed be inconsistent if we were to prohibit foreign banks from doing in this country what we permit United States banks to do abroad." This appears to support the argument for reciprocity which I think Under Secretary of the Treasury Solomon repudiated very effectively in his testimony last week.

But let's take your statement one step further. If we permit foreign banks to do in this country what U.S. banks do abroad, wouldn't it be inconsistent to prohibit U.S. banks from doing in this country what foreign banks can do and what the same U.S. banks can do abroad? What is your view of that? Should we repeal Glass-Steagall and let U.S. banks underwrite and sell securities?

2. You mention on page 3 of your statement that ABD Securities Corporation is a dealer specialist on the Boston Stock Exchange in 31 issues. Among the issues you list is Bank of America. Do you think it is good policy for the securities affiliate of two major European banks to make a market in the securities of one of its major competitors? An example of this involves the two parent banks of ABD, Algemene Bank Nederland and Dresdner Bank of Germany. Both own stock in a Parisian finance company, Societe Financiere Europeene. Bank of America and several other large banks also own stock in this company. Is this another area in which the potential for conflict of interest might require that regulations be drafted to assure that securities transactions of foreign banks be conducted at arms length and properly insulated from the activities of the parent bank?

3. On page 8 of your statement, you, like other witnesses, argue that divestiture under section 8 of the bill "may prompt a change in how foreign governments treat United States multinational banks and securities firms." That, of course, would not be true in England or Japan since their banking structures are more similar to our own and they would be less affected by divestiture. What we should consider, then, are the importance of operations of U.S. institutions in the domestic capital markets of other major countries. Assuming the threat of retaliation is real, how important are the securities activities of U.S. commercial and investment banks in Germany, Switzerland, the Netherlands, Belgium, France, Italy and Canada?

---

4. On page 4 of your statement, you refer to "...the long-range implications of a bill such as this for the overseas activities of United States securities firms." I assume you mean retaliation.

As you may be aware, Governor Gardner, both as spokesman in the past for the Treasury and now as spokesman for the Federal Reserve, has testified that he thinks the threat of retaliation is not a reality. Under Secretary of the Treasury Solomon and others think that section 8 as presently written could bring about subtle pressures from foreign financial institutions to discriminate against U.S. institutions. Deputy Secretary of State Boeker testified that divestiture under section 8 would not violate our treaty obligations. Discrimination against U.S. institutions clearly would violate treaty obligations which other countries have to the United States.

In light of the history of testimony on this subject, how real do you think the threat of retaliation is?

5. On page 4 of your statement, you argue that, in the absence of existing abuses, you find it "...difficult to understand the need for hasty legislative action." As Deputy Comptroller Bloom subsequently testified, his office recognizes that there is a need "...to attempt to anticipate problems" and avoid them where possible. Can we be certain that abuses will not develop in the future?

In his statement, Chairman LeMaistre of the FDIC noted that:

> "Many foreign banks are permitted under the law of their headquarter's country to engage in business activities abroad which would not be permitted to banks chartered in this country. Such foreign activities could give rise to antitrust, conflict of interest, and other legal problems under U.S. law."

Aren't these prospective concerns important and shouldn't we try to anticipate them by providing a regulatory framework which will avoid them or minimize their impact?

6. On page 6 of your statement, you urge that section 8 in its entirety be deleted. A point of clarification: You mean that only the provisions relating to securities activities should be deleted, not those relating to other nonbanking activities covered under the Bank Holding Company Act, don't you?

With regard to the securities activities, why do you advocate deletion as opposed to permanent grandfathering? Wouldn't this be consistent with the notion of waiting for a decision on the overall issue of Glass-Steagall?

Isn't it possible that a decision on Glass-Steagall may be several years down the road?

7. The information you have provided on the market share of foreign bank members of your Exchange is very valuable. The fact that they have about 10 percent of the market is significant. Doesn't this indicate that they may become even more important in U.S. capital markets as they gain entry to the New York Stock Exchange? Won't the ability to do business in major markets provide an impetus to growth?

Should that occur, wouldn't you share the concern expressed last year during Senate hearings on this bill by G. Robert Ackerman, President of the Pacific Stock Exchange, that "domestic banks might use the existence of Securities activities by affiliates of foreign banks as an argument for legislative permission to expand their securities activities"?

8. On page 5 of your statement, you say that the "growing interdependence of the world's economies has led to an increasing need for integrated financial markets", and the "multinational securities firms are necessary for the capital markets of the future."

How many U.S. securities firms are now engaged in multinational operations? How many are members of the Midwest Exchange? How many of your members who are not now active overseas have sufficient capital to enter into overseas ventures in the future? To what extent will the international capital markets of the future be dominated by the giants of the industry as is now the case in multinational banking? Should we encourage further integration of financial markets without some concern for the trend toward an increase in financial and economic concentration?

9. With regard to your support for increased integration of financial markets, do you see the trend in integration in terms of the growth of the Eurobond market, involving dollar denominated issues outside the U.S., or growth of "yankee bonds" sold in the U.S. for foreign borrowers?

When I hear about the need for multinational firms in the future, I want to know if it is just rhetoric or if proponents of such views have in fact a clear vision of the future and just what that future is likely to be. What kinds of transactions are likely to take place, and what kinds of institutions will be conducting business in capital markets of the future?

Again, I do appreciate your assistance and look forward to the responses to the foregoing questions.

Sincerely,

Fernand J. St Germain
Chairman

E S T A B L I S H E D I N 1 8 3 4

BOSTON STOCK EXCHANGE, INC.
53 STATE STREET, BOSTON, MASSACHUSETTS 02109

(617) 723-9500

JAMES E. DOWD
PRESIDENT

August 9, 1977

Honorable Fernand J. St. Germain, Chairman
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
Committee on Banking, Finance and Urban Affairs
U.S. House of Representatives
Room 2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am happy to respond herewith to the three questions presented in your letter of July 21, 1977 in further explanation of my testimony before your Subcommittee on July 18 on the International Banking Act of 1977, H.R. 7325. Mr. Rosenblum, Senior Vice President and General Counsel of the Midwest Stock Exchange, Inc., who appeared with me on the panel, will respond separately to questions #4 through #9.

1. If we permit foreign banks to do in this country what U.S. banks do abroad, wouldn't it be inconsistent to prohibit U.S. banks from doing in this country what foreign banks can do, and which the same U.S. banks can do abroad? Should we repeal Glass-Steagall and let U.S. banks underwrite and sell securities?

As I indicated in my testimony, there are a number of inconsistencies in our treatment of U.S. and foreign banks and in what they may and may not do. The evils and abuses within the domestic banking industry in the 1930s which gave rise to the enactment of Glass-Steagall were very real and well documented. I would not suggest repeal or revision of that Act without clear and convincing evidence that the potential and opportunities for overreaching and conflict of interest have been eliminated. The thrust of the Glass-Steagall provisions was against the domestic combination of investment and commercial banking, and I would await results of the current Senate re-examination before attempting repeal or modification. I do not perceive the same potential for abuse by continuing to permit foreign bank affiliates to act as underwriters and dealers of securities. Indeed, in their capacities as dealers, these affiliates have played and continue to play a vital role in the capital formation, distribution and securities trading processes of our country.

2. In referring to the dealer-specialist role of ABD Securities Corporation on the Boston Stock Exchange in the Bank of America common stock, you inquire whether it is a good policy for the securities affiliate of two major European banks to make a market in the securities of one of its major competitors. In response, I would agree that if this Exchange were the principal or primary market in Bank of America common stock, with a substantial order flow and extensive limit orders entrusted to the specialist book for future execution, it would not permit the potential conflict of interest to exist, and would probably prohibit that stock from dealer assignment to ABD. This, however, is not the case. I note that the year-to-date volume through June 30, 1977, on all U.S. exchanges and the Third Market as reported in the Consolidated Tape System was 11,207,600 shares; that in June alone there were 1,494,500 shares of Bank of America executed on all U.S. markets; that of the year-to-date figure 73,497 shares were executed on this Exchange, and in June only 3,561 shares of Bank of America were traded. Without examining each and every trade, it is quite possible that ABD participated as a dealer in only a small percentage of these Boston trades. Your observation relative to the possible need for regulation to assure that securities transactions of foreign banks be conducted at arms length and properly insulated from the activities of the parent bank is quite perceptive, but I suggest that the present general and far-reaching anti-fraud provisions of Rule 10b-5 under the Securities and Exchange Act of 1934 already covers this situation.

3. With respect to the operations of U.S. institutions in the domestic capital markets of other major countries, you inquire as to the importance of securities activities of U.S. commercial and investment banks in Germany, Switzerland, the Netherlands, Belgium, France, Italy and Canada, I regret that I am unable to respond to this question, lacking information relative to the scope or profitability of the international securities activities of U.S. institutions. I would expect that this information is available in reports to the Federal Reserve, the Secretary of the Treasury or the FDIC by U.S. institutions.

Again, I thank you for the opportunity to present out views on H.R. 7325 to your Subcommittee, and for the courtesy you extended to the panel on July 18.

Sincerely,

James E. Dowd

James E. Dowd
President

MSE
MIDWEST STOCK EXCHANGE, INCORPORATED
120 South LaSalle Street Chicago, Illinois 60603

August 19, 1977

Honorable Fernand J. St. Germain, Chairman
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
Committee on Banking, Finance and Urban Affairs
U.S. House of Representatives
Room 2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to respond to the six questions presented in your letter of July 21, 1977 regarding the testimony of the Midwest Stock Exchange before your Subcommittee on July 18, 1977 on the International Banking Act of 1977 (HR 7325). Unfortunately, through a misunderstanding, I did not receive a copy of your letter until the beginning of this week. I do hope, however, that you will still be able to include my responses in the record. If this is not possible, I still offer this letter for your information and the information of the Subcommittee.

4. In light of the history of testimony on this subject of retaliation, how real do we think the threat of retaliation is?

On page 4 of our prepared statement, we indicate that the questions concerning the appropriate role and regulation of foreign affiliated broker-dealers in the United States markets are complex. We suggest, among other things, that a careful balancing of the benefits these firms provide for our domestic markets against the potential danger - competitive and regulatory - should be done. Obviously, one potential danger is the long-range implications of the bill as drafted for the overseas activities of United States securities firms. We do think that some form of subtle and not so subtle retaliation are real possibilities, but we have no way of demonstrating that possibility absent an appropriate study.

5. Can we be certain that abuses relating to the activity of foreign, banks will not develop in the future? In light of the statement by Chairman LeMaistre of the FDIC that activities of foreign banks "could give

Honorable Fernand J. St. Germain, Chairman
Page Two
August 19, 1977

rise to antitrust, conflict of interest, and other legal problems under U.S. law" shouldn't we try to anticipate such problems by providing a regulatory framework which will avoid them or minimize their impact?

Our reference on page 4 of our statement to not taking hasty legislative action in the absence of existing abuses relates specifically to the securities activities referred to in Section 8 of the bill. We make the point that the securities activities which would be proscribed are extremely important to the functioning of the Midwest Stock Exchange and there being no existing abuses in this area, no action should be taken. With respect to other non-securities activities of foreign banks, we have no way of knowing whether abuses do exist and what, if anything, these current activities add to competition in the banking industry in the United States. More importantly, we do not know whether the regulatory pattern to be adopted for non-securities activities would force them out of these activities. On the other hand, it is clear that as the bill is drafted, they would be driven out of important securities activities which increase competition between markets in the United States consistent with the Securities Acts Amendments of 1975.

6. When you refer to deleting Section 8 in its entirety, do you mean only the provisions relating to securities activities and not those relating to other non-banking activities covered under the Bank Holding Company Act? With regard to the securities activities, why do you advocate deletion as opposed to permanent grandfathering? Wouldn't this be consistent with the notion of waiting for a decision on the overall issue of Glass-Steagall? Isn't it possible that a decision on Glass-Steagall may be several years down the road?

You are correct in your assumption that our recommendation with respect to deletion of Section 8 refers only to the provisions relating to securities activities.

We have no substantial objection to permanent grandfathering rather than our recommendation of deletion. Since we conclude that no abuses now exist in the securities activity area, and the contribution of existing U.S. broker-dealer affiliates of foreign banks to the operations of our Exchange are substantial, we prefer not to lock out the possibility of other similar firms not currently operating in the U.S. markets being able to also make a contribution to our Exchange. As I understand your question, permanent grandfathering would be consistent with the notion of waiting for a decision on the overall issue of Glass-Steagall. However, we do not believe that deletion of the particular provision would be inconsistent with waiting for such a decision.

7. Doesn't the fact that affiliates of foreign bank members of our Exchange have about 10 percent of the market, indicate that they may become even more important in U.S. capital markets as they gain entry to the NYSE? Won't the ability to do business in major markets provide an impetus to growth? Do we share the concern that domestic banks might use the existence of securities activities by affiliates of foreign banks as an argument for legislative permission to expand their securities activities?

On page 2 of our prepared statement, we indicate that foreign members are responsible for market making in approximately 10 percent of all securities actively traded on the Exchange. There is no indication that these firms as they gain entry to the NYSE, will either be interested in market making on the NYSE or, in fact, will be able to become a market maker thereon since securities being traded on the NYSE all have specialists making markets. With respect to access for agency business, there is no real impetus for their business to grow based upon ability to become a member of the NYSE. For all intents and purposes, these firms have all the access that they now need to the NYSE since all commission rates are negotiated. Accordingly, we don't anticipate any significant impetus to growth. Although domestic banks could use the existence of securities activities via affiliates of foreign banks as in argument to expand their securities activities we see any such argument as insignificant in relation to the broader concern of what the effect upon the U.S. securities markets could be as a result of such increased activities.

8. How many U.S. securities firms are now engaged in multinational operations? How many are members of the Midwest Stock Exchange? How many of our members who are not now active overseas have sufficient capital to enter into overseas ventures in the future? To what extent will the international capital markets of the future be dominated by the giants of the industry as is now the case in multinational banking? Should we encourage future integration of financial markets without some concern for the trend toward an increase in financial and

Honorable Fernand J. St. Germain, Chairman
Page Four
August 19, 1977

the economic consideration?

9. With regard to your support for increased integration of financial markets, do you see the trend in integration in terms of the growth of the Eurobond market, involving dollar denominated issues outside the U.S., or growth of "yankee bonds" sold in the U.S. for foreign borrowers?

Respectfully, I suggest that these questions go significantly beyond what we address in our statement and beyond our capacity to respond in any timeframe consistent with what we understand the timetable for your subcommittee's legislation. We have spent considerable time and other resources to formulate our thoughts on the future of the securities markets and particularly how a national market system in the United States should be developed. In this connection, I am enclosing copies of statements we have prepared which address themselves to the markets of the future. I think that these papers will be of interest to you and I encourage you or any other members of the Subcommittee or its staff to contact us should you have any further questions.*

Again, on behalf of the Midwest Stock Exchange, I extend my sincere appreciation to you for the opportunity to present our views on this important bill.

Sincerely,

Kenneth I. Rosenblum
Senior Vice President
and Counsel

*The enclosures referred to above are retained in the Subcommittee files.

U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
NINETY-FIFTH CONGRESS
WASHINGTON, D.C. 20515

July 21, 1977

Mr. Hart Perry, President
SoGen-Swiss
245 Park Avenue
New York, New York 10017

ATTENTION: Albert J. Beveridge III, Esquire
Washington, D. C.

Dear Mr. Perry:

On behalf of the Subcommittee, I would like to express our appreciation to you for your testimony on the provisions of the International Banking Act of 1977, H.R. 7325.

The Subcommittee, of course, is anxious to proceed expeditiously with our consideration of H.R. 7325 and a number of suggested amendments that have been proposed. Accordingly, a response by Friday, July 29, will be appreciated.

The questions follow:

1. On page 7 of your statement, you point up the significance of the crisis in the securities industries in 1973 and 1974. As you indicate, that crisis was not due to a drop in demand since the financing requirements of American industry rose 50%. No doubt much of the loss of capital by securities firms and the increased demand for capital by industrial corporations was due to inflation. But is it not possible that acquiescence to the need for foreign capital will create new structural problems for the industry without necessarily solving the structural problems which currently exist?

Have other solutions for increasing the capital of the securities industries been formulated involving domestic sources? What impact has the flow of capital from foreign sources had on foreign capital markets?

2. You argue on page 15 of your statement that there are adequate protections now to reflect the concerns expressed in Glass-Steagall for the protection of deposits. You note that foreign banks which establish subsidiaries and do retail banking cannot now have securities affiliates while those which establish agencies and branches and can have securities

Mr. Hart Perry, President
Sogen-Swiss
July 21, 1977
Page Two

affiliates are not able to engage in retail banking because their deposits are not insured. You overlook the fact that this bill provides for the insurance of branch deposits and will therefore enable branches of foreign banks to broaden their deposit base. Are you suggesting that branch deposits should not be insured?

3. Foreign bank branches now issue a substantial amount of CD's to U.S. residents and can pay a higher rate of interest on them. The Federal Reserve is very anxious that these deposits be insured up to the legal maximum. If we reject the idea of insurance for CD's of foreign bank branches, what might happen in the event of a failure of one of these banks overseas?

Weren't the failures of Intrabank, Franklin, and the U.S. National Bank (San Diego) sufficiently disruptive to indicate that not insuring wholesale deposits can shake confidence in the banking system and lead to major repercussions? In the case of USNB, didn't the FDIC finally give in and treat letters of credit in such a way as to insure repayment? Didn't the Federal Reserve and FDIC in effect "make good" on Franklin's CD's and the uninsured deposits in its London branch?

4. On page 11 of your statement, you say that "The volume of foreign investment in new issues in the U.S. has been relatively small, and, therefore, the authority granted by the bill to underwrite in the U.S. but sell abroad is of no real use." You give the impression that there is little foreign interest in the U.S. market. But Professor Robert G. Hawkins of New York University gives a different view. In a recent paper prepared for the Salomon Brothers Center for the Study of Financial Institutions, he says that in 1967 "external purchases of U.S. equities began an ascent which continued through 1975 with only minor lapses", and that foreign investors acquired "an amount equivalent to over a third of new equity issues in the U.S. market in 1973 and 1975". If foreign investors are taking over one-third of new equity issues, why wouldn't restricting foreign bank securities affiliates to sales to foreigners be equitable?

Again, I do appreciate your assistance and look forward to the responses to the foregoing questions.

Sincerely,

Fernand J. St Germain
Chairman

FJSTG:aSb

SOGEN-SWISS
245 PARK AVENUE
NEW YORK, N.Y. 10017

July 29, 1977

The Honorable
Fernand J. St. Germain, Chairman
United States House of Representatives
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
B303 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am enclosing herewith the answers to the questions posed to me in your letter of July 21, 1977.

ANSWER TO QUESTION 1

The issues raised in question one are difficult and there is no easy answer. The structural problems in the U.S. securities industry have arisen in substantial part because of the lack of permanence in the capital base of many firms. In some instances a portion of the capital is invested in the form of short term subordinated debt obligations which can be withdrawn on relatively short notice. In other instances, the capital is held by a person or an estate of a person who retired from the firm and who seeks to invest his funds in other ways.

It is difficult to generalize because the situation varies from firm to firm, but I believe it is fair to say that the lack of permanence has been a problem over the past several decades, arising in no small part by the former requirements of the N.Y.S.E. that member firms had to be partnerships. The problem has been exacerbated on the one hand as capital has been withdrawn and on the other as capital needs have increased to support the expanded volume of activity in the industry as the funding needs of U.S. industry and government have increased.

Again, I hesitate to generalize about foreign capital as it undoubtedly varies from firm to firm. I can speak with certainty about my own firm, but I believe that in general other foreign sources of capital have the same characteristics as ours.

The investments made in SoGen-Swiss by our shareholders were in the form of equity and long term subordinated debt with the equity exceeding debt by approximately 2-1/2 times.

The Honorable
Fernand J. St. Germain
July 29, 1977
Page Two

While I cannot predict the future because of the many imponderables in international finance, politico-economic affairs, national considerations, etc., I do know that our shareholders look upon their investment as a part of a long range program. The commitment to so invest in the U.S. was made only after serious deliberation of long term objectives. History, I believe, supports the view that European capital investment of this type is not subject to short term vicissitudes or short range consideration.

Foreign investment in the securities industry has been made not only through affiliates but also through substantial investments in established firms. At least one objective on the part of American firms seeking such investment has been to assure themselves of more permanent capital.

While, obviously, I cannot assure anyone that there will be no withdrawal of foreign capital, I do believe it a fair statement to say that it is more permanent than a substantial portion of the present U.S. owned capital base in the industry. I know of no way to quantify the so-called "non-permanent" U.S. owned capital, but I do believe it is of sufficient size to remain a problem to the industry.

While foreign shareholders wish to realize return on their investment through dividends, I am confident that they will not adopt dividend policies which would inhibit future growth. Should additional capital be required to support increased volume coming as a result of inflation or whatever cause, I am certain our shareholders would provide it and I hope there would be no legislative restrictions on such investments. While foreign shareholders of U.S. securities firms are not reluctant to associate with domestic sources of capital (e.g., White, Weld; Warburg, Paribas, Becker; Blyth Eastman Dillon & Co.), I do not believe it would be prudent or in the public interest to restrict new capital to domestic sources.

You also ask in question one whether there have been other solutions for increasing the capital of the securities industries from U.S. sources. There have been two developments in recent years which have been helpful but have not been a full solution to the problem.

A number of firms have gone to the public market for capital infusion. The acceptance of these securities by the public, however, has not been such to engender confidence that this is a source which could be used successfully at the present time. This is, of course, subject to change should market acceptance improve in the future.

The Honorable
Fernand J. St. Germain
July 29, 1977
Page Three

Finally, through changes in the legislative and regulatory environment, non-banking financial institutions and corporate investors have been permitted to invest in the securities industries. This, however, has not resulted in substantial infusions of capital nor does there appear to be a trend in that direction.

ANSWER TO QUESTION 2

The question of deposit insurance for U.S. branches of foreign banks involves the formulation of public policy for commercial banking. As an investment banker, I am not qualified to express an opinion on the merits of deposit insurance for foreign bank branches. Assuming that Congress elects to extend deposit insurance in some way to those branches, we see no reason why this should alter the legal status of the securities affiliates of foreign banks.

If insurance is made mandatory, there would be an element of "Catch 22" in so creating a retail banking capability not requested by the foreign banks and then denying them the retention of their securities affiliates because of potential broadening of their deposit base. From our conversations with foreign bankers, we are doubtful that the extension of deposit insurance to foreign bank branches would lead to a new corporate strategy to compete for retail deposits. We would hope that Congress would not require divestiture on the mere supposition that retail deposits will be accepted by foreign bank branches. If this is perceived to be a problem, certainly Congress could fashion a lesser remedy.

In any case, a remedy is not needed. Our investment banking operations pose no real threat to the safety of deposits placed with the branches of Credit Suisse in the United States. As emphasized in my testimony, our management is independent. We have operated at arms length in our relationships with the U.S. banking offices of Credit Suisse. Moreover, our operations are very small in relation to the resources of our shareholders. It simply is not realistic to presume that any reverses which we might suffer in a hypothetical "worst possible case" would cause any ripple effect on the U.S. banking activities of any of our shareholders. To illustrate: During the past four years, our average weekly underwriting commitments were in the neighborhood of $4.8 million. The combined assets of our six shareholders is in excess of $62 billion.

Indeed, we believe that we have prudently managed the risks in our own operations and that the exposure is, in reality, far less than is suggested even by the modest sum of our average outstanding underwriting commitments. These underwritings are diversified. It is as unrealistic to hypothesize a 100 percent loss on these commitments as it would be to assume a total loss of principal on all bank loans in the portfolio of a failing bank. The risk, we would suggest, is more

The Honorable
Fernand J. St. Germain
July 29, 1977
Page Four

on the order of 10 percent of such commitments, which, in our case, is less than 1-1/100th of a percent of the combined assets of our shareholders.

In summary, we hope that your Subcommittee will not magnify the problem out of proportion to existing realities. The gains to be achieved through requiring divestiture are theoretical. The injury to our operations, our employees, and our customers by severing us from our supporting foreign capital would be real.

ANSWER TO QUESTION 3

The basic thrust of your question appears to be that the distinction between wholesale and retail banking is not valid today in terms of the risk posed to the U.S. commercial banking system, as a whole, by the failure of any large domestic bank regardless of whether it is a retail or wholesale bank.

On pages 14 and 15 of my statement of July 19, 1977, I cited the distinction between wholesale and retail banking for the proposition that foreign banks having securities affiliates are disadvantaged in commercial banking and therefore do not enjoy an overall competitive advantage over domestic banks in commercial banking. That comment related to the question of competition. It did not address risk.

As an investment banker, I am most reluctant to volunteer inexpert opinion on the ways in which risk should be managed in the commercial banking system. My company competes in the securities industry. Its business is the prudent management of investment banking risks.

Therefore I regret I am unable to give the Subcommittee informed guidance in this area.

ANSWER TO QUESTION 4

In a recent telephone conversation Professor Hawkins has confirmed to me that in his paper he discussed the total purchases by foreigners of U.S. equities in both the new issues market and the secondary markets including all stock exchanges, the over-the-counter markets and the third markets. He compares the total of such purchases with total purchases by domestic and foreign sources in the new issue market only. This comparison was made to illustrate the magnitude of such foreign purchases. He could have chosen another measure such as the relationship of such purchases to total stock market transactions. He told me he did not mean to imply that foreigners had purchased one-third of the new equity issues.

As I indicated in my testimony, we experience a sporadic interest in new issues from foreign sources, particularly Swiss sources. We estimate the sale to foreigners of equity securities which we have underwritten since 1973 to be approximately 11% of our underwritings of such securities.

The Honorable
Fernand J. St. Germain
July 29, 1977
Page Five

Professor Hawkins also points out in his paper that the purchase of U.S. Corporate debt obligations by foreigners has been and continues to be less important. This would be particularly true if convertible debentures were eliminated from the bond totals in his paper. This has certainly been our experience at SoGen-Swiss since 1973. The interest withholding tax makes fixed income securities unattractive to foreign buyers because interest rates after withholding would be less than that available in the international markets. This is less true in equities and convertible debentures where a potential appreciation in price can outweigh the dividend withholding or interest withholding in the case of convertible debentures.

Historically, the volume of underwritings for corporate bonds has been larger than for equities. This has been particularly true in recent years. For example, in 1976, the volume of corporate bond underwritings in the U.S. amounted to $32 billion while the volume of common stock underwritings amounted to $8 billion. In the case of SoGen-Swiss, since July of 1973 we have underwritten approximately $850,000,000 in bonds and $150,000,000 in equities, or nearly 85% in bonds.

Of these, we have sold abroad approximately $16,500,000 in equities, $29,750,000 in bonds, or $46,250,000 in total. To state it in percentages, we have sold approximately 11% of equity issues abroad, approximately 3.5% of bond issues (including convertible issues and issues by foreign entities where there is no withholding) or 4.6% of our total underwritings.

FINAL SECTION

You have asked through our Washington counsel whether we would have observations to make on possible conflicts of interest which might arise if a shareholder of a securities affiliate made a market in the shares of an industrial company affiliated with its parent foreign bank.

I know of no instance where this has occurred. In any event, this potential problem is covered by the grandfathering language of Section 8, which gives appropriate federal regulators the authority to enforce compliance with conflict of interest standards. I do not think that the potential problem is of sufficient magnitude to outweigh the arguments we have advanced in favor of full grandfathering.

Sincerely yours,

Hart Perry, President

CC: Richard Still, B303 RHOB
Paul Nelson, 2129 RHOB

U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
NINETY-FIFTH CONGRESS

WASHINGTON, D.C. 20515

July 22, 1977

Honorable George A. LeMaistre
Chairman
Federal Deposit Insurance Corporation
Washington, D. C. 20429

Dear Mr. Chairman:

On behalf of the Subcommittee, I would like to express our appreciation to you for your testimony on the provisions of the International Banking Act of 1977, H.R. 7325.

The Subcommittee, of course, is anxious to proceed expeditiously with our consideration of H.R. 7325 and a number of suggested amendments that have been proposed. Accordingly, a response by Friday, July 29, will be appreciated.

The questions follow:

1. In weighing the need for federal regulation of foreign banks, shouldn't we consider the fact that some 88% of foreign bank assets are held by banks with operations in more than one state? How many U.S. banks with multi-state operations are not subject to federal regulation?

Shouldn't we also consider the fact that, like U.S. banks with loan production offices, foreign banks tend to operate their multi-state offices as a network?

2. On page 11 of your statement, you state the following as a problem which the FDIC foresees in insuring foreign banks:

> "The domestic branch may be subjected to requirements under foreign law or to political and economic decisions of a foreign government which conflict with domestic bank regulatory policies."

This indicates that the FDIC may see the need for some guidance from those in government responsible for international economic and political policy in assessing whether or not to insure the deposits of a foreign bank branch. You have opposed the guidelines and consultations provided under section 9. Wouldn't you also view this as a problem which transcends the bounds of bank regulatory policy?

Honorable George A. LeMaistre, Chairman
Federal Deposit Insurance Corporation
July 22, 1977
Page Two

3. On page 20 of your statement, you indicated that while the Fed's monetary concerns are real, the small size of foreign bank assets does not justify imposing reserve requirements. Have you not overlooked the degree to which foreign bank operations are concentrated in money markets and the volatility of the flow of funds between these offices and the Eurodollar market?

Between March and April of this year, there was an outflow of $3 billion from foreign banks in the United States and a $6 billion reduction in their total assets from $72 billion to $66 billion. There have been outflows and inflows of similar magnitudes in the past.

Doesn't the Federal Reserve Board need some means of moderating these flows? Should it resort to European methods such as restricting the payment of interest on nonresident deposits? Since the flows occur through branches as well as agencies, don't they also have a potential impact on the FDIC insurance proposal?

4. You refer to an overriding public interest as the basis for your opposition to section 5, and yet you fail to give that same consideration to wit: overriding public interest to the judgment of the Federal Reserve in your opposition to section 7, dealing with reserve requirements. Thus, it seems the Corporation is opposed to sections 5, 7, 8, and I assume 9 of the basic bill, and yet you state the Corporation "supports the essential thrust of the legislation and indeed strongly endorses many of its provisions." Possibly I am misreading your statement or have not attached the same significance as apparently you do to those provisions of the bill which the Corporation does support. Have you had an opportunity to review Governor Gardner's testimony and his concern that given the present geometric progression in foreign bank activity in this country, the task of providing minimum regulation will become seriously compounded or, in my judgment at least, the permitting of continued activities by foreign banks denied domestic banks will inevitably bring pressure on our own domestic law, which in my judgment is simply not the way the United States should establish its own banking policy. With that perspective in mind, it does seem to indicate that there should be at least a presumption in favor of the Federal Reserve categorization of the importance of this bill.

Honorable George A. LeMaistre, Chairman
Federal Deposit Insurance Corporation
July 22, 1977
Page Three

5. As I understand your position, you urge that the FDIC be given authority to examine and supervise all foreign branches it insures, whether chartered by state or federal authorities. While I believe your reasons for requesting this authority have merit, I would point out that they deviate from the principal of national treatment. On the other hand, you think the FDIC, rather than the Federal Reserve, should supervise state-chartered foreign banks because it would be more consistent with national treatment. Do you think the FDIC should supervise state-chartered agencies as well, even though they are not insured?

If not, do you believe that agencies should have no Federal supervision despite the fact that they operate multi-state offices as a network and that multi-offices of U.S. banks are subject to Federal regulation?

Again, I do appreciate your assistance and look forward to your responses to the foregoing questions.

Sincerely,

Fernand J. St Germain
Chairman

FJSTG:aSb

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D.C. 20429

OFFICE OF THE CHAIRMAN

July 29, 1977

Honorable Fernand J. St Germain
Chairman
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
Committee on Banking, Finance and
Urban Affairs
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

I greatly appreciated the opportunity to testify before your Subcommittee on the International Banking Act of 1977 (H.R. 7325). The purpose of this letter is to respond to the questions which you put to me in your letter of July 22, 1977. The questions which you asked and our responses follow:

1. Question:

In weighing the need for federal regulation of foreign banks, shouldn't we consider the fact that some 88% of foreign bank assets are held by banks with operations in more than one state? How many U.S. banks with multi-state operations are not subject to federal regulation?

Shouldn't we also consider the fact that, like U.S. banks with loan production offices, foreign banks tend to operate their multi-state offices as a network?

Response:

We do believe that the factors which you raise should be weighed in assessing the need for federal regulation of foreign operations in the U.S. The fact that foreign banks holding approximately 88% of all the foreign bank assets have multi-state operations strongly suggests the need for application of a federal regulatory framework, which has the ability to supervise the entire multi-state operation. This is, of course, buttressed by the fact that banks tend to operate their multi-state operations as a network. These are among the reasons that led the FDIC to support the extension of federal regulation and supervision of the U.S. operations of foreign banks.

To the best of our knowledge, there are no significant U.S. commercial banks with multi-state operations which are not subject to federal regulation.

Honorable Fernand J. St Germain
July 29, 1977
Page 2

2. Question:

On page 11 of your statement, you state the following as a problem which the FDIC foresees in insuring foreign banks:

The domestic branch may be subjected to requirements under foreign law or to political and economic decisions of a foreign government which conflict with domestic bank regulatory policies.

This indicates that the FDIC may see the need for some guidance from those in government responsible for international economic and political policy in assessing whether or not to insure the deposits of a foreign bank branch. You have opposed the guidelines and consultations provided under section 9. Wouldn't you also view this as a problem which transcends the bounds of bank regulatory policy?

Response:

Certainly, consultation among the appropriate agencies and departments of government is necessary in order to deal effectively with many problems involving foreign banks. However, we would defer to Treasury and State Department as to whether guidelines and such consultations should be mandated by statute.

3. Question:

On page 20 of your statement, you indicated that while the Fed's monetary concerns are real, the small size of foreign bank assets does not justify imposing reserve requirements. Have you not overlooked the degree to which foreign bank operations are concentrated in money markets and the volatility of the flow of funds between these offices and the Eurodollar market?

Between March and April of this year, there was an outflow of $3 billion from foreign banks in the United States and a $6 billion reduction in their total assets from $72 billion to $66 billion. There have been outflows and inflows of similar magnitudes in the past.

Doesn't the Federal Reserve Board need some means of moderating these flows? Should it resort to European methods such as restricting the payment of interest on nonresident deposits? Since the flows occur through branches as well as agencies, don't they also have a potential impact on the FDIC insurance proposal?

Honorable Fernand J. St Germain
July 29, 1977
Page 3

Response:

At the outset, I should clarify the FDIC's position with respect to reserve requirements. We do not oppose the imposition of reserve requirements on those foreign banking operations which choose to accept the benefits and burdens of Federal Reserve membership. We do believe, however, that consistent with the concept of national treatment, foreign banks should be able to opt for a state charter, choosing not to enjoy the benefits nor bear the burdens of Federal Reserve membership.

We are aware that some substantial changes in the assets of foreign owned U.S. banks have occurred from month to month. To the best of our knowledge, these changes have not been subject to any systematic analysis. However, prevailing economic theory and empirical support denies that the changes could have resulted from inflows and outflows of Eurodollar funds. The Eurodollar market is a fractional reserve system based on U.S. demand deposits as reserve assets. Any attempt to transfer Eurodollar deposits to the U.S. would destroy the Eurodollar market's reserve base, leading to a sharp reduction in total Eurodollar deposits and no change in U.S. monetary aggregates.

The preliminary analysis of our economic staff indicates that the recent variations in foreign owned banks' assets and liabilities depend on two primary casual factors. First, from month to month foreign owned banks have simultaneously increased (decreased) borrowing from U.S. commercial banks and increased (decreased) various short term loans. Secondly, foreign parents have shifted demand deposit funds from other U.S. commercial banks to their affiliated branches and subsidiaries, while these foreign owned U.S. banks have simultaneously increased their demand deposit assets in U.S. commercial banks by a like amount. During the March-April period to which you refer, foreign parents were transferring these funds back into non-foreign U.S. banks. Foreign owned U.S. banks experienced simultaneous declines in liabilities to foreign parents and in demand deposit assets with other U.S. banks. It is not clear whether, and to what extent, these monthly changes interfere with the Federal Reserve's monetary control objectives. It does appear, however, that the problem is not one of international flows of funds.

With respect to the impact of foreign owned U.S. banks on the FDIC deposit insurance proposal, it has always been our position that the provision of deposit insurance to branches, as opposed to subsidiaries, poses a problem of the potential for precipitous advances of funds to foreign home offices. Since the problem is one of potentially rapid deterioration in the quality of assets and the lack of jurisdiction and recourse over the foreign parents, the existence of Federal Reserve System required reserves would not significantly alter the problem. However, because of the strong feeling in many quarters that deposit insurance should at least be made available on a

Honorable Fernand J. St Germain
July 29, 1977
Page 4

optional basis to branches of foreign banks operating in the United States, the FDIC has come forward with what we think to be a workable proposal. The potential threat that foreign owned banks pose for the deposit insurance fund would certainly be something that would have to be taken into account in determining the sufficiency of a security bond or pledge of assets for deposit insurance purposes.

4. Question:

You refer to an overriding public interest as the basis for your opposition to section 5, and yet you fail to give that same consideration to wit: Overriding public interest to the judgment of the Federal Reserve in your opposition to section 7, dealing with reserve requirements. Thus, it seems the Corporation is opposed to sections 5, 7, 8, and I assume 9 of the basic bill, and yet you state the Corporation supports the essential thrust of the legislation and indeed strongly endorses many of its provisions. Possibly I am misreading your statement or have not attached the same significance as apparently you do to those provisions of the bill which the Corporation does support. Have you had an opportunity to review Governor Gardner's testimony and his concern that given the present geometric progression in foreign bank activity in this country, the task of providing minimum regulation will become seriously compounded or, in my judgment at least, the permitting of continued activities by foreign banks denied domestic banks will inevitably bring pressure on our own domestic law, which in my judgment is simply not the way the United States should establish its own banking policy. With that perspective in mind, it does seem to indicate that there should be at least a presumption in favor of the Federal Reserve categorization of the importance of this bill.

Response:

In our testimony we do not dispute the importance of this legislation and we certainly recognize the legitimacy of the concerns expressed by Governor Gardner. Nor do we dispute the assertion that the "geometric progression in foreign bank activity in this country" strongly suggests the need for federal regulatory framework in this area. In our testimony, we did express strenuous opposition to only one provision of the legislation, section 5, which in our judgment might stifle the development of regional cities as centers of international commerce. As we have indicated in response to Question 2, we neither oppose nor support the provisions of section 9 of the bill. With respect to sections 7 and 8 we merely expressed what seems to us to be preferable policy alternatives. Doing so, we recognized, the logic of positions taken in the bill and could support the bill even if our recommendations were not accepted.

Honorable Fernand J. St Germain
July 29, 1977
Page 5

5. Question:

As I understand your position, you urge that the FDIC be given authority to examine and supervise all foreign branches it insures, whether chartered by state or federal authorities. While I believe your reasons for requesting this authority have merit, I would point out that they deviate from the principal of national treatment. On the other hand, you think the FDIC, rather than the Federal Reserve, should supervise state-chartered foreign banks because it would be more consistent with national treatment. Do you think the FDIC should supervise state-chartered agencies as well, even though they are not insured?

If not, do you believe that agencies should have no Federal supervision despite the fact that they operate multi-state offices as a network and that multi-offices of U.S. banks are subject to Federal regulations?

Response:

In our testimony, we did not intend to suggest that the FDIC examine and supervise all foreign branches which it insures whether chartered by state or federal authorities. Rather it is our view that the FDIC should be the primary federal supervisor of those institutions which are licensed or chartered by state and which do not choose to accept the benefits and burdens of Federal Reserve membership. This would include agencies as well as branches, even though they are not insured. In addition, we believe that consistent with the deposit insurance function, the FDIC should be given authority to examine all branches which are insured or are applying for deposit insurance when it is necessary for deposit insurance purposes, such as determining the magnitude of the risk to be covered by the bond or pledged assets.

With respect to your last question, it is our view that there should be federal supervision and regulation of state chartered agencies.

I sincerely hope that these answers are responsive to your questions. If they are not, please do not hesitate to call on me or my staff for further assistance we can provide to you.

Again, let me thank you for the courtesy and consideration you showed me at the hearings on the legislation last week. It was sincerely appreciated.

Sincerely,

George A. LeMaistre

George A. LeMaistre
Chairman

U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
NINETY-FIFTH CONGRESS

WASHINGTON, D.C. 20515

July 21, 1977

Honorable Robert Bloom
First Deputy for Policy
Office of Comptroller of the Currency
Washington, D.C.

Dear Mr.Bloom:

On behalf of the Subcommittee, I wish to express our appreciation for your testimony on Tuesday, July 19, on the provisions of the International Banking Act of 1977, H.R. 7325.

The Subcommittee, of course, is anxious to complete action on the pending measure and, accordingly, we would appreciate your response to the following questions by noon, Friday, July 29.

1. In weighing the need for federal regulation of foreign banks, shouldn't we consider the fact that some 88 percent of foreign bank assets are held by banks with operations in more than one state? How many U.S. banks with multistate operations are not subject to federal regulation?

Shouldn't we also consider the fact that, like U.S. banks with loan production offices, foreign banks tend to operate their multistate offices as a network?

2. On page 3 of your statement, you quote Mr. Heimann's testimony to this Committee last year:

> "It should be a central purpose of any system of regulation of foreign banking to sustain and invigorate the American centers of international trade and finance so as to facilitate thereby the flow of capital through the U.S. capital markets and the movement of trade into and out of the United States."

How many such centers of international trade and finance are there currently, and how realistic is it to expect that efforts by other cities to attract foreign banks will increase the number of such centers to any substantial degree?

3. On page 11 of his statement, Mr. LeMaistre states the following as a problem which the FDIC foresees in insuring foreign banks:

> "The domestic branch may be subjected to requirements under foreign law or to political and economic decisions of a foreign government which conflict with domestic bank regulatory policies."

This indicates that the FDIC may see the need for some guidance from those in government responsible for international economic and political policy in assessing whether or not to insure the deposits of a foreign bank branch. You have opposed the guidelines and consultations provided under section 9. Wouldn't you also view this as a problem which transcends the bounds of bank regulatory policy?

4. You seem to suggest that federal regulation of foreign banks is not needed although you also indicate, on page 4, that optional federal chartering is desirable and, on page 6, that you support imposing reserve requirements on foreign banks. Are you suggesting that the Fed be given authority for monetary control without having authority to regulate or supervise foreign banks?

Again, we do appreciate your assistance and look forward to your responses to the foregoing questions.

Sincerely,

Fernand J. St Germain
Chairman

FJStG:hSh

Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

July 29, 1977

The Honorable Fernand J. St. Germain
Chairman
Subcommittee On Financial Institutions
Supervision, Regulation, and Insurance
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is in response to your letter dated July 21, 1977, requesting this Office to provide additional comment on matters involving the International Banking Act of 1977, H.R. 7325.

1) This Office is not aware of any U. S. bank with multi-state operations which is not federally regulated. The interstate activities of U. S. banks and foreign banks generally represent an institutional marketing network. The Subcommittee indeed should weigh these considerations in its deliberations of the International Banking Act of 1977.

2) Our Reports of Examination during 1976 show that 98 national banks' international assets approached $136 billion. National bank acceptances and letters of credit outstanding at the end of 1976 were $7 billion and $22 billion respectively. A good deal of this activity was centered in New York-Newark, Chicago-Detroit, and San Francisco-Los Angeles. About $22 billion of international assets also reflect activity in Boston-Providence, Philadelphia-Pittsburgh, Baltimore-Charlotte, Cleveland, Atlanta-Miami-Tampa, New Orleans, Milwaukee-Minneapolis, Houston-Dallas, and Seattle. These areas are the traditional international trade centers in the United States, and it is unlikely that others will emerge in the foreseeable future. However, these centers likely would benefit from the presence of major foreign banks in the same manner as centers which already have on-site activity of major foreign banks or of Edge Act banking corporations have benefited. A major point here is that given the legislative uncertainties since 1974 about interstate activities of foreign banks, those institutions have sought the traditional major centers- New York, Chicago, and San Francisco, and have been reluctant to establish anything more than representative offices beyond these major centers until that uncertainty is removed. Furthermore, there is a natural marketing escalation which has occurred abroad for U. S. banks but which is relatively recent for foreign banks in the United States. The marketing process is conducted by travel from head office until the volume of business justifies an on-site presence. Generally, the first presence

is a representative office, followed by an agency, then a branch and/or subsidiary, depending on local business growth and local statutary authority. The network of operations in a country generally proceeds along the same escalating process. For most foreign banks, that network escalation is only just beginning outside of the three major centers.

Therefore, it is realistic that other centers eventually will attract on-site presence of foreign banks beyond a representative office level provided such presence is permitted by statute. Those attractions may derive from general, overall economic growth trends in a center or perhaps an individual attraction, e.g. the projected Volkswagen plant in Pennsylvania. Based on our routine examinations in more than twenty countries annually, we know from our discussions with foreign bankers and officials at all levels that the United States is viewed abroad as the safest, most attractive place for capital in the world today and is viewed as having still more development potential. It is reported that foreign investment in the United States now approaches $30 billion and the flow is not expected to cease as the United States continues its reputation as the center of capitalism. Banks, domestic and foreign, are the intermediaries of this capital influx.

3) We believe that with the changes recommended by the FDIC, that Agency's interests will be sufficiently protected. Therefore, we believe the consultative and clearing process in Section 9 is not necessary.

4) We did not intend to suggest that some federal regulation of foreign banks is not necessary. The Act provides in Section 7(c) for the Federal Reserve System to receive the necessary reports to monitor activity for monetary control purposes. Foreign banks already submit voluntarily this type of information to the Federal Reserve. Section 12 of the Act provides the Board of Governors with regulatory and enforcement authority. These provisions appear adequate for effective monetary control purposes.

This Office appreciates the opportunity to further comment on the International Banking Act of 1977, H.R. 7325. We trust the above is responsive to your needs.

Sincerely,

Robert Bloom
First Deputy Comptroller
for Policy

July 21, 1977

Mr. Steuart L. Pittman
Counsel
Institute of Foreign Bankers
1800 M Street, N.W.
Washington, D.C. 20006

Dear Mr. Pittman:

On behalf of the Subcommittee, I wish to express our appreciation for the testimony of the Institute of Foreign Bankers on the provisions of the International Banking Act of 1977, H.R. 7325. We especially appreciate your understanding of the necessity for the cancellation of our hearings on July 14 and your cooperation in accommodating the Subcommittee by testifying during the morning session on July 19.

The Subcommittee, of course, is anxious to move forward after a thorough analysis of the testimony presented; and, accordingly, we request a response to the following additional questions no later than noon on Friday, July 29. The questions are as follows:

1. On page 6 of Mr. DeLuca's Summary Statement, he says, "Section 7 authorizes the FRB to impose on certain foreign bank operations in the U.S. any or all of the Federal Reserve Act restrictions on domestic member banks. This is not equal treatment; on the contrary, this is discrimination against foreign banks. Federal reserve requirements, optional for domestic banks, become mandatory for foreign banking in the U.S."

Is it not true that no other central bank permits foreign banks to transact business in its domestic currency within the area of its jurisdiction without imposing the same monetary controls on those banks that are imposed on its domestic banks?

2. Chairman LeMaistre of the FDIC testified that of the three large banks which it supervises, two are subsidiaries of foreign banks. In the portion of Mr. DeLuca's statement quoted above, he bases his argument that Federal Reserve regulation and mandatory reserve requirements for foreign banks will be discriminatory on an implicit comparison of foreign banks with State-chartered nonmember banks. Yet, he has noted elsewhere that rules affecting depository institutions such as State nonmember banks are not necessarily applicable to non-depository institutions, such as foreign bank branches and agencies. Isn't there some inconsistency in Mr. DeLuca's arguments on various sections of the bill?

Are foreign bank branches and agencies comparable to State nonmember banks? Are these banks among the U.S. institutions with which you compete? Do they, like foreign bank branches and agencies, currently have multistate operations under the Bank Holding Company and Edge Acts, and are they likely to establish multistate operations in the future? If they do so, will they not then be subject to Federal Reserve regulation?

3. During the hearings Mr. DeLuca noted that foreign bank assets were only $66 billion, not $76 billion as stated by Federal Reserve Board Governor Gardner and other witnesses. In response to my question concerning these figures, Mr. DeLuca acknowledged that the present $66 billion figure was a reduction of $10 billion from total assets at year-end 1976. Mr. DeLuca did not agree, however, that this was an indication of the volatility of foreign bank operations, that it reflected sizable flows of funds into and out of the United States through these offices, or that these sizable flows justified direct monetary control over foreign bank operations by the Federal Reserve Board.

In your view, this $10 billion reduction in foreign bank assets merely reflected seasonal factors. Do seasonal factors normally result in a 13 percent reduction in assets of domestic banks? Wouldn't a change in asset size of that magnitude usually reflect very significant changes in monetary and economic conditions?

Between March and April of this year, U.S. assets of foreign banks dropped from $72 billion to $66 billion, a $6 billion reduction in a single month. Foreign claims fell less than $1 billion while foreign liabilities dropped by $5.5 billion, for a net outflow of $3.5 billion. Does such a development reflect seasonal factors or is it the result of more volatile types of operations than those which characterize domestic banks? What impact might a $3.5 billion outflow of funds have on money markets in the United States? What recourse does the Federal Reserve have in its efforts to stabilize money markets and pursue policies governing credit availability? Do other central banks permit their currencies to move in and out of the domestic money market without using the monetary tools at their disposal to influence or minimize the direction of such movements of funds?

4. Mr. DeLuca argues on pages 17 and 18 of his statement that the legislation is not needed because most of the activity of foreign banks is conducted by agencies which do not accept deposits. Are you aware that the agency share of total foreign bank assets is no longer 51 percent -- it has dropped to 38 percent -- while the share of branches has risen from 23 percent to 36 percent in the same period over the last two years? Doesn't the growth in branch assets and the increase of U.S. deposits in foreign banks undermine Mr. DeLuca's argument?

5. Mr. DeLuca argues on page 15 of his statement that the growth of foreign banking in the United States is not a problem and has been beneficial. I would agree to some extent and with some reservations. The overall growth may not be a

problem, but indications of an increase in banking concentration may be. At year-end 1975, fifteen foreign banks had U.S. banking assets of over $1 billion. The aggregate assets of all 15 were $32.5 billion, an increase of $4 billion over the previous year. Can we afford to ignore any competitive advantages of 15 huge banks with over $1 billion of U.S. assets, adding $4 billion to their assets in a single year?

Again, I do appreciate your assistance and look forward to your responses to the foregoing questions.

Sincerely,

Fernand J. St Germain
Chairman

FJStG:hSh

SHAW, PITTMAN, POTTS & TROWBRIDGE
1800 M STREET, N. W.
WASHINGTON, D. C. 20036

(202) 331-4100

TELECOPIER
(202) 296-0694 & 296-1760

TELEX
89-2693 (SHAWLAW WSH)
CABLE "SHAWLAW"

JOHN H. SHARON
COUNSEL

July 27, 1977

The Honorable Fernand J. St Germain
Chairman
U. S. House of Representatives
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
2136 Rayburn House Office Building
Washington, D. C. 20515

Re: <u>Institute of Foreign Bankers Testimony on H.R. 7325</u>

Dear Mr. Chairman:

On behalf of the Institute of Foreign Bankers and its officers and trustees who testified on July 19, we wish to express our appreciation for your courteous and productive conduct of the hearings on H.R. 7325, and we make the following response to the questions contained in your letter of July 21.

<u>Your Paragraph 1</u>

Question: "Is it not true that no other central bank permits foreign banks to transact business in its domestic currency without imposing the same monetary controls on those banks that are imposed on its domestic banks?"

Answer: So far as we know, most foreign central banks impose monetary controls on foreign as well as domestic banks. The point we have attempted to stress in our testimony is that the United States has a unique system which permits banks to organize and operate under various options, one of which,

SHAW, PITTMAN, POTTS & TROWBRIDGE

The Honorable Fernand J. St Germain
Page 2
July 27, 1977

exercised by over 60% of the domestic banks, is to organize under state law and to avoid the benefits, burdens and restrictions of membership in the Federal Reserve System. We know of no comparable system of bank regulation abroad, permitting banks to choose among methods of regulations on the basis of burdens and benefits. The issue of whether to deny such a choice only to foreign banks does not arise in foreign countries.

Your Paragraph 2

Question: ". . . Mr. DeLuca. . . bases his argument that Federal Reserve regulation and mandatory reserve requirements for foreign banks will be discriminatory on an implicit comparison of foreign banks with State-chartered nonmember banks. Yet, he has noted elsewhere that rules affecting depository institutions such as State nonmember banks are not necessarily applicable to nondepository institutions, such as foreign bank branches and agencies. Isn't there some inconsistency. . .?"

Answer: We fail to see any inconsistency between these two fundamental and important points, namely, denial of the option of becoming a System member is discriminatory, and rules designed for depository institutions are not designed for, and should not be applied to, nondepository foreign bank agencies and commercial lending companies.

Questions: "Are foreign bank branches and agencies comparable to State nonmember banks? Are these banks among the U. S. institutions with which you compete? Do they, like foreign bank branches and agencies, currently have multistate operations under the Bank Holding Company and Edge Acts. and are they likely to establish multistate operations in the future? If they do so, will they not then be subject to Federal Reserve regulation?"

Answers: We agree that foreign banks compete with large domestic banks which are in most instances national banks and members of both the System and FDIC. We note in passing that the principal domestic bank opposition to this bill,

SHAW, PITTMAN, POTTS & TROWBRIDGE

The Honorable Fernand J. St Germain
Page 3
July 27, 1977

intended to provide relief from allegedly unfair competitive advantages, comes from these major competitors. We are not informed on whether state nonmember banks engage in the type of multistate banking operations characteristic of the domestic national member banks. However, we do not agree with your implication that they would be necessarily subject to FRB regulation by virtue of their engaging in multistate banking in one or more of the various forms used by the larger domestic banks. On the contrary, nonmember state banks are not restricted by federal law from engaging in multistate banking directly through deposit-taking branches wherever state law, now or in the future, may permit.

Your Paragraph 3

Question: "Between March and April of this year, ... a net outflow of $3.5 billion. Does such a development reflect seasonal factors or is it the result of more volatile types of operations than those which characterize domestic banks? What impact might a $3.5 billion outflow of funds have on money markets in the United States? What recourse does the Federal Reserve have in its efforts to stabilize money markets and pursue currencies to move in and out of the domestic money market without using the monetary tools at their disposal to influence or minimize the direction of such movements of funds?"

Answer: Seasonal factors are a significant factor in the first quarter drop in assets but are not exclusive. It is impossible to generalize on the many lesser factors affecting the large variety of transactions which change aggregate foreign bank assets and liabilities in the United States. However, it seems to us abundantly clear that the quantities moving in and out of the United States through foreign bank offices in the United States are extremely small compared to such monetary movements through domestic banks. As the hearing record amply demonstrates, movements of funds through foreign bank offices are subject to fully effective voluntary compliance with reserve requirements of the FRB comparable to those imposed

SHAW, PITTMAN, POTTS & TROWBRIDGE

The Honorable Fernand J. St Germain
Page 4
July 27, 1977

on international transactions of domestic banks and their branches overseas. Thus, we see no basis to expect the FRB to require any significantly different reserves under the authority of Section 7(a) than it is now achieving. In any event, a net outflow of $3.5 billion, which you mention, and the much smaller amount which might be eliminated by any foreseeable level of reserve requirements, could not have appreciable impact on the monetary policy of the United States. We believe that voluntary compliance is a proven tool of administration which gives the FRB ample opportunity to deal with special problems arising from foreign bank transactions and have heard nothing in the testimony of the FRB to indicate otherwise. You ask again in this context whether foreign central banks use monetary tools to influence the movement of funds: they do, but it is very relevant to Section 7(a) that many foreign central banks rely on voluntary compliance similar to the requests made by the FRB to foreign banks in the United States.

Your Paragraph 4

Question: "Mr. DeLuca argues on page 17 and 18 of this statement that the legislation is not needed because most of the activity of foreign banks is conducted by agencies which do not accept deposits. . . . Doesn't the growth in branch assets and the increase of U. S. deposits in foreign banks undermine Mr. DeLuca's argument?"

Answer: The cited IFB statement made the more limited, but important, point that the bill should not cover agencies and commercial lending companies because they do not accept deposits and that share-of-market statistics should be reduced accordingly, whatever the latest statistics show. This particular argument is not directed at the need for the entire bill, as your question suggests. The growth of branch assets more rapidly than agency assets in the last two years, if anything, supports the IFB point. During Mr. LeMaistre's testimony, a similar question was put by you as to whether

SHAW, PITTMAN, POTTS & TROWBRIDGE

The Honorable Fernand J. St Germain
Page 5
July 27, 1977

recent asset statistics do not reflect conversion by Japanese banks from agencies to branches in New York and whether a motive might be to anticipate this legislation. Attached is a statement prepared with the help of some of the Japanese banks which have recently applied for branch licensing in New York State. It provides a much needed perspective on the motivations behind these applications and effectively dispels the notion that these applications are motivated by anticipation of legislation.

Your Paragraph 5

Question: ". . . Can we afford to ignore any competitive advantages of 15 huge [foreign] banks with over $1 billion of U. S. assets, adding $4 billion to their assets in a single year?"

Answer: The billion dollars of U. S. assets you refer to are less than one-tenth of one percent of U. S. banking assets. At no point in the testimony have any of the proponents of the bill or anyone else suggested that a justification of the bill is competitive advantage relating to the size of foreign banks. If there is such an argument, it could be more effectively made with respect to the big domestic banks' far greater share either of the U. S. market or of the markets of home countries of foreign banks in the U. S. However, we doubt that discouragement of foreign investment in the United States because of the size of the investor or of the investment is a precedent with which the U. S. Government would wish to identify. The issue posed by H.R. 7325 is whether, quite apart from relative size, foreign banks, on balance, have a competitive advantage resulting from the diversity of U. S. bank regulation. We believe the hearings record demonstrates that they have more disadvantages than advantages. IFB prefers to share in the diversity, even the imperfections, of the existing U. S. regulatory scheme, rather

SHAW, PITTMAN, POTTS & TROWBRIDGE

The Honorable Fernand J. St Germain
Page 6
July 27, 1977

than to take on the new burdens and uncertainties of restructuring federal, but not state, regulations for the sake of a symmetry of regulation, partially unattainable, of wholesale foreign bank branches and agencies and of retail domestic banks. But if the Subcommittee decides to recommend a bill, we renew our plea for equal treatment which is consistent and economically realistic, along the lines of Part C of our statement.

Thank you for the opportunity to explain further our views on H.R. 7325. If we can be of any assistance on a more technical level, we would gladly respond at any time with drafting suggestions or comments within the framework of the Subcommittee's intentions.

Respectfully yours,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By ______________________
Steuart L. Pittman
Counsel for
Institute of Foreign Bankers

SLP:sjs

Attachment

July 27, 1977

Attachment to

July 27 Letter of Institute of Foreign Bankers

to Chairman St Germain

Re H.R. 7325

We would like to clarify the record with respect to the colloquy between Mr. St Germain and Mr. LeMaistre on pages 348-9 of the transcript relating to the changes in percentage share of foreign bank assets in agencies and branches from 1974 to 1977. Mr. St Germain referred in that regard to conversions of Japanese bank agencies in the State of New York to branches and suggested these conversions were motivated in part by an effort to beat the effective date of this legislation.

The reasons for Japanese banks changing from agency to branch status are principally that the needs of their main customers, Japanese companies, have been calling for more comprehensive banking services, whereas, in the past, they were mainly interested in trade transaction financing. Since the restoration of confidence in the Japanese economy, following the disastrous effects of the Arab oil embargo and subsequent price increases, there has been a significant expansion of the activities such as direct investments of Japanese companies in the United States, especially since the latter part of 1975. This growth has brought with it an increased demand for more diversified and broadened wholesale banking services.

Also, from recent experience in the international finance market, Japanese and other foreign banks have learned that it would be desirable to diversify their sources of funds, for example, through the issuance of CD's. Only a branch can take deposits.

Changing to branch status involved business decisions that the Japanese banks could be more responsive to their customers' growing and diversified needs as well as being better able to protect their dollar assets.

A second reason suggested by Mr. St Germain for the conversions was that New York State has prohibited agencies from issuing acceptances. The record should be made clear that New York State has never prohibited agencies from issuing eligible acceptances.

Mr. St Germain also attributed some of the changes in percentage share of foreign bank assets in branches and agencies to the conversions of Japanese bank agencies in the State of New York to branches. In that regard, the following asset figures of foreign banks operating in the United States in 1974 and 1977 taken from the Statistical Appendix to the statement by Governor Stephen S. Gardner submitted to the Subcommittee on July 12, 1977, are self-explanatory. They show that total U. S. assets of banks declined slightly and they also show that the substantial increase in foreign bank branch assets is mostly attributable to banks from other countries. The interesting point is that most of the Japanese expansion in the U. S. during this period has been in the asset growth of state-chartered subsidiaries, which are unaffected by the four key provisions of the bill (Sections 5, 6, 7 and 8), for the good reason that they are already subject to federal regulation.

	All Reported*	Agencies*	Branches*	Subsidiaries*
November 1974				
--Total Foreign in U. S.	55.9	28.8	12.8	12.0
--Japanese	23.7	18.9	1.4	3.4
April 1977				
--Total Foreign in U. S.	66.2	25.2	23.9	15.2
--Japanese	23.5	15.3	2.5	5.7
Change				
--Total Foreign in U. S.	+10.3	-3.6	+11.1	+3.2
--Japanese	-0.2	-3.5	+1.1	+2.3

* In $billion

July 28, 1977

The Honorable Fernand J. St Germain
Chairman
U. S. House of Representatives
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
2136 Rayburn House Office Building
Washington, D. C. 20515

Re: H.R. 7325

Dear Mr. Chairman:

You asked at the July 19th hearings whether the foreign banks might suggest a way to resolve differences of opinion relating to Section 6 of H.R. 7325.

We would like to associate ourselves with the views of Mr. LeMaistre, the Chairman of FDIC, presented after we testified. After reviewing the matter, we believe that the FDIC proposal is the best answer to the difficulties raised by the nature of foreign banking in the U. S., the preservation of equal treatment and the protection of the FDIC fund from foreign risks.

We understand the FDIC proposal to be that insurance be made available under security arrangements to protect the FDIC fund from foreign risks but that the inevitable discriminatory features of this proposal be offset by making the insurance optional for foreign bank branches.

Foreign bank subsidiaries are already subject to mandatory FDIC insurance, foreign bank agencies are not insurable because they have no domestic deposits and foreign bank branches are essentially wholesalers which do not solicit the smaller deposit accounts benefited by FDIC insurance up to $40,000 per account.

Accordingly, we suggest that your Subcommittee adopt the FDIC proposed amendment of Section 6 of the bill.

Respectfully yours,

Mario R. de Luca
Chairman
Institute of Foreign Bankers

MRdL:sjs

APPENDIX B

THE FOLLOWING MATERIAL WAS SUBMITTED FOR INCLUSION IN THE RECORD

July 19, 1977

Honorable Harold M. Williams
Chairman
Securities and Exchange Commission
Washington, D.C. 20549

Dear Mr. Chairman:

In recent hearings before the Subcommittee on the provisions of H.R. 7325, a copy of which is enclosed, I inquired of Governor Gardner whether or not the Federal Reserve Board would favor concurrent jurisdiction with SEC for the review of grandfathered foreign bank securities affiliate activities.

I have enclosed a copy of Governor Gardner's testimony, plus, excerpts from our transcript containing material relating to this subject matter.

The Subcommittee would appreciate having the views of the SEC on the feasibility of this suggestion and whether the Commission would be willing to undertake this additional regulatory responsibility should the Subcommittee adopt Governor Gardner's suggestion.

Sincerely,

Fernand J. St Germain
Chairman

FJStG:hSh

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
THE CHAIRMAN

JUL 27 1977

JUL 21 1977

The Honorable Fernand St Germain
Chairman
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
Committee on Banking, Finance and
Urban Affairs
U. S. House of Representatives
Washington, D. C. 20515

Dear Congressman St Germain:

Thank you for your letter of July 19, seeking the Commission's views on the feasibility of concurrent jurisdiction by the Commission and the Federal Reserve Board over foreign bank securities affiliate activities in the United States.

I have asked Mr. Harvey Pitt, General Counsel of the Commission, to examine this approach, and to review Governor Gardner's testimony and provide me with a report. You may be sure I shall be in further contact with you as soon as I have Mr. Pitt's report.

With best wishes,

Sincerely,

Harold M. Williams
Chairman

NOTE.--At the time the Hearing went to press, no information had been received from the SEC.

The Ambassador of Switzerland

Washington, D.C.
July 25, 1977

Dear Mr. Chairman :

It is with great interest that this Embassy has followed the hearings on the International Banking Act under your able leadership.

It has come to my attention that you raised some questions about the admission of foreign banks to Switzerland and alleged discriminatory practices such as the so-called "negative interest" on foreign bank deposits.

Since I wondered if, perhaps, there do not exist misunderstandings, I asked Mr. Fritz Leutwiler, President of the Swiss National Bank (Swiss Central Bank), to let me have an official outline of the existing situation for your information.

I have now received a cable reply, and hurry to transmit the

. / ..

The Honorable
Fernand J. St Germain
U.S. House of Representatives
Chairman of the Subcommittee on
Financial Institutions Supervision,
Regulation and Insurance
2136 RHOB
Washington, D.C. 20515

text to you. I hope it will clarify the situation as far as Swiss banking legislation is concerned.

May I ask you to kindly have this letter and President Leutwiler's statement circulated among the members of your Committee.

Thanking you very much in advance for your attention, I remain

sincerely yours,

Raymond Probst

(R. Probst)

Encl.

Foreign Banking in Switzerland

1) Swiss banking legislation subjects the admission of a foreign bank to the warranty of reciprocity by the country in which the foreign founders or the persons or companies controlling it are domiciled (principle of reciprocity). Furthermore, the foreign bank shall not use any style that could point to a Swiss character of the bank. It has to commit itself vis-a-vis the Swiss National Bank to respect existing credit and monetary regulations. There are no further restrictions on admission.

Also in the most recent past, foreign banks have established themselves in Switzerland. In 1975 they numbered five, in 1976 four and in the first half of 1977 two. Admittedly, some foreign banks also had to close down because of financial difficulties. From the end of 1971 to the end of 1976 the overall number of banks in Switzerland declined by 36 to 490, whereas the group of foreign banks showed an increase by one to 98 during the same period.

2) Swiss regulations on the interest ban and negative interest are not discriminatory to foreign banks. Foreign banks in Switzerland have to abide by these measures - which are motivated purely by monetary and not by structural reasons - in exactly the same way as Swiss-controlled establishments. The restrictions apply to Swiss franc accounts maintained in Switzerland by non-residents, and this quite

. / ..

93-031 O - 77 - 50

irrespective of the origin and nationality of the foreign depositors.

It is easy to prove that the Swiss measures for the protection of the currency, which have been in force since mid-1972 (with certain interruptions and modifications) do not prejudice the foreign banks in their business activities. With the inclusion of funds held on trust, the business volume of the foreign banks increased from the end of 1972 to the end of 1976 by 55.3 percent. The corresponding figure for the overall number of banks in Switzerland, however, was 46.3 percent only.

Dr. Fritz Leutwiler
President
Swiss National Bank

July 21, 1977

July 29, 1977

Honorable Raymond Probst
Ambassador of Switzerland
Office of the Embassy
2900 Cathedral Avenue
Washington, D. C. 20008

Dear Ambassador Probst:

Thank you for your letter of July 25 and the outline of foreign banking operations provided by President Fritz Leutwiler of the Swiss National Bank. I would be happy to insert your letter and Mr. Leutwiler's outline in the record of the Hearings. I would, however, like to comment on the information supplied and ask a few additional questions.

With respect to the interest ban and negative interest regulations involving non-resident deposits, the point was not that this was intentional discrimination against foreign banks but, rather, an illustration of the fact that measures motivated by monetary policy concerns can have an uneven impact on foreign banks as compared with domestic banks. Since foreign banks rely more on non-resident deposits as sources of funds, foreign banks are necessarily more affected by such regulations.

Mr. Leutwiler indicates that the business volume of foreign banks increased from the end of 1972 to the end of 1976 by 55.3 percent while the increase for all banks in Switzerland during the same period was only 46.3 percent. These figures, as Mr. Leutwiler notes, include funds held in trust. Is it possible that the interest ban on non-resident deposits has had the effect of restricting the commercial banking business of foreign banks and encouraging them to concentrate on managing offshore mutual funds and other financial and non-financial activities such as factoring, leasing and managerial services?

Honorable Raymond Probst
July 29, 1977
Page 2

The pattern of U.S. bank operations in Switzerland suggests that this may be the case. As of January 1975, there were only 9 branches of U.S. banks in Switzerland, an increase of 2 branches over the 7 established as of 1971.

U.S. banks have, however, significantly increased the number of subsidiaries and affiliates located in Switzerland. The number of institutions rose from 16 in 1971 to 33 in 1973, the latest date for which information is available. These appear largely to be engaged in activities other than commercial banking.

Between 1971 and 1975, the number of foreign branches of U.S. banks grew from 532 to 732, an increase of 200 world-wide. Over the same period, the assets of Swiss branches of U.S. banks grew very little and stood at only $1.1 billion as of August 1975. On that date, the U.S. banking assets of Swiss banks in New York, Illinois and Chicago were $2.7 billion.

It would appear that Swiss banks conduct a larger volume of commercial banking business in the United States than that conducted by U.S. banks in Switzerland. It would also appear that the monetary policy regulations of the Swiss National Bank have had the effect of curtailing the formation of branches by U.S. banks. The point, let me reiterate, is not that this is an overt form of discrimination but that the requirements of national policy often have an inadvertent discriminatory effect on foreign banks.

There is, however, another area of discrimination on which I would like you to comment. Last year, as part of the Committee's Study of Financial Institutions and the Nations Economy (FINE Study), the Library of Congress prepared an outline of laws regulating U.S. banks overseas. On page 1013 of Volume II of the Compendium of Papers prepared for the Study, the outline lists as one of the two most restrictive regulations imposed on U.S. banks: "Informal but effective competitive restrictions imposed by local banks." The other restriction listed is the requirement for work permits. Could you provide information concerning what, if any, competitive restrictions are imposed by local banks?

Thank you again for your letter and for the information you have provided. I look forward to your reply and am grateful for your assistance in these matters.

Sincerely,

Fernand J. St Germain
Chairman

J'D'A;fcc

WHITE, WELD & CO.
INCORPORATED

ONE LIBERTY PLAZA
91 LIBERTY STREET, NEW YORK, N.Y. 10006

PAUL HALLINGBY, JR.
CHAIRMAN
212/285-2296

CABLE ADDRESS-"WHITEWELD"

JUL 2 . 1977

July 12, 1977

The Honorable Fernand J. St. Germain
Chairman of the Sub-Committee on
Financial Institutions Supervision,
Regulation and Insurance
House Committee on Banking, Finance
and Urban Affairs
Room 2136
Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of White Weld Holdings, Inc. ("Holdings") and White, Weld & Co. Incorporated ("White, Weld"), I would like to submit for the consideration of the Subcommittee on Financial Institutions Supervision, Regulation and Insurance the following comments on H.R. 7325, the "International Banking Act of 1977."

White, Weld is an international investment banking firm registered as a broker-dealer under the Securities Exchange Act of 1934 and engaged in a wide range of underwriting, brokerage, securities trading and investment counseling services in the U.S. and overseas. All of the stock of White, Weld (except for certain qualifying shares) is owned by Holdings. Approximately thirty percent of the capital stock of Holdings (including approximately twenty-four percent of the voting securities) is owned by Societe Anonyme financiere du Credit Suisse et de White, Weld ("Financiere"). Financiere is a diversified financial company engaged through its subsidiaries and divisions in commercial banking, investment banking, asset management and brokerage activities. Credit Suisse, one of the three largest banks in Switzerland, owns approximately forty-one percent of the voting securities of Financiere. Holdings owns approximately twenty-nine percent of such securities.

Section 8 of H.R. 7325, as we understand it, is intended to cause foreign commercial banks which have a branch or agency in the U.S. and a voting share interest in a U.S. investment banking firm to either give up their commercial banking activities in the U.S. or limit their voting share interest in the U.S. investment banking firm. For those foreign commercial banks which had an equity interest in a U.S. investment banker on December 3, 1974, the restriction would become effective on December 31, 1985.

White, Weld is extremely concerned about the impact of Section 8 on its business in particular and on the securities industry in general. We would submit that for those foreign banks faced with deciding between commercial banking activities in the U.S. and a voting share interest in a U.S. investment banking firm, the probable result will be continuation of the commercial banking activities. We also would submit that requiring such a decision is not in the public interest.

In deliberations on the Securities Acts Amendments of 1975, Congress directly considered whether foreign banks ought to be limited in their securities activities in the U.S., such as limitations on their ability to enjoy the benefits of exchange membership, on the grounds that the right to engage in such securities activities conflicted with the policies of the Glass-Steagall Act and was unfair to national banks. This approach was squarely rejected. Indeed, the consistent theme of that legislation was to eliminate all artificial barriers to competition; thus, with regard to exchange membership in particular, the only permissible grounds for denial are capital and competency requirements. Parentage taints, including those in effect on the New York Stock Exchange and American Stock Exchange regarding foreign parents at the time of passage of the legislation, were specifically eliminated.

We would not dispute, of course, the right of Congress to reverse a national policy, even one so recently established. We do question the fairness of such an action, however, particularly to our European partners in Holdings. At the very least, we strongly believe that those relationships established in good faith based on a long-standing governmental policy of unrestricted investment flow into the U.S. securities industry, affirmed as recently as June, 1975, with the enactment of the Securities Acts Amendments, ought to be permanently grandfathered. But more importantly, we consider the restrictions proposed to be established by Section 8 to be ill-advised policy even if White, Weld were to be unaffected, whether by virtue of a permanent grandfather clause or otherwise.

The difficulty which U.S. securities firms have had over the past years in raising much needed long-term capital is well documented. The "back-office" crises of the late sixties and early seventies, competitive rates, institutional pressure on rate levels, the lethargic new issue markets, the merger wave and the uncertainties created by a radically changing regulatory climate all have contributed to a decided wariness on behalf of those who would contribute capital to our business. At the same time the demand and need for capital is growing. Regulatory changes initiated by the Securities and Exchange Commission and the Securities Acts Amendments of 1975 are intended to make the securities business even more intensely competitive than before. Indeed, certain of those changes, such as the Commission's recently announced proceeding pursuant to Section 11A(c)(4)(A) of the 1975 Amendments to eliminate existing exchange restrictions on the ability of members to trade listed securities "off-board", if implemented as proposed, will create a direct need for new capital. This seems a peculairly inappropriate time therefore to eliminate one of the few available and willing sources of stable capital which the securities industry may tap.

There is nevertheless a more fundamental policy reason why such legislation should not be adopted. Presently in most European countries investment banking and commercial banking are combined; necessarily, therefore, the most likely foreign entrants into the U.S. securities industry are business enterprises that perform a commercial banking function. If Section 8 of H.R. 7325 were adopted, a foreign government would be faced with the prospect that its domiciliary banks would be prevented from entering both commercial and investment banking in the U.S., while U.S. commercial banks (through Edge Act subsidiaries) and U.S. investment banks would be able to combine such functions in the foreign country in direct competition with such domiciliary banks. Under these circumstances we think it highly likely that such foreign government would view Section 8 of H.R. 7325 as protectionist legislation requiring some sort of retaliatory response on their part. That indeed would be unfortunate.

The primary and secondary securities markets are presently on the verge of becoming truly international in scope. Advances in communications and computer-assisted electronic facilities are creating the opportunity for multi-national trading mechanisms, perhaps functioning on a twenty-four hour basis. In our opinion this internationalization of the capital markets is very much in our nation's interest. Moreover, it creates significant business opportunities for U.S. commercial banks and investment banking firms who, because of their expertise in the most highly developed capital markets, presently are positioned to play a prominent role in the internationalization process. It would be ironic, under these circumstances, if the nation with the most to gain from the free flow of investment capital across national lines were to play a leadership role in the erection of barriers to capital movement.

We respectfully urge the Subcommittee to consider fully the public policy benefits of existing and future relationships between U.S. investment banking firms and foreign banks before endorsing Section 8, including:

(1) the contribution to the capital of U.S. investment bankers made by such foreign banks, which contribution permits the recipients to be more aggressive competitors in the U.S. securities industry, particularly in the capital intensive functions of market-making, underwriting and block positioning;

(2) the linkage provided to a U.S. firm with such a relationship to the international financial markets;

(3) the linkage provided to foreign banks with such a relationship to the U.S. capital markets, a linkage which stimulates the interest and participation of such foreign firms in the financing of U.S. enterprises; and

(4) the benefits to the U.S. economic system and to U.S. business enterprises from increased internationalization of the capital markets.

Again we urge, at the very least, that existing relationships between foreign banks and U.S. investment bankers ought to be permanently grandfathered for reasons of equity and of mitigating any retaliatory action abroad.

Very truly yours,

Paul Hallingby Jr.

EAB | European American Bank

H.E. EKBLOM
Chairman, Chief Executive Officer

July 20, 1977

The Honorable Fernand J. St. Germain
Chairman
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
Committee on Banking, Currency and Housing
U.S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

I respectfully submit the enclosed comments of European American Banking Corporation ("EAB") and J. Henry Schroder Banking Corporation ("Schroders") for inclusion in the record of the hearings of your Subcommittee on HR 7325.

These joint comments are designed to amplify the statements of the Institute of Foreign Bankers heretofore submitted to your Subcommittee as they relate to Article XII investment companies and express the very deep concern of EAB and Schroders and their shareholders as to the unfairness of including foreign-owned Article XII investment companies within the coverage of HR 7325 since domestic ones are not included.

If further information or clarification is desired, we will be glad to cooperate and meet with your staff at any convenient time.

Sincerely yours,

EUROPEAN AMERICAN BANKING CORPORATION

H. E. Ekblom
Chairman

Enc.

European American Bank & Trust Company/Banking Corporation, 10 Hanover Square, New York, New York 10015 (212) 437-2320

COMMENTS OF

EUROPEAN AMERICAN BANKING CORPORATION

AND

J. HENRY SCHRODER BANKING CORPORATION

ON HR 7325
AS IT PERTAINS TO ARTICLE XII INVESTMENT COMPANIES

July 15, 1977

Contrary to the original recommendation of the Board of Governors of the Federal Reserve System, HR 7325 includes Article XII investment companies within its coverage, although these institutions are designated by the term "commercial lending company." Article XII investment companies are creatures of the Banking Law of the State of New York. They engage primarily in international banking and are not permitted to accept deposits in New York, although they are authorized to maintain "credit balances" incidental to or arising out of the exercise of their lawful powers. They differ from agencies in that they are domestically incorporated under New York law, and their ownership is not limited to foreign banks or foreign nationals.

The application of Federal reserve requirements to investment companies seems to serve no Federal policy. The purpose of reserve requirements is to affect the supply of money and credit by influencing the availability of funds necessary to back up the extension of credit by banks. Deposits are not available to investment companies to fund loans. Credit balances are restricted by New York State law to balances maintained incidentally to or arising out of authorized transactions and they must be temporary in nature. For these reasons, they are inherently different from deposits and, unlike deposits, could not have any appreciable impact on monetary policy. Thus, no apparent purpose is served in subjecting investment companies to Federal reserve requirements and certainly none has been identified for subjecting investment companies to the many other restrictions on member banks as authorized by the Bill.

Although there are today five foreign-owned investment companies in New York, there are at least seven investment companies that are not foreign owned. The latter include such giants as General Motors Acceptance Corporation, CIT Corporation, General Electric Credit Corporation and Commercial Credit Company, a subsidiary of Control Data Corporation.

Former Governor Mitchell and the staff of the Federal Reserve System, after an extremely thoughtful analysis of the unique situation of investment companies, decided that they should be excluded from the Federal Reserve's original bill to regulate foreign banks. The reasons given were (1) that it would be discriminatory to regulate investment companies that are foreign owned while not regulating investment companies that are owned by U.S. nationals and (2) that since, at the time, there were only three relatively small investment companies doing business in New York, the exclusion of such companies would have no impact on Federal monetary or bank regulatory policy. As the Fed pointed out in its section-by-section analysis of its own bill, investment companies were excluded "because of the limited number involved and because of the difficulty of distinguishing these Companies on a nondiscriminatory basis from the domestically-owned companies that are not essentially engaged in a commercial banking function."

Since then, the New York State Banking Department authorized the creation of two foreign-owned investment companies in addition to the three that had been in existence for many years. (In both cases, the

Department was satisfied that there were special legal or business reasons why the investment company charter was appropriate for the particular applicant.) This led to some concern that the exclusion of investment companies from Federal regulation would open a loophole through which foreign banks might escape regulation. However, as suggested by Governor Mitchell at that time, if this is a real concern, the Bill could be amended so as to exclude from coverage through "grandfather rights" those investment companies that were in existence and actively engaged in business on an appropriate grandfather date, such as the date of introduction of HR 7325. In view of the fact that all three of the original investment companies have been continuously engaged in business in New York for many decades, and these businesses have been built up in reliance upon the regulatory structure provided by Article XII of the New York Banking Law, it would seem only fair to give those institutions the right to continue their established businesses in accordance with the existing regulatory structure.

Both the Fed and the Congressmen interested in this legislation have repeatedly emphasized that they are motivated by the desire that foreign banks should be regulated on the same basis as domestic banks. The case of the foreign-owned investment companies is <u>sui generis</u> in that they are separately incorporated U.S. corporations -- not foreign corporations or branches or agencies of foreign corporations. They are subject to the same laws and regulations as other U.S. corporations and, therefore, have no special advantages which are not available to the others. The proposed legislation would clearly discriminate between foreign and domestically-owned institutions solely on the basis of the nationality of their owners.

By the simple device of a sale of the shares of a foreign-owned investment company to a United States bank or other domestic U.S. corporation, the investment company in question would no longer be subject to HR 7325. Therefore, so far as investment companies are concerned, the Bill accords one kind of treatment to an organization owned by foreigners and another kind of treatment to the same organization owned by U.S. citizens, even though the stated purpose of the legislation is to accord nondiscriminatory treatment to foreign and domestic banks.

Significantly, both European American Banking Corporation and J. Henry Schroder Banking Corporation (the largest active investment companies), although indirectly foreign-owned, are affiliated with New York State-chartered banks that are themselves members of the Federal Reserve System. In the case of Schroders, the English parent companies are all registered as bank holding companies, so that the U.S. subsidiaries, including the investment company, are already subject to the Bank Holding Company Act. EAB will be, as of August 1, 1977, a wholly-owned subsidiary of a domestic U.S. bank holding company, European American Bancorp. The third major investment company, French American Banking Corporation, is affiliated with a state-chartered bank in California and the French parent company is a registered bank holding company.

Apart from the question of the wisdom of introducing into bank regulation this kind of discrimination based on the nationality of the shareholders of a U. S. corporation, there may well be serious legal questions as to the validity of such differentiation both on constitutional grounds and by reason of treaties between this country and the countries whose nationals are direct or indirect owners of investment companies.

To exclude investment companies from the Bill will not create a loophole any more than permitting U. S. nationals to own an investment company would create such a loophole. In both cases, the institution is subject to the same state regulation. If it is the decision of Congress that all state-chartered banks and investment companies in the United States should be subject to Federal regulation, then it would not be discriminatory to include investment companies regardless of the nationality of their shareholders. But it is not fair to single out foreign-owned investment companies for special treatment when the same investment companies, if owned by U. S. citizens, are excluded.