

# NORTHWESTERN Banker Newsletter

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## High Court May Decide H.C. Acquisitions

Future acquisitions by registered bank holding companies may be determined by the United States Supreme Court if it decides to rule on the Justice Department's "market extension theory" as it applies to banking. The theory holds that affiliations between potential as well as actual competitors violate the anti-trust laws.

The ruling has been requested by the Justice Department in an appeal from the dismissal of its suit by the U.S. District Court, Denver, to block the acquisition of the First National Bank, Greeley, Colo., by First National Bancorporation, Denver.

According to Justice, the case "raises squarely the question of the extent to which Section 7 of the Clayton Act forbids (the) developing domination by a few organizations of a substantial percentage of the banking business in a particular state."

In many states, Justice said in a jurisdictional statement filed with the high court, "a few banking organizations have recently reached, or in the near future will reach, a position of dominance in the statewide banking business through the acquisitions of leading local banks in significant banking markets throughout the state."

"The situation in Colorado is typical of this emerging movement. There, the trend toward concentration has rapidly accelerated, with Denver-based holding companies endeavoring to acquire control of established institutions which have large market shares in the state's various local banking markets. The result

is a form of merger known as market extension — i.e., the entry of a firm into a new geographic market by acquisitions of a firm already doing business there.

"Although such mergers do not change existing market shares, they may well affect significantly market structure and behavior by eliminating the potential



competition of the acquiring organization. This case involves the legal criteria by which the substantiality of this effect is to be determined in market-extension acquisitions by banking organizations..."

"In the banking industry potential competition is particularly important... To be sure, state and federal laws generally forbid entry by out-of-state banking organizations... Behind this legal barrier, however, there has been an accelerated trend in states which permit acquisitions, either under branching laws or by holding companies, toward the acquisition by the state-wide leaders of banks with the largest market shares in local banking markets." In a

number of these states, this trend has progressed to the point where two or three banking organizations together control more than half of the state's total deposits.

"The proper question before the court in potential competition should not be whether management considered independent entry to be preferable to entry by acquisition, but whether independent entry is preferable to no entry at all for a firm with the defendant's capabilities and incentives. Entry by purchasing a large share of the market is always preferable to the hard competition required for successful entry *do novo* or by a small "foothold" acquisition. Moreover, if subjective evidence were determinative, effective enforcement of Section 7 would be seriously jeopardized, since the test of potential competition would then depend upon the trial court's evaluation of the sincerity of an acquiring firm's statements that independent entry is not a feasible alternative. Such a standard would make the antitrust consequences of an acquisition completely unpredictable to both business and government.

"Because Bancorporation remains a significantly potential entrant, without regard to the present likelihood of its obtaining a new charter from the regulatory agencies, the bank customers in Greeley are more likely to receive effective performance by the existing banks in the area. Greeley is a concentrated banking market; this Court has held that anticompetitive consequences may be inferred from concentration in HIGH COURT MAY DECIDE..."

(Continued on back page)

# Happy Holidays

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### Fed Board Has 2 Vacancies

Two new members of the Federal Reserve Board will have to be appointed soon by President Nixon. The resignation of William W. Sherrill was announced by the White House December 10. Mr. Sherrill, whose term runs until 1982, has retired from the board for personal reasons. The term of Sherman J. Maisel expires January 31 and it appears that President Nixon definitely will replace him rather than reappoint him to a full 14-year term. Mr. Maisel had been appointed by President J. F. Kennedy to an unexpired term. High sources in Washington say President Nixon will appoint a Californian to replace Mr. Maisel, also from California, and that Mr. Sherrill's successor might come from the Atlanta Fed District.

### Fed Cuts Discount Rate to 4½%

The Federal Reserve Board on December 10 approved action of four Federal Reserve Banks who reduced the discount rate from 4-3/4% to 4-1/2%. The rate had been cut one month earlier from a higher level and is the lowest since the 1967-68 recession.

In New York City, Morgan Guaranty Trust and Chase Manhattan both cut

their prime rate to 5-1/4% from 5-1/2%. Other banks held to the 5-1/2% rate.

### IOWA NEWS

**BURLINGTON:** The Group 11 meeting will be held at the Burlington Hotel on February 18 and 19. Phase 1 will be on the 18th and Phase 2 on the following morning.

**DES MOINES:** Neal A. Sands, president of Valley Bank and Trust Co., has been named vice-chairman of the board of directors, and J. Locke Macomber, formerly vice president and trust officer, has been named president.

**PERRY:** Newton P. Black, 86, former state superintendent of banking and founder of the Perry State Bank, died recently at a Perry Nursing Home.

### NEBRASKA NEWS

**OMAHA:** The Omaha National Bank has promoted David R. Johnson and Louis R. Sones to senior vice president and George H. Coulter to vice president. Mr. Johnson came to the bank in 1958, Mr. Sones in 1954, and Mr. Coulter in 1970. Mr. Johnson has also been appointed treasurer of the Nebraska Bankers Association to fill the unexpired term of Fred

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**nb** National Bank of Waterloo

H. Douglas who resigned from the bank to take another position.

**SUPERIOR:** Sam Baird has joined the staff of the Farmers State Bank as vice president, and Arlo Doehring, formerly assistant vice president, is now vice president and agricultural representative.

**OMAHA:** Dennis Solko was promoted to assistant operations officer at the Center Bank. Charles L. Greene was also elected to assistant loan officer. Mr. Solko has been with the bank since 1966, while Mr. Greene is a junior at Creighton University.

### ILLINOIS NEWS

**CHICAGO:** Richard A. Moss has been elected vice president, installment loan division of the Pioneer Trust and Savings Bank, and Harvey B. Hoffman has been elected vice president of the commercial loan division.

**CHICAGO:** Thomas H. Detrick has joined the O'Hare International Bank as vice president and cashier. He will be responsible for all bank operations as well as advertising, promotion and consumer marketing. Mr. Detrick was formerly vice president of the Central National Bank and Trust Company in Rockford, Ill.

**LISLE:** The FDIC has approved the Bank of Lisle's application to establish a motor facility in Lisle.

**SPRINGFIELD:** Kent D. Stickler has been elected vice president, sales, at the



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Illinois National Bank. He was formerly officer in charge of sales and marketing.

## MINNESOTA NEWS

**APPLE VALLEY:** An application for a bank charter has been submitted to the Minnesota Commerce Commission for a bank charter to be located in Apple Valley. A hearing will be held on January 11, 1972.

**DULUTH:** Chester C. Lind, president of the First American National Bank, recently announced three promotions. They are: Robert M. Fischer, trust officer to vice president and trust officer; Bruce W. Potter, trust tax officer to trust officer, and Donald J. Endstrom of the investment department to investment officer.

**MINNEAPOLIS:** Dean Scott, 46, general counsel and legislative representative for the Minnesota Bankers Association, died suddenly December 10, and was buried in Minneapolis December 13. Mr. Scott had undergone open heart surgery October 7 and was apparently recuperating well. He had returned to his duties at the MBA last week on a half-day basis and had entered the hospital Thursday for routine checks on his progress and was stricken in the hospital Friday evening.

## NORTH DAKOTA NEWS

**BISMARCK:** The State Industrial Commission has promoted four Bank of North Dakota men. James H. Kelly, manager of the loan department and supervisor for state trust funds was named executive vice president.

Charles F. Campbell, charged with sales, marketing and special projects; Ernest W. Pederson, manager of the mineral trust department, and Martin E. Stenehjem, manager of the student loan

department, all were named vice president.

**OAKES:** Four men have been promoted at the First National Bank: Dennis Dalziel is the new president; John Breitbach, vice president; Ralph Mangall, assistant vice president; Marvin Hein, cashier.

**ROBINSON:** Mrs. Orpha B. Wells, 80, vice president of the Security State Bank, died recently at a Bismarck hospital.

## WYOMING NEWS

**TORRINGTON:** Roy Dinsdale and Joe J. Huckfeldt have purchased 5,350 of 10,000 shares of the Citizens National Bank and Trust Company from Rex W. Tebbet.

## MONTANA NEWS

The Federal Reserve System has approved applications by the First Security Banks of Laurel and Malta to become members of the Fed.

## COLORADO NEWS

**COLORADO SPRINGS:** Roger D. Knight, Jr., president of the United Banks of Colorado Inc., and Frederick M. Farrar, principal stockholder of Colorado Commercial Bank, announced the approval by the Federal Reserve Board of the acquisition of the Colorado Commercial by United Banks.

**DENVER:** Ronald E. Davis has been named vice president, commercial banking division of the United Bank of Denver. He was formerly in the municipal bond department.

**LEADVILLE:** Hugh E. Smith, president

**STEVEN H. PARRISH**

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of the Commercial Bank of Leadville since 1954, recently resigned due to ill health. He will be replaced by Frank L. Luoma, a former bank vice president. He takes over January 1.

## Object to Fed Proposal On "Grandfather Rights"

The Association of Registered Bank Holding Companies has filed strong objections to a Federal Reserve Board proposal which would cost a one bank holding company its "grandfather rights" if it acquired another bank after Dec. 31, 1970.

The Association also has urged the Board to permit the acquisition of going concern mortgage and factoring companies without specific Board approval where the company to be acquired is located outside the trade area of the bank subsidiaries and any other mortgage or factoring company subsidiaries of the holding company.

In general, the Board's one bank

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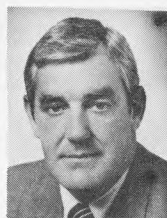
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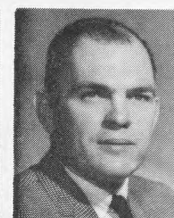
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# COMMERCE BANK of Kansas City

holding company proposal would provide that any grandfathered company which acquired a second bank — either by direct acquisition or by merger with its subsidiary bank — would have to dispose of any activity not closely related to banking within two years (p. A-4, T-10 WFR No. 43).

Under Section 4 of the Bank Holding Company Act, some companies that controlled one bank on December 31, 1970, are given 10 years within which to divest nonbanking activities; in other cases no divestiture is required; and in a few cases exemptions from divestiture may be granted by the Board.

## HIGH COURT MAY DECIDE... (Continued from page one)

banking markets in the same manner as in other industries . . .

"This acquisition also would have another anticompetitive effect: the foreclosure to other Denver banks of FNB Greeley as a customer for correspondent banking services in Colorado . . .

"The acquisition of FNB Greeley would increase holding company ownership by an additional 1.2 percent. In numerous cases, it has been held that foreclosure of even a relatively small percentage of a market may produce a substantial lessening of competition . . . The district court held that these cases were inapplicable in the present context on the ground that they involve national, not local, markets. But this Court has made it clear that the antitrust laws apply with the same vigor in local markets as in the larger areas . . .

"Moreover, we think it is improper

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to consider the acquisition involved here in isolation, as the district court did. Rather, in determining whether the foreclosure of FNB Greeley may tend substantially to lessen competition within the meaning of Section 7 of the Clayton Act, the transaction must be viewed in the context of the clear trend now developing in Colorado toward foreclosure of the correspondent banking market through large bank holding company acquisitions . . ."

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