

DRAFT--MAY 16, 1988

## EMERGENCY CONSOLIDATIONS

SEC. \_\_\_\_ EMERGENCY CONSOLIDATIONS.--Section 5 of the Bank Holding Company Act of 1956 is amended by inserting new subsections (g) and (h) at the end thereof reading as follows:

"(g) EMERGENCY CONSOLIDATIONS; PREEMPTION OF STATE AND FEDERAL LAWS.--Notwithstanding any other provision of this Act, or of Federal or State bankruptcy laws, or of any other Federal or State law or of the constitution of any State, or of any contract or other instrument or security--

"(1) CONSOLIDATIONS REQUIRED.--Upon certifying to the Board that it is necessary for the Board to exercise the powers made available by this subsection (g), the Corporation may recommend that the Board:

"(A) Order a bank holding company to cause any or all of its affiliated banks to be reorganized as subsidiaries of a bank specified in subparagraph (11)(A);

"(B) Order a bank holding company to cause any or all of its subsidiary banks located in the same State as a bank specified in subparagraph (11)(A) to merge with, or to purchase the assets and assume the liabilities of, such bank;

"(C) Order a bank holding company to cause a bank specified in subparagraph (11)(A) to merge with, or to purchase the assets and assume the liabilities of, any or all of the bank holding company's other subsidiary banks that are located in the same State as such bank;

"(D) Order a bank holding company to contribute or transfer or provide to a bank specified in subparagraph (11)(A), or to require any of its subsidiaries to contribute or transfer or provide to any such bank, such assets or services as are customarily utilized by a bank in the conduct of its business or operations; or

"(E) Order a bank holding company to take any combination of actions specified in paragraphs (A) through (D).

"(2) BOARD POWERS.--

"(A) AUTHORITY.--

"(i) The Board shall have authority to compel any bank holding company to consummate a transaction recommended by the Corporation under paragraph (1). The Board may require the bank holding company and any subsidiary thereof to take such action in connection with any such transaction as the Board may deem necessary or appropriate.

"(ii) Upon a determination that an emergency no longer exists, the Board may order any bank holding company subsidiaries which were reorganized as subsidiaries of a bank under subparagraph (A) of paragraph (1) to be organized as direct subsidiaries of the bank holding company. In no event shall the Board order such a restructuring to occur in less than thirty days from the date of its order.

"(B) PROCEDURES.--Any action required by the Board under subparagraph (A) shall be consummated in accordance with such procedures and schedules as the Board may prescribe. Except as provided in clause (ii) of subparagraph (A), any transaction ordered by the Board, and any action required by the Board in connection with any such transaction, shall be consummated immediately if the Board so orders.

"(C) JUDICIAL REVIEW.--No order issued by the Board under this paragraph (2), and no action required by the Board under this paragraph (2), shall be subject to review by any court.

"(3) CONSULTATION.--

"(i) REQUIRED.--Before making any recommendation under paragraph (1), the Corporation shall consult the relevant supervisor of any bank involved in the recommended transaction.

"(ii) NOTICE.--The Corporation shall provide the relevant supervisor a reasonable opportunity, and in no event less than forty-eight hours, to object to the Corporation's recommendation.

"(iii) RIGHT TO OBJECT.--If the relevant supervisor objects during such period, the Corporation may make a recommendation under paragraph (1) only by a unanimous vote of its Board of Directors.

"(4) OFFICES ACQUIRED IN CONSOLIDATIONS.--Any office operated as a branch or home office by a bank involved in a transaction ordered by the Board under paragraph (2) may be operated as a branch or home office by any bank that acquires it pursuant to such transaction.

"(5) APPLICATION OF CERTAIN LAWS.--

"(A) BANK HOLDING COMPANY ACT.--

"(i) SECTION 2.--So long as a bank that is ordered under paragraph (2) to acquire affiliates as subsidiaries remains itself a subsidiary of a bank holding company, the term 'bank holding company' as defined in subsection 2(a) of this Act shall not include a bank if such bank would otherwise be deemed to be a bank holding company solely because it holds stock in the shares of another bank or banks, and has acquired such stock pursuant to the action required by the Board.

"(ii) SECTION 3.--No action required by the Board under paragraph (2) shall require an application to or approval by the Board under Section 3 of this Act.

"(B) NATIONAL BANKING ACT.--No action required by the Board under paragraph (2) shall be subject to the requirements of the National Banking Act specified in Section 20 of Public Law 86-230.

"(C) FEDERAL DEPOSIT INSURANCE ACT.--No action required by the Board under paragraph (2) shall be subject to the requirements of section 13(f) or of section 18(c) of the Federal Deposit Insurance Act.

"(D) HART-SCOTT-RODINO ACT.--No action required by the Board under paragraph (2) shall be subject to the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"(6) PRIVATE PARTIES INELIGIBLE TO PREVENT CONSOLIDATION.--

(A) LIMITATION ON RIGHTS OF PRIVATE PARTIES.--No court shall give effect to any rights or powers conferred on any person, whether such rights or powers are conferred by State or Federal statute or by the articles or by-laws of the bank holding company or of any subsidiary thereof or by any debt or equity security of any such bank holding company or subsidiary thereof or by any other contract or other instrument or otherwise, and any provision of any such statute or security or article or by-law or contract or instrument shall be void, insofar as giving effect to any such rights or powers would impair the ability of the bank holding company or of any subsidiary bank:

"(i) to take any action required by the Board under paragraph (2), or

"(ii) as part of a transaction ordered by the Board under paragraph (2), to pledge, sell or otherwise transfer securities or assets of the bank holding company or of any subsidiary bank to the Corporation in connection with a transaction authorized by Section 13 of the Federal Deposit Insurance Act.

"(B) REFUSAL TO ENFORCE RIGHTS NOT OCCASION OF DEFAULT OR OTHER IMPOSITION OF PENALTY OR GROUND FOR ASSERTION OF DERIVATIVE RIGHTS.--The failure of a court to give effect to any rights or powers under subparagraph (A) shall not constitute an event of default or occasion of imposition of any penalty. No consequent effect of such failure to enforce the rights or duties of any person shall constitute an event of default or occasion of imposition of any penalty. No person may assert any rights or powers, whether such rights or powers are conferred by State or Federal statute or by the articles or by-laws of the bank holding company or of any subsidiary thereof or by any debt or equity security of any such bank holding company or subsidiary thereof or by any other contract or other instrument or otherwise, if such person would be unable to assert such rights or powers but for the failure of the court to give effect to rights or powers under subparagraph (A).



"(C) NO OTHER CONSENTS NECESSARY.--Except as provided in this subsection (g), any action required by the Board under paragraph (2) shall be consummated without the necessity of notice to, approval from, or consent of shareholders, creditors, parties to contracts, lessors, insurers, or any other persons or governmental authorities.

"(7) RIGHT OF APPRAISAL.--

"(A) DEBTS OF BANK HOLDING COMPANIES AND OF AFFILIATED BANKS.--Any creditor of a bank holding company subject to an order issued by the Board under paragraph (2), and any creditor of a bank directly involved in a transaction in connection with such order, may apply to the Board for an appraisal of the value of any valid and enforceable debt owed to such creditor: provided, that neither the bank holding company nor any affiliate thereof, other than a person who is an affiliate solely because such person holds shares for investment purposes in such bank holding company or affiliate thereof, may file an application to the Board under this subparagraph (A).

"(B) SHAREHOLDERS IN BANK HOLDING COMPANIES.--Any person holding shares in a bank holding company subject to an order issued by the Board under paragraph (2) may apply to the Board for an appraisal of the value of such shares: provided, that no affiliate of such bank holding company, other than a person who is an affiliate solely because such person holds shares for investment purposes in such bank holding company, may file an application to the Board under this subparagraph (B).

"(C) SHAREHOLDERS IN AFFILIATED BANKS.--Any person holding shares in a bank directly involved in a transaction in connection with an order issued by the Board under paragraph (2) may apply to the Board for an appraisal of the value of such shares: provided, that no affiliate of such bank, other than a person who is an affiliate solely because such person holds shares for investment purposes in such bank, may file an application to the Board under this subparagraph (C).

"(8) TIME LIMITS.--

"(A) LIMIT RELATED TO TIME OF CONSUMMATION OF THE TRANSACTION.--No application under paragraph (7) may be made more than thirty days after the date of consummation of the transaction ordered by the Board under paragraph (2).

"(B) LIMIT RELATED TO TIME OF ACQUISITION OF THE DEBT OR SHARE.--No application under subparagraph (A) or subparagraph (B) of paragraph (7) may be made based on a debt or share acquired by the applicant on or after [the effective date of this Act]: provided, that this subparagraph (B) shall not apply to a person making application based on a debt owed for goods or services procured by the bank holding company or bank in the ordinary course of business.

"(9) BOARD APPRAISALS.--

"(A) BOARD AUTHORIZED TO MAKE APPRAISALS.--Whenever a person files an application with the Board under paragraph (7), the Board shall determine the value of any debt or share based upon an appraisal. The appraisal shall be final and binding on all parties.

"(B) BASIS FOR APPRAISAL.--The value of any debt or share shall be based upon the value it would have had if every bank specified in subparagraph (11)(A) had been closed on the date of the order issued by the Board under paragraph (2), with the Corporation paying all insured deposits, the assets liquidated, and the resulting funds applied toward satisfying all other valid and enforceable liabilities of such bank, with the remainder, if any, allocated to the shareholders of such bank. Any determination of value also shall include consideration of any consequential effects resulting from such closing that would have occurred to other subsidiaries of the bank holding company.

"(C) RULEMAKING AUTHORITY.--The Board shall promulgate rules providing the procedures for making applications and appraisals under this subparagraph (9).

"(D) STANDARD OF REVIEW FOR APPRAISALS.--Any person obtaining an appraisal from the Board and disagreeing with the appraisal so established may seek review of the appraisal in accordance with the provisions of section 9 of this Act: provided, that no appraisal of any debt or share shall be set aside unless the Board has acted arbitrarily and capriciously in setting the value of such debt or share.

"(10) FDIC COMPENSATION.--

"(A) TENDER BY APPLICANT.--No later than twenty days after completion of an appraisal under subparagraph (9)(A) and review of any challenge thereto, an applicant may tender to the Corporation any debt or share so appraised. An applicant may accomplish the tender by surrendering the debt instrument or share to the Corporation or by providing such other evidence of the debt or ownership interest as the Corporation may reasonably require.

"(B) FDIC COMPENSATION AUTHORIZED; SUBROGATION.--Upon tender of any debt or share under subparagraph (A), the Corporation is authorized and directed to acquire any such debt or share from the applicant and to compensate the applicant promptly in the amount determined by the Board under paragraph (9). Upon providing compensation to any person under this subparagraph (B), the Corporation shall be subrogated to all rights of such person arising out of such debt or share to the extent of such compensation.

"(C) RULEMAKING AUTHORITY.--The Corporation is authorized and directed to promulgate rules providing procedures for receipt and payment under the provisions of this paragraph (10).

"(D) FDIC COMPENSATION AS SOLE REMEDY.--The procedure established by this paragraph (10) shall be the sole means by which any person may seek compensation for any loss occasioned by an action ordered by the Board under paragraph (2).

"(11) STANDARD FOR CERTIFICATION.--The Corporation may certify that it is necessary for the Board to exercise the powers made available by this subsection (g) only if:

"(A) BANK IN DANGER OF CLOSING.--The chartering authority for an insured bank has notified the Corporation that the bank is in danger of closing, as defined in Section 13(f)(8) of the Federal Deposit Insurance Act, and

"(B) REDUCTION OF RISK TO FDIC FUND.--The Corporation has determined, in its sole discretion, either:

"(i) That such action will lessen the risk to the Federal Deposit Insurance fund, or

"(ii) That severe financial conditions exist which threaten the stability of a significant number of insured banks in the community where the bank specified in subparagraph (A) is located or is making loans or is doing business, or the stability of insured banks possessing significant financial resources in any such community.

"(12) BOARD ACTION TO BE LIMITED IN KEEPING WITH NEEDS OF SITUATION.--In exercising the authority conferred under this subsection (g), the Board shall make a reasonable effort to assure that any transfer of assets or securities to a bank specified in subparagraph (11)(A), and any transfer of assets or securities in connection with a merger involving a bank specified in subparagraph (11)(A), shall not exceed an amount that is reasonably necessary to provide adequate capitalization to such bank or any successor thereto.

"(13) DEFINITIONS.--For the purpose of this subsection (g):

"(A) FDIC.--The term 'Corporation' means the Federal Deposit Insurance Corporation.

"(B) RELEVANT SUPERVISOR.--

"(i) COMPTROLLER OF THE CURRENCY.--In the case of a national bank, the term 'relevant supervisor' means the Office of the Comptroller of the Currency.

"(ii) STATE BANK SUPERVISOR.--In the case of a State-chartered bank, the term 'relevant supervisor' means the State bank supervisor of any such bank.



"(h) (1) CERTAIN RESTRICTIONS PROHIBITED.--No provision of any contract entered into by a bank holding company or subsidiary thereof on or after [the effective date of this Act] shall be effective if:

"(A) it prohibits or restricts in any manner the sale, transfer, pledge or conveyance by a bank holding company or a bank subsidiary of a bank holding company of shares or assets of a subsidiary bank or prohibits the subsidiary bank from selling, transferring, pledging or conveying any or all of its shares, assets or liabilities to any entity other than the holding company; and

"(B) such sale, transfer, pledge or conveyance takes place in conjunction with or as a part of assistance provided by the Corporation under section 13(c) of the Federal Deposit Insurance Act and the Corporation requests such sale, transfer, pledge or conveyance as a part of such assistance.

"(2) COMPLIANCE WITH FDIC REQUEST NOT OCCASION OF DEFAULT OR OTHER IMPOSITION OF PENALTY.--Any compliance with such a request of the Corporation shall not constitute a default or event of default under such contract, and shall not give rise to the imposition of rights of acceleration, damages, or otherwise.

"(3) DEFINITION.--For the purpose of this subsection (h) the term 'Corporation' means the Federal Deposit Insurance Corporation.