In the United States Court of Appeals

District of Columbia Circuit

William Michael Cunningham	)	
PO Box 55793	)	
Washington, D.C. 20040-5793	)	
APPELLANT	)	
v.	)	PETITION FOR REVIEW
The Federal Reserve Board	)	
20th & Constitution Ave., N.W.	)	
Washington, DC	)	
20551	)	
ATTN: Ms. Jennifer Johnson,	)	
Secretary	)	
Appellee	)	

APPELLANT William Cunningham hereby petitions the Court for a review of an Order of the Federal Reserve Board. The order stated that:

"The Board of Governors of the Federal Reserve System has conditionally approved the application by Travelers Group Inc., New York, NY and Citicorp; & Citibank, N.A., both of New York, NY; Universal Bank, N.A., Columbus, GA; Citibank , Perinton, NY; Citicorp Holdings, Inc.; Citibank Delaware, both of New Castle, DE; Citibank, N.A., Las Vegas, NV & Citibank, N.A., Sioux Falls, SD. The merger also includes the following:
Travelers Group Inc., New York, NY and All Travelers & Citicorp subsidiaries, including Citibank, Federal Savings Bank, San Francisco, CA; Travelers Bank & Trust, F.S.B., Newark, DE; Universial Financial Corp., Salt Lake City, UT; Commercial Credit Corp., Honolulu, HI;

Until the Order is reviewed, APPELLANT prays that it be set aside. The APPELLANT outlines his reasoning below.

In the United States Court of Appeals

District of Columbia Circuit

Respectfully Submitted,

William Cunningham
Pro Se

In the United States Court of Appeals

District of Columbia Circuit

William Michael Cunningham	)	
PO Box 55793	)	
Washington, D.C. 20040-5793	)	
APPELLANT	)	
v.	)	DEFERRED APPENDIX NOTICE AS REQUIRED UNDER RULE 30(C)
The Federal Reserve Board	)	
20th & Constitution Ave., N.W.	)	
Washington, DC	)	
20551	)	
ATTN: Ms. Jennifer Johnson,	)	
Secretary	)	
Appellee	)	

DEFERRED APPENDIX NOTICE AS REQUIRED UNDER RULE 30(C)

The APPELLANT indicates now that he will not need to defer the preparation of the Appendix until after the briefs have been filed.

_____

William Cunningham

(Signature)

In the United States Court of Appeals

District of Columbia Circuit

(**A.) Questions presented for review:**

1. This petition is based on an action by the Appellee concerning a merger. The Board of Governors of the Federal Reserve System announced this action on 9/23/98. A portion of the announcement is reproduced below:

Release Date: September 23, 1998 For immediate release
The Federal Reserve Board today announced its conditional approval of applications by Travelers Group Inc., New York, New York, to become a bank holding company by acquiring Citicorp, New York, New York, and its bank and nonbank subsidiaries, including Citibank, N.A., New York, New York; and to retain certain nonbanking subsidiaries and investments of Travelers, including Salomon Smith Barney Inc., New York, New York, and Travelers Bank & Trust, FSB, Newark, Delaware.

Did the Board exceed its authority in approving this Order? Anticipated actions by the merger partners are prohibited by the Banking Act of 1933, ch. 89, 48 Stat. 162 (commonly known as the Glass-Steagall Act). In addition, the Board does not have, the appellant contends, currently the legal authority to approve this merger and will not have that authority unless and until banking laws are revised. A revision of banking laws is currently underway in the House and Senate of the United States Congress. Appellant contends that merger approvals of this type should be postponed until legal and regulatory systems are in place to protect the public interest. Finally, given recent incidents, appellant asks: Does the current regulatory and market environment render such merger approval actions injurious to the public welfare? Recent market occurances, more fully described below, suggest this is the case.

2. In *An Order Approving Application to Engage in Commercial Paper Placement to a Limited Extent* (Federal Reserve Bulletin, Feb. 1987, p. 148)) the Board defined the following activities as "..so functionally and operationally similar to the role of a bank that arranges a loan participation or

syndication that banking organizations are particularly well suited to perform the commercial paper placement function."

.) Municipal Revenue Bonds/Securities; ii.) Mortgage related securities iii.) Commercial Paper; iv.) Consumer - receivable related securities ("CRR's").

Does the fact that the Board considered these activities to be "functionally and operationally similar to the role of a bank" require the Board to review these activities, when conducted by banks and wholesale banks, in accordance with 12 CFR Part 228, commonly known as the Community Reinvestment Act.

In the United States Court of Appeals

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(B.) List of parties.

All parties appear in the caption of the case on the cover page.

APPELLANT William Michael Cunningham is a citizen of the United States with mailing address of PO Box 55793, Washington, D.C. 20040-5793.

Appellee Ms. Jennifer Johnson is Secretary of The Board of Governors of the Federal Reserve System, 20th & Constitution Ave., N.W., Washington, DC, 20551.

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UNITED STATES CODE, TITLE 12 - BANKS AND BANKING, CHAPTER 3 - FEDERAL RESERVE SYSTEM, SUBCHAPTER X - POWERS AND DUTIES OF MEMBER BANKS

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§ 378. 24

UNITED STATES CODE, TITLE 12 - BANKS AND BANKING, CHAPTER 16 - FEDERAL DEPOSIT INSURANCE CORPORATION,

§ 1813 26

UNITED STATES CODE, TITLE 12 - BANKS AND BANKING, CHAPTER 17 - BANK HOLDING COMPANIES

§ 1848. 38

UNITED STATES CODE, TITLE 12 - BANKS AND BANKING, CHAPTER 30 - COMMUNITY REINVESTMENT

§ 2901. 39

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UNITED STATES CODE, TITLE 12 - BANKS AND BANKING, CHAPTER 30 - COMMUNITY REINVESTMENT

§ 2902. **40**

UNITED STATES CODE, TITLE 12 - BANKS AND BANKING, CHAPTER 30 - COMMUNITY REINVESTMENT

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UNITED STATES CODE, TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE, PART IV - JURISDICTION AND VENUE, CHAPTER 81 - SUPREME COURT

§ 1253 **45**

UNITED STATES CODE, TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE, PART IV - JURISDICTION AND VENUE, CHAPTER 81 - SUPREME COURT

§ 1254. **46**

UNITED STATES CODE, TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE, PART V - PROCEDURE, CHAPTER 123 - FEES AND COSTS

§ 1915. **47**

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District of Columbia Circuit

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1996.CDC.104 (http://www.versuslaw.com) United States Court of Appeals FOR THE DISTRICT OF COLUMBIA CIRCUIT . No. 95-1182 Money Station, Inc., APPELLANT v. Board of Governors of the Federal Reserve System, Appellee. Decided April 23, 1996.

1996.CDC.67 (http://www.versuslaw.com) United States Court of Appeals FOR THE DISTRICT OF COLUMBIA CIRCUIT. No. 95-1142 Joseph L. Jones, APPELLANT v. Board of Governors of the Federal Reserve System, Appellee. Decided March 26, 1996.

U.S. Supreme Court, SECURITIES INDUSTRY ASSN. v. BOARD OF GOVERNORS, 468 U.S. 137 (1984) 468 U.S. 137. Decided June 28, 1984.

United States Court of Appeals FOR THE DISTRICT OF COLUMBIA CIRCUIT. No. 97-1256 William Michael Cunningham, APPELLANT v. Board of Governors of the Federal Reserve System, Appellee. Decided April 30, 1997.

In the United States Court of Appeals

District of Columbia Circuit

(D.) Citations of the official and unofficial reports

This petition is based on two Federal Reserve Board actions. The Board announced this action on 9/23/98. The text of the announcement is reproduced below.

In the United States Court of Appeals

District of Columbia Circuit

"FEDERAL RESERVE press release

For immediate release December 20, 1996

The Federal Reserve Board today announced an increase in the amount of revenue that a section 20 subsidiary may derive from underwriting and dealing in securities from 10 percent to 25 percent of its total revenue.

The increase is effective March 6, 1997. Section 20 subsidiaries will therefore be allowed to employ the 25 percent limit for the first quarter 1997.

The revenue limit is designed to ensure that a section 20 subsidiary will not be engaged principally in underwriting and dealing in securities in violation of section 20 of the Glass-Steagall Act.

Based on its experience supervising these subsidiaries and developments in the securities markets since the revenue limitation was adopted in 1987, the Board concluded that a company earning 25 percent or less of its revenue from underwriting and dealing would not be engaged principally in that activity for purposes of section 20.

The Board's notice is attached.

In the United States Court of Appeals

District of Columbia Circuit
FEDERAL RESERVE SYSTEM

[Docket No. R-0841]

Revenue Limit on Bank-Ineligible Activities of Subsidiaries of Bank Holding Companies Engaged in Underwriting and Dealing in Securities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board is increasing from 10 percent to 25 percent the amount of total revenue that a nonbank subsidiary of a bank holding company (a so-called section 20 subsidiary) may derive from underwriting and dealing in securities that a member bank may not underwrite or deal in. The revenue limit is designed to ensure that a section 20 subsidiary will not be engaged principally in underwriting and dealing in such securities in violation of section 20 of the Glass-Steagall Act. Based on its experience supervising these subsidiaries and developments in the securities markets since the revenue limitation was adopted in 1987, the Board has concluded that a company earning 25 percent or less of its revenue from underwriting and dealing would not be engaged principally in that activity for purposes of section 20.

EFFECTIVE DATE: March 6, 1997.

Specifically, the APPELLANT objects to the following:

"The Board has also concluded, as it had in its original orders, that an increase in the revenue limit will not cause any adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices that would outweigh the projected public benefits. Accordingly, these benefits will not come at an increased risk to the safety and soundness or reputation of the nation's banks or to the federal safety net. Bank holding companies have demonstrated over the past nine years that they are able to manage the risks of investment banking, and section 20 subsidiaries operate as separately capitalized subsidiaries of a bank holding company, outside the control of any affiliated bank and therefore outside the protections of the federal safety net. Section 20 subsidiaries must register as broker-dealers and remain subject to the capital regulations of the Securities Exchange Commission.

Protection against unfair competition and undue concentration of resources is provided by the antitrust laws and special anti-tying restrictions applicable only to banks, which prohibit a bank from using its products to require or induce customers to use the products of its securities affiliate. A section 20 subsidiary is also subject to the consumer protection and anti-fraud provisions of the Securities Exchange Acts of 1933 and 1934. In the Board's experience, competition in the securities markets remains vibrant.

The Community Reinvestment Act does not provide for consideration of a bank's community lending performance in deciding whether a nonbanking activity is permissible under section 4 of the Bank Holding Company Act or in deciding what level of underwriting and dealing activity is permitted by section 20 of the Glass-Steagall Act. In any event, the Board believes that expanded securities activities by bank holding companies will not adversely affect low- and moderate-income neighborhoods and households or small businesses. At least one study has shown that section 20 subsidiaries bring a larger proportion of smaller-sized issues and lower-credit-rated new issues of non-financial firms to market than do independent investment banks.

Although banks affiliated with section 20 subsidiaries have closed branches since 1987, particularly over the past few years, these closings are intrinsic to the consolidation that is occurring in the banking industry."

(E.) Jurisdiction

APPELLANT William Michael Cunningham has standing to pursue this claim under the Bank Holding Company Act, codified at 12 U.S.C. Section 1848. Mr. Cunningham was, through comments submitted to the Board prior to this Order, a party in the Board's proceedings.

In the United States Court of Appeals

District of Columbia Circuit

(F.) Constitutional provisions, treaties, statues, ordinances and regulations involved in the case.

Fed. R. App. P. 26(b)

Banking Act of 1933, ch. 89, 48 Stat. 162

12 CFR Part 228, commonly known as the Community Reinvestment Act.

12 U.S.C. Section 377

12 U.S.C. Section 378

12 U.S.C. Section 1813

12 U.S.C. Section 1841

12 U.S.C. Section 1842

12 U.S.C. Section 1848

12 U.S.C. Section 2901

12 U.S.C. Section 2902

12 U.S.C. Section 2903

12 U.S.C. Section 2906

28 U.S.C. Section 1253

28 U.S.C. Section 1254

28 U.S.C. Section 1915

In the United States Court of Appeals

District of Columbia Circuit

(G.) Statement of the case.

BACKGROUND

This case concerns an action by the Federal Reserve Board, specifically an action allowing bank holding companies to purchase securities firms and securities firms to purchase bank holding companies. APPELLANT commented to the Federal Reserve Board on this proposal, as allowed under the Community Reinvestment and Bank Holding Company Acts.

Banks, bank holding companies and securities firms are the most powerful institutions extant, affecting the behavior of both the largest industrial organizations and the smallest households.

In order to satisfy financial institution and market demands for higher profits and growth, managers have used brutal methods, sometimes seeking to significantly increase stock market asset values and prices by laying off workers in an effort to reduce costs quickly.

Households have been affected in several ways. Recent advancements in information technology have allowed household to tie their home mortgage interest rates to interest rates reflecting institutional market activity, linking the financial fortunes of these households to the dictates of asset markets. Securitization, the process of standardizing, packaging, pooling and selling home mortgage loans, has made these household subject to institutional market fluctuations.

This slavish attention to market and asset values has taken a toll, furthering, in APPELLANT's opinion, a degradation of core cultural values in every sector of the society. Every domestic activity is now, or shortly will be, impacted by and subject to the rule of the market. No individual or industry is immune from a relentless dictate to increase profits. State and local governments, industrial organizations, news outlets owned by media conglomerates, educational institutions,

hospitals and health care organizations, and nonprofit organizations have all shown that this market based discipline can distort behavior, making these institutions unable to serve the public interest, as they had in the past, in a consistent manner.

Indeed, the APPELLANT brings this action because he has concluded, after a conversation with one major community investment public interest group who have acknowledged the merits of this case, no organization is in a position to challenge these powerful financial institutions. While this community investment organization has expressed concern about the influence securities firms and financial institutions have on the integrity and objectivity of formerly independent social purpose organizations vital to the society, the group is not willing to risk retaliation by the financial institutions likely to be affected by this action. Most community development or investment organizations receive funding from financial institutions likely to be affected by this action.

It is in this environment that the Federal Reserve Board has acted.

This action, in addition to being potentially injurious, may be unnecessary. The Congress of the United States recently announced an effort to update banking laws. One bill (H.R. 10) was passed by the U.S. House of Representatives, and passed to the Senate. The bill was not enacted this session, and until such legislation is enacted, the Board cannot, APPELLANT contends, approve this merger.[1]

Question One

The proposed merger is not consistent with the standards for merger application approval outlined under 12 U.S.C. Section 1841 et. seq., the Bank Holding Company Act of 1956. We feel these banks have not been meeting their respective CRA obligations to serve the credit needs of the communities in which they are chartered.

1*Banking Overhaul Gathers Momentum*. The Wall Street Journal, May 23, 1997. Page A-2.

Specifically, 12 U.S.C. § 1842 states that:

(c) Factors for consideration by Board

(1) Competitive factors

The Board shall not approve -

(A) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint or (FOOTNOTE 4) trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

(FOOTNOTE 4) So in original. Probably should be "of".

(2) Banking and community factors

In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

In the United States Court of Appeals

District of Columbia Circuit
II.

Cause for review

Institutions at issue: summary -

According to the company, “Travelers Group Inc. (the ‘Company’) is a diversified financial services holding company engaged, through its subsidiaries, principally in four business segments: (i) Investment Services (primarily through Salomon Smith Barney Holdings Inc. and its subsidiaries), including Asset Management; (ii) Consumer Finance Services (primarily through Commercial Credit Company and its subsidiaries); (iii) Property & Casualty Insurance Services (primarily through Travelers Property Casualty Corp. and its subsidiaries); and (iv) Life Insurance Services (primarily through The Travelers Insurance Company and its subsidiaries and the Primerica Financial Services group of companies).

On November 28, 1997, a newly formed wholly owned subsidiary of the Company was merged (the ‘Merger’) into Salomon Inc. (‘Salomon’)[2]. Under the terms of the Merger, approximately 188.5 million shares of Company common stock were issued in exchange for all of the outstanding shares of Salomon common stock, based on an exchange ratio of 1.695 shares of Company common stock for of Salomon common stock, for a total value of approximately $9 billion. Each of Salomon's series of preferred stock outstanding was exchanged for a corresponding series of Company preferred stock having substantially identical terms, except that the Company preferred stock issued in conjunction with the Merger has certain voting rights. Thereafter, Smith Barney Holdings Inc. (‘SBHoldings’), a wholly owned subsidiary of the Company, was merged into Salomon to form Salomon Smith Barney Holdings Inc. (‘SSBH’), which is the primary vehicle through which the

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Company engages in investment banking, securities and commodities trading, brokerage, asset management and other financial services activities. The Merger constituted a tax-free exchange and was accounted for under the pooling of interests method. This method of accounting requires there statement of all periods presented as if the Company and Salomon had always been combined."

Citicorp stated that "Citicorp, with its subsidiaries and affiliates, is a global financial services organization. Its staff of 93,700 (including 54,800 outside the U.S.) serves individuals, businesses, governments, and financial institutions in approximately 3,000 locations (including branches and representative, subsidiary, and affiliate offices) in 98 countries and territories throughout the world as of December 31, 1997. Citicorp, a U.S. bank holding company, was incorporated in 1967 under the laws of Delaware and is the sole shareholder of Citibank, N.A. ('Citibank'), its major subsidiary. Citicorp is regulated under the Bank Holding Company Act of 1956 and is subject to examination by the Federal Reserve Board ('FRB'). Citibank is a member of the Federal Reserve System and is subject to regulation and examination by the Office of the Comptroller of the Currency ('OCC')."

We oppose this Order. We feel it is "in furtherance of (a) combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States." Specifically, according to published reports, "the integrity of the entire U.S. Treasury securities auction market was called into question when Salomon Inc., admitted in August 1991 to serious violations of the auction rules during 1990 and 1991. This led to fines, censure, Congressional hearings and a review of the market by the Treasury, Federal Reserve System, and the Securities and

Exchange Commission. Following one of their recommendations, in September 1992, the Treasury began selling 2-year and 5-year Treasury notes using a uniform-price auction, in which all winning bidders pay the same price, rather than a discriminatory-price auction, in which winning bidders pay what they bid." In essence, the firm attempted to "monopolize" or "corner the market" in a particular U.S. Treasury security. Such behavior should give regulators pause when considering this merger application, given the ability of the merged institution (including Salomon, now Salomon Smith Barney) to use the bank as a source of capital and other non-monetary (reputation, perceived safety) resources. 12 U.S.C. § 1842 speaks directly to this type of behavior. Clearly, the public is at risk.

In addition, we oppose the merger on Community Reinvestment Act (CRA) grounds. While Citicorp has acceptable HMDA lending data, we feel there are other compelling reasons to deny this merger application on CRA grounds.

The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation. To accomplish this end, the CRA requires the appropriate federal supervisory authority to "assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution, " and to take that record into account in its evaluation of an application for a deposit facility.

Specifically, we also object to the following:

Competitive Aspects Under Section 3 of the BHC Act

Section 3 of the BHC Act prohibits the Board from approving a proposal to acquire a bank that would result in a monopoly or that would substantially lessen competition in any relevant banking market, if the anticompetitive effects of the proposal are not clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.

The proposal involves the acquisition of banks by Travelers, which does not own a commercial bank. Travelers owns a savings association, a limited-purpose credit card bank and a variety of nonbanking companies. Based on all the facts of record, the Board has determined that consummation of the proposal by Travelers to acquire the subsidiary banks of Citicorp would not likely result in a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market. Accordingly, the Board has determined that competitive factors under section 3 of the BHC Act are consistent with approval of the proposal. The competitive effects of the proposed nonbanking activities are discussed below.

A. Underwriting and Dealing in Bank-Ineligible Securities

Travelers has applied to acquire Citicorp Securities Inc. ("CSI") and to retain Salomon Smith Barney Inc. ("SSB") and The Robinson-Humphrey Company, LLC ("Robinson"). These companies are engaged in a variety of securities activities, such as underwriting and dealing in U.S. government securities, underwriting and dealing in corporate debt and equity securities, acting as a securities broker, and providing financial and investment advice to institutional and retail customers. Each securities company currently is, and after consummation of the proposal will continue to be, registered with the Securities and Exchange Commission ("SEC") as a broker-dealer under the Securities Exchange Act of 1934 (15 U.S.C. § 78a *et seq.*) ("1934 Act") and as a member of the National Association of Securities Dealers, Inc. ("NASD"). Accordingly, each securities company is and will be subject to the recordkeeping and reporting obligations, fiduciary standards and other requirements of the 1934 Act, the SEC and the NASD. As noted above, the Board has determined by regulation that underwriting and dealing in U.S. government securities, acting as a securities broker, and providing financial and investment advice are activities that are closely related to banking and permissible for bank holding companies to conduct. In addition, the Board has determined that, subject to the framework of prudential limitations established in previous decisions to address the potential for conflicts of interests, unsound banking practices or other adverse effects, the activities of

underwriting and dealing in bank-ineligible securities are so closely related to banking as to be proper incidents thereto within the meaning of section 4(c)(8) of the BHC Act. The Board also has determined that underwriting and dealing in bank-ineligible securities in the United States is consistent with section 20 of the Glass-Steagall Act (12 U.S.C. § 377), provided that the company engaged in the activity derives no more than 25 percent of its gross revenues from underwriting and dealing in bank-ineligible securities.

Travelers has committed that each of its proposed securities subsidiaries will conduct its underwriting and dealing activities using the methods and procedures and subject to the Board's operating standards established for section 20 subsidiaries ("Operating Standards"). Travelers also has committed that each company will conduct its domestic bank-ineligible securities underwriting and dealing activities subject to the Board's revenue restriction. As a condition of the Board's action in this case, Travelers and each of its subsidiaries engaged in bank-ineligible securities underwriting and dealing activities is required to conduct its bank-ineligible securities activities subject to the revenue restrictions and the Operating Standards.

(1) *Competitive effects*. As part of its analysis of the net public benefits of the proposal, the Board has considered the potential effects on competition in nonbanking services from the proposed combination of Travelers and Citicorp. The nonbank subsidiaries of Citicorp compete with Travelers in a number of geographic and product markets. For virtually all these markets, the Board has determined that the relevant geographic market is regional or national in scope. In particular, nonbank subsidiaries of Travelers and Citicorp compete in underwriting and dealing activities involving U.S. government, municipal government, asset-backed, and corporate debt and equity securities; investment advisory activities, including providing advice on mergers, acquisitions, and corporate finance; securities brokerage activities; asset management activities; brokerage of shares of mutual funds and related advisory activities; credit card operations; mortgage origination and servicing activities; consumer finance activities; syndicated lending activities; foreign exchange activities; financial data processing activities; trust services; and certain types of insurance underwriting and brokerage activities. The record indicates that there are numerous, active competitors providing each of these products and services, and that the markets for these products and services are unconcentrated. Travelers and Citicorp offer complementary products with few significant overlaps in competition. In any product market in which one party to this merger has a significant presence, the other party has a relatively small market share. For these reasons, and based on all the facts of record, the Board concludes that consummation of the proposal would have a *de minimis* effect on competition in any relevant market.

This conclusion is not consistent with the previously noted actions of the applicant.

The Board stated "(2) *Unfair competition.* As used in the BHC Act, unfair competition "was intended to refer to unfair or unethical business conduct (as defined by common law or under state or federal law), not disparities or advantages based on the structure and operations of the banking industry." In evaluating this potentially adverse effect, the legislative history of the BHC Act indicates that Congress intended the Board to consider whether a proposal would result in practices such as the facilitation of commercial espionage, price discrimination or inducement of a breach of contract. There is no evidence in the record that the proposal would result in these types of effects."

We again refer to the incident cited concerning activities in the U.S. Treasury market conducted by one of the applicants.

The Board has gained substantial experience in supervising the activities and operations of non bank subsidiaries. There is, however, ample recent evidence suggesting that financial market imperfections will impair the ability of these subsidiaries to continue to operate in a safe and sound manner without adverse effects on their affiliated banks or the public. We refer the Court to the following incidents:

There is ample recent evidence suggesting that financial market imperfections will impair the ability of the Section 20 subsidiaries to continue to operate in a safe and sound manner without adverse effects on their affiliated banks or the public. We refer the Court to the following incidents:

1. In February 1995, the oldest English merchant bank in existence at the time, Barings Bank, PLC (Barings), collapsed, allegedly due to the actions of a single individual, Mr. Nicholas Leeson, the General Manager and Head Trader of Barings Singapore (BFS).

There were no contagion effects which could have led to a system-wide destabilization, but the incident shows how "bank solvency and liquidity can be significantly threatened if speculative trading in financial derivatives is guided by a lack of adequate internal and external controls." In a preliminary report[3], the Bank of England noted:

"Our conclusions, in summary, are:
(a) the losses were incurred by reason of unauthorized and concealed trading activities within BFS;
(b) the true position was not noticed earlier by reason of a serious failure of controls and managerial confusion within Barings;
(c) the true position had not been detected prior to the collapse by the external auditors, supervisors **or regulators** of Barings."

Similar incidents have occurred in the United States. The Board's order is part of a "piecemeal" approach to financial modernization that makes such incidents more likely. While the Federal Reserve maintains regulatory authority for banks and bank holding companies, regulatory authority for securities firms remains with the Securities and Exchange Commission. The APPELLANT believes this separation of regulatory authority invites trouble, and will mean that, as in the Barings incident, potentially damaging information will be hidden from both sets of regulators. The separation of regulatory authority encourages regulated institutions to behave in a manner inconsistent with the public interest. We have seen this happen time and time again.

3The Bank Of England, *REPORT OF THE BOARD OF BANKING SUPERVISION INQUIRY INTO THE CIRCUMSTANCES OF THE COLLAPSE OF BARINGS BROTHERS*, 18 July 1995.

2. We refer the Court to the Daiwa[4] incident:

"The Federal Reserve on Nov. 2 ordered Daiwa to terminate its U.S. operations within 90 days. Daiwa also is fighting U.S. criminal charges alleging fraud and conspiracy in the cover-up of $1.1 billion in bond trading losses over 12 years at its New York branch. Daiwa delayed reporting a trader's losses from U.S. authorities for two months but has denied wrongdoing."

3. A domestic securities firm, Kidder, Peabody & Co., experienced significant turmoil and was sold to another domestic securities firm after it was learned that Kidder had suffered heavy losses, allegedly due to the actions of a trader, a Mr. Joseph Jett . The "schemes reportedly involved tricks that would have rapidly raised red flags had even rudimentary policies been in-place and mechanically enforced."

4. In the most serious indication to date that securities market problems have significantly damaged the public, the National Association of Security Dealers was found by the U.S. Securities and Exchange Commission to be "failing to police wrongdoing the NASDAQ Stock market, the second largest stock market in the world." The Washington Post (August 8, 1996. Page A1.) We note that "twenty-two section 20 subsidiaries have authority to underwrite and deal in all debt and equity securities."

5. According to the Washington Post (August 10, 1996. Page D2), a Massachusetts jury "convicted a former partner of Lazard Freres & Co. on 58 of 61 counts of fraud and corruption in connection with his work on municipal bond issues for the District government, the U.S. Postal Service and other

4Associated Press Wire Report, 1-29-96, 8:33 am EST

clients." We note that "fourteen of these so-called section 20 subsidiaries have authority to underwrite and deal in municipal revenue bonds." We also note that significant explorations concerning fraud and corruption in the municipal bond markets are ongoing.

6. According to the Washington Post (August 10, 1996. Page A1), the Securities and Exchange Commission "filed a civil securities complaint against Bennett Funding Group, Inc. of Syracuse, N.Y. alleging that the company was a 'massive, ongoing Ponzi scheme,' perhaps the largest such scheme in U.S. history, with liabilities exceeding $1 billion."

7. According to the Washington Post (August 20, 1996. Page C2.), one financial institution granted a Section 20 exemption, Banker's Trust New York, experienced severe problems in the derivatives market. Clients, such as Gibson Greetings and Proctor & Gamble, claim the company misled them about the value of derivative investments.

8. According to the Washington Post (August 22, 1996. Page D8), another financial institution granted a Section 20 exemption, Citicorp, was fined $25,000 and ordered to surrender $300,000 by the National Association of Security Dealers for failing to ensure that 19 brokers completed computer-based training under NASD continuing education requirements.

9. According to the Washington Post (August 28, 1996. Page D1), several securities brokers were suspended because they hired others to impersonate them and take the main securities licensing

examination, the Series 7 test.

10. Finally, we refer the Court to the following: “Long-Term Capital near collapse seeks bank rescue” by Apu Sikri

“NEW YORK (Reuters) - Long-Term Capital Management[5], the once high-flying hedge fund run by a former Salomon Brothers bond whiz, teetered on the brink of collapse Wednesday after losing billions of dollars in the recent global economic turmoil, bank officials said.

The officials, who spoke on condition they not be identified, said the fund was in talks with several investment and commercial banks about raising new funds to pay off clamoring creditors.
But the future of the 6-year-old fund, run by John Meriwether, former head of the bond trading desk at Salomon Brothers, was in doubt Wednesday afternoon as bankers considered various options.
The Federal Reserve Bank of New York was brought into the negotiations, bankers said, with liquidation of the firm a possibility. The bankers said the firm has lost nearly 80 percent of its capital, which was estimated at $4.8 billion at the start of the year. Both the Fed and Long-Term Capital Management declined to comment.

The fund makes its money through arbitrage, or exploiting tiny differences in prices of securities across various markets, and is managed by a superstar cast of financial professionals. Besides Meriwether, its partners include Nobel laureates Robert Merton and Myron Scholes, and former Fed Vice Chairman David Mullins.

In recent days, Long-Term has approached several banks, including Credit Suisse First Boston, Goldman Sachs & Co. and Chase Manhattan Bank, to discuss an infusion of new money to the fund or a takeover by one of the larger banks, officials said.

5

Long-Term Capital Management
Business: Specializes in bond arbitrage, where traders use mathematical formulas to try to beat the market on certain types of bonds and securities.
Based: Greenwich, Conn.
Established: March 1994
Run by: Trader John Meriwether, formerly of Salomon Brothers.
Major players: Robert C. Merton, 54, of Harvard University, and Myron S. Scholes, 57, of Stanford University, who both won the Nobel prize for economics in 1997, are among the partners.
Past performance: Nearly tripled investors' money from its inception to the end of 1997 but now is suffering huge losses. SOURCES: Bloomberg News, news reports

Officials at Chase, Goldman and CSFB were not available to comment. On Sept. 2, Long-Term said it had lost 50 percent of its net asset value. It said its remaining assets then exceeded $2.3 billion. The statement attributed the losses to 'the significant market dislocations resulting from volatility and liquidity shifts.' About 10 percent of the losses were from investments in Russia.

Since then, the hedge fund has seen more trading bets go wrong, according to bankers that deal with it. The fund has borrowed heavily from several Wall Street houses. It was reported to have investments
worth in excess of $20 billion with a capital base of $4 billion before the losses were announced on Sept. 2. Given the extensive leverage, any liquidation would result in large losses to several investment banks in New York.

'Long-Term has been one of the biggest clients on Wall Street,' said a trader. Traders earlier this week reported heavy selling of mortgage-backed securities and Treasuries, which some attributed to the hedge fund. That selling alerted the banking community to growing problems at Long-Term Capital, traders said." REUTERS (23 Sep 1998 16:28 EDT)
We note the merger partners have been affected by this matter. Yet, they withheld this information

from the public and the appropriate regulators.

This is a cursory sample of recent securities market instability and malfeasance. A more extensive review would reveal additional incidents. While U.S. security markets are broadly well functioning, these irregularities call into question the appropriateness of approving the merger in question at this time. The incident highlights current risks in the financial markets. Such risks reduce the safety and soundness of large financial institutions. The nature of financial market activities is such that significant dislocations can and do occur quickly, with great force. These dislocations strike across institutional lines. That is, they affect both banks and securities firms. The financial institution regulatory structure is not in place to effectively evaluate these risks, however[6]. Given this, public

6Greenspan: Fed Aided Fund Bailout to Shield Global Economy By John M. Berry, The Washington Post. Friday, October 2, 1998; Page F1.

Federal Reserve Chairman Alan Greenspan yesterday defended the Fed's role in brokering a rescue

safety is at risk. Appellant believes that such incidents present clear evidence that the public interest may be at risk. Financial instabilities may be transmitted from a securities firm owned by a bank holding company to a bank owned by that same bank holding company in any number of ways. If the public were to become aware of losses at a securities firm owned by a bank holding company, confidence in the banking institution owned by that bank holding company may be eroded. A “bank run” may ensue once the public learns the identity of the bank affiliated with this specific holding company. Substantial evidence exists that the public is not aware of the difference between banks, securities firms, and other institutions. Several senior level industry executives have commented on this fact.[7]

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of Long-Term Capital Management L.P. last month, saying that failure of the huge investment fund could have severely disrupted world markets and damaged ‘the economies of many nations, including our own.’

But skeptical members of the House banking committee, both Republicans and Democrats, peppered Greenspan and William J. McDonough, president of the New York Federal Reserve Bank, with questions about why government regulators didn't know much sooner that the fund was in deep trouble and that some of the nation's largest banks and brokerage firms were exposed to very large losses if it went under.

Committee Chairman Rep. Jim Leach (R-Iowa) acknowledged that failure of the fund would have posed a risk for financial markets, but he labeled the episode a "fiasco."

‘From a social perspective, it's not clear that Long-Term Capital or any other hedge fund serves a sufficient social purpose to warrant government-directed protection,’ he said.

Leach and several other members suggested that additional regulatory powers may be needed, either by the Fed or other government financial agencies, to prevent such situations from occurring again.

7See, for example, Mr. Byron Wein, Executive Vice President, J.P. Morgan, appearing on The Charlie Rose Show, 2/13/97 broadcast on Channel 26 (WETA). He stated “Individual investors even believe the Federal Deposit Insurance Corporation insures stock bought through a bank..”

In the United States Court of Appeals

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Question Two

In an earlier letter to the Board, we protested the approval of a merger application submitted by Morgan Guaranty Trust, the beneficiary of a Section 20 exemption. The Board approved the merger on April 29, 1996. In that protest, we suggested Section 20 exemptions require Board staff to more broadly analyze activities of banking organizations granted Section 20 exemptions in meeting the credit needs of the community. We feel this includes reviewing the social and community impact of the securities activities of Section 20 subsidiaries. Recent advancements in information technology make this a reasonable suggestion. The creation of an Investment test under new Community Reinvestment Act guidelines suggests that the Board agrees this can be done efficiently.

In our earlier protest to the Board, we stated our belief that the grant of a section 20 exemption does not relieve the Board from an obligation to review and uncover any discriminatory business lending practices on the part of these firms.

This includes inspecting the gender and ethnic makeup of firms using the following services provided by section 20 subsidiaries:

a. Municipal Revenue Bonds/Securities

b. Mortgage related securities

c. Commercial Paper

d. Consumer - receivable related securities ("CRR's")

Activities in at least one of the above functional areas have been defined by the Federal Reserve Board (in *An Order Approving Application to Engage in Commercial Paper Placement to a Limited Extent* (Federal Reserve Bulletin, Feb. 1987, p. 148)) as "so functionally and operationally similar to the role of a bank that arranges a loan participation or syndication that banking organizations are particularly well suited to perform the commercial paper placement function."

In the Appellants view, Section 20 subsidiaries should be required to provide all credit services in a nondiscriminatory manner. Further, it is our belief that the times require measures to compel Section 20 subsidiaries to provide credit in this manner.

The Federal Reserve noted, in a 1989 study, (in *Changes in Family Finances from 1983 to 1989: Evidence from the Survey of Consumer Finances* (Federal Reserve Bulletin, Jan. 1992, p. 1)) a widening income gap. That study indicated: "The small rise in the median values of income and net worth and the simultaneous substantial rise in the mean values indicate that the distributions of income and net worth became more concentrated between 1983 and 1989."

This trend in income distribution has continued. In a recent study[8] by the U.S. Department of Commerce, Bureau of the Census, researchers commented that "In sum, when money income is

8"A BRIEF LOOK AT POSTWAR U.S. INCOME INEQUALITY" by Daniel H. Weinberg . See also Paul Ryscavage, "Surge in Growing Income Inequality?" Monthly Labor Review, August 1995.

examined, each (of these) indicators shows increasing income inequality over the 1968-1994 period."

It is the APPELLANT'S belief that current tensions in certain parts of the country are a result of, in part, this widening income gap. He feels the increased concentration of wealth has contributed to and encouraged the development of, in certain individuals and groups, a repulsive "bunker," or militia mentality that has a negative impact on the country, including its capital markets. Recent events provide additional evidence concerning this observation.

Certain organizations, like Section 20 subsidiaries, have been the beneficiaries of an unprecedented increase in financial market activity. Section 20 subsidiaries must be encouraged to apply their skills to deliver main line services to all, prudently but in a nondiscriminatory manner. Applying a "CRA-like" standard to the activities of these Section 20 subsidiaries will help even the distribution of income and wealth, and contribute to domestic political and economic stability.

Further, it is the APPELLANT'S belief that the current regulatory structure makes it likely that the public interest will be harmed. The Federal Reserve Board lacks the legal authority to quickly and efficiently regulate the securities and underwriting subsidiaries of Section 20 entities. The Securities and Exchange Commission will be responsible for this task. The Appellant feels this regulatory structure will lead to problems in the future. A review of the regulatory structure in place prior to what has commonly become know as the "Savings and Loan crisis" reveals a striking similarity. Regulators allowed Thrift institutions to enter new markets. Regulators were unprepared, however, to quickly and efficiently monitor the activities of these institutions. Many of these institutions

failed, costing the public billions. The current bank and security firm regulatory structure makes it likely that this type of crisis will be repeated if the Federal Reserve Board Order is allowed to stand, without review

It is the APPELLANT'S belief that, unless the Board is designated a ***"Super-regulator,"*** with broad authority (based in legislation) and responsibility for overseeing the activities of banks, thrifts, pension funds, insurance companies, mutual fund companies, brokerage firms, hedge funds and investment banks, the order will result in significant public harm. We note the APPELLANT'S belief that recent advancements in financial and computer technology require the creation of such a ***"Super-regulator."***

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REASONS FOR GRANTING THE APPELLANT'S REQUEST

The current bank, thrift and security firm regulatory structure is undergoing a review. To allow banks to purchase securities firms under the order issued by the Appellee would subject the public to undue risk. Further, the Congress of the United States is currently in the process of and will shortly revise and revamp the financial institution regulatory structure. In addition to possibly subjecting the public to harm, the Order is needless.

Growing income inequality threatens social stability. By requiring banks and bank holding companies to consider expanding their markets to include low and moderate income areas, bank, security firm and thrift regulators will further address these critical needs and contribute to long term domestic social stability.

In the United States Court of Appeals

District of Columbia Circuit

CONCLUSION

Appellant prays for orders from the Court revering the Order issued by the Federal Reserve Board in this matter. The petition should be granted.

Respectfully Submitted,

William Michael Cunningham

Pro Se

PO BOX 55793

Washington, DC 20040-5793

202-722-5000

In the United States Court of Appeals

District of Columbia Circuit

William Michael Cunningham)

PO Box 55793)

Washington, D.C. 20040-5793)

APPELLANT)

v.) PETITION FOR REVIEW

The Federal Reserve Board)

20th & Constitution Ave., N.W.)

Washington, DC)

20551)

ATTN: Ms. Jennifer Johnson,)

Secretary)

Appellee)

PROOF OF SERVICE

I, William Michael Cunningham, do swear or declare that on this date, October 30, 1998, 1 have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and DOCKETING STATEMENT on each party to the above proceeding by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Mr. William Wiles, Secretary of The Board of Governors of the Federal Reserve System, 20th & Constitution Ave., N.W., Washington, DC, 20551.

In the United States Court of Appeals

District of Columbia Circuit

I declare under penalty of perjury that the foregoing is true and correct.

_____

William Michael Cunningham, Pro Se

William Michael Cunningham	)	
PO Box 55793	)	
Washington, D.C. 20040-5793	)	
APPELLANT	)	
v.	)	APPENDIX
The Federal Reserve Board	)	
20th & Constitution Ave., N.W.	)	
Washington, DC	)	
20551	)	
ATTN: Ms. Jennifer Johnson,	)	
Secretary	)	
Appellee	)	

APPELLANT William Cunningham hereby submits the following documents in support of this action.

In the United States Court of Appeals

District of Columbia Circuit

Respectfully Submitted,

William Cunningham
Pro Se

In the United States Court of Appeals

District of Columbia Circuit

Appendix **A: Cases Below**.

In the United States Court of Appeals

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Appendix **B: Constitutional provisions, treaties, statues, ordinances and regulations involved in the case.**

In the United States Court of Appeals

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UNITED STATES CODE

TITLE 12 - BANKS AND BANKING

CHAPTER 3 - FEDERAL RESERVE SYSTEM

SUBCHAPTER X - POWERS AND DUTIES OF MEMBER BANKS

§ 377. Affiliation with organization dealing in securities; penalties

After one year from June 16, 1933, no member bank shall be affiliated in any manner described in subsection (b) of section 221a of this title 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: Provided, That nothing in this paragraph shall apply to any such organization which shall have been placed in formal liquidation and which shall transact no business except such as may be incidental to the liquidation of its affairs.

For every violation of this section the member bank involved shall be subject to a penalty not exceeding $1,000 per day for each day during which such violation continues. Such penalty may be assessed by the Board of Governors of the Federal Reserve System, in its discretion, and, when so assessed, may be collected by the Federal reserve bank by suit or otherwise.

If any such violation shall continue for six calendar months after the member bank shall have been

warned by the Board of Governors of the Federal Reserve System to discontinue the same,

(a) in the case of a national bank, all the rights, privileges, and franchises granted to it under the National Bank Act (12 U.S.C. 21 et seq.), may be forfeited in the manner prescribed in sections 141, 222 to 225, 281 to 283, 285, 286, 501a, and 502 of this title, or, (b) in the case of a State member bank, all of its rights and privileges of membership in the Federal Reserve System may be forfeited in the manner prescribed in subchapter VIII of this chapter.

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District of Columbia Circuit

UNITED STATES CODE

TITLE 12 - BANKS AND BANKING

CHAPTER 3 - FEDERAL RESERVE SYSTEM

SUBCHAPTER X - POWERS AND DUTIES OF MEMBER BANKS

§ 378. Dealers in securities engaging in banking business; individuals or associations engaging in banking business; examinations and reports; penalties

(a) After the expiration of one year after June 16, 1933, it shall be unlawful -

(1) For any person, firm, corporation, association, business trust, or other similar organization, engaged in the business of issuing, underwriting, selling, or distributing, at wholesale or retail, or through syndicate participation, stocks, bonds, debentures, notes, or other securities, to engage at the same time to any extent whatever 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: Provided, That the provisions of this paragraph shall not prohibit national banks or State banks or trust companies (whether or not members of the Federal Reserve System) or other financial institutions or private bankers from dealing in, underwriting, purchasing, and selling investment securities, or issuing securities, to the extent permitted to national banking associations by the provisions of section 24 of this title: Provided further, That nothing in this paragraph shall be construed as affecting in any way such right as any bank, banking association, savings bank, trust company, or other banking institution, may otherwise possess to sell, without recourse or agreement

to repurchase, obligations evidencing loans on real estate; or

(2) For any person, firm, corporation, association, business trust, or other similar organization to engage, to any extent whatever with others than his or its officers, agents or employees, in the business of receiving deposits subject to check or to repayment upon presentation of a pass book, certificate of deposit, or other evidence of debt, or upon request of the depositor, unless such person, firm, corporation, association, business trust, or other similar organization (A) shall be incorporated under, and authorized to engage in such business by, the laws of the United States or of any State, Territory, or District, and subjected, by the laws of the United States, or of the State, Territory, or District wherein located, to examination and regulation, or (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 regulations or, © shall submit to periodic examination by the banking authority of the State, Territory, or District where such business is carried on and shall make and publish periodic reports of its condition, exhibiting in detail its resources and liabilities, such examination and reports to be made and published at the same times and in the same manner and under the same conditions as required by the law of such State, Territory, or District in the case of incorporated banking institutions engaged in such business in the same locality.

(b) Whoever shall willfully violate any of the provisions of this section shall upon conviction be fined not more than $5,000 or imprisoned not more than five years, or both, and any

officer, director, employee, or agent of any person, firm, corporation, association, business trust, or other similar organization who knowingly participates in any such violation shall be punished by a like fine or imprisonment or both.

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District of Columbia Circuit

UNITED STATES CODE

TITLE 12 - BANKS AND BANKING

CHAPTER 16 - FEDERAL DEPOSIT INSURANCE CORPORATION

§ 1813. Definitions

As used in this chapter -

(a) Definitions of Bank and Related Terms. -

(1) Bank. - The term "bank" -

(A) means any national bank, State bank, and District bank, and any Federal branch and insured branch;

(B) includes any former savings association that -

(I) has converted from a savings association charter; and

(ii) is a Savings Association Insurance Fund member.

(2) State bank. - The term "State bank" means any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), or other banking institution which -

(A) is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and

(B) is incorporated under the laws of any State or which is operating under the Code of Law for the District of Columbia (except a national bank), including any cooperative bank or other unincorporated bank the deposits of which were

insured by the Corporation on the day before August 9, 1989.

(3) State. - The term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(4) District bank. - The term "District bank" means any State bank operating under the Code of Law of the District of Columbia.

(b) Definition of Savings Associations and Related Terms. -

(1) Savings association. - The term "savings association" means -

(A) any Federal savings association;

(B) any State savings association; and

© any corporation (other than a bank) that the Board of Directors and the Director of the Office of Thrift Supervision jointly determine to be operating in substantially the same manner as a savings association.

(2) Federal savings association. - The term "Federal savings association" means any Federal savings association or Federal savings bank which is chartered under section 1464 of this title.

(3) State savings association. - The term "State savings association" means -

(A) any building and loan association, savings and loan association, or homestead association; or

(B) any cooperative bank (other than a cooperative bank which is a State bank

as defined in subsection (a)(2) of this section), which is organized and operating according to the laws of the State (as defined in subsection (a)(3) of this section) in which it is chartered or organized.

© Definitions Relating to Depository Institutions. -

(1) Depository institution. - The term "depository institution" means any bank or savings association.

(2) Insured depository institution. - The term "insured depository institution" means any bank or savings association the deposits of which are insured by the Corporation pursuant to this chapter.

(3) Institutions included for certain purposes. - The term "insured depository institution" includes any uninsured branch or agency of a foreign bank or a commercial lending company owned or controlled by a foreign bank for purposes of section 1818 of this title.

(4) Federal depository institution. - The term "Federal depository institution" means any national bank, any Federal savings association, and any Federal branch.

(5) State depository institution. - The term "State depository institution" means any State bank, any State savings association, and any insured branch which is not a Federal branch.

(d) Definitions Relating to Member Banks. -

(1) National member bank. - The term "national member bank" means any national bank which is a member of the Federal Reserve System.

(2) State member bank. - The term "State member bank" means any State bank which is a member of the Federal Reserve System.

(e) Definitions Relating to Nonmember Banks. -

(1) National nonmember bank. - The term "national nonmember bank" means any national bank which -

(A) is located in any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Northern Mariana Islands; and

(B) is not a member of the Federal Reserve System.

(2) State nonmember bank. - The term "State nonmember bank" means any State bank which is not a member of the Federal Reserve System.

(f) The term "mutual savings bank" means a bank without capital stock transacting a savings bank business, the net earnings of which inure wholly to the benefit of its depositors after payment of obligations for any advances by its organizers.

(g) Savings Bank. - The term "savings bank" means a bank (including a mutual savings bank) which transacts its ordinary banking business strictly as a savings bank under State laws imposing special requirements on such banks governing the manner of investing their funds and of conducting their business.

(h) The term "insured bank" means any bank (including a foreign bank having an insured branch) the deposits of which are insured in accordance with the provisions of this chapter; and the term "noninsured bank" means any bank the deposits of which are not so insured.

(I) New Bank and Bridge Bank Defined. -

(1) New bank. - The term "new bank" means a new national bank, other than a bridge bank, organized by the Corporation in accordance with section 1821(h) (FOOTNOTE 1) of this title.

(FOOTNOTE 1) See References in Text note below.

(2) Bridge bank. - The term "bridge bank" means a new national bank organized by the Corporation in accordance with section 1821(n) of this title.

(j) The term "receiver" includes a receiver, liquidating agent, conservator, commission, person, or other agency charged by law with the duty of winding up the affairs of a bank or savings association or of a branch of a foreign bank.

(k) The term "Board of Directors" means the Board of Directors of the Corporation.

(l) The term "deposit" means -

(1) the unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the bank or savings association, or a letter of credit or a traveler's check on which the bank or savings association is primarily liable: Provided, That, without limiting the generality of the term "money or its equivalent", any such account or instrument must

be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts, or other instruments forwarded to such bank or savings association for collection.

(2) trust funds as defined in this chapter received or held by such bank or savings association, whether held in the trust department or held or deposited in any other department of such bank or savings association.

(3) money received or held by a bank or savings association, or the credit given for money or its equivalent received or held by a bank or savings association, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to, escrow funds, funds held as security for an obligation due to the bank or savings association or others (including funds held as dealers reserves) or for securities loaned by the bank or savings association, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes: Provided, That there shall not be included funds which are received by the bank or savings association for immediate application to the reduction of an indebtedness to the receiving bank or savings association, or under condition that the receipt thereof immediately reduces or extinguishes such an

indebtedness.

(4) outstanding draft (including advice or authorization to charge bank's (FOOTNOTE 2) or savings association's balance in another bank or savings association), cashier's check, money order, or other officer's check issued in the usual course of business for any purpose, including without being limited to those issued in payment for services, dividends, or purchases, and

(FOOTNOTE 2) So in original. Probably should be "a bank's".

(5) such other obligations of a bank or savings association as the Board of Directors, after consultation with the Comptroller of the Currency, Director of the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System, shall find and prescribe by regulation to be deposit liabilities by general usage, except that the following shall not be a deposit for any of the purposes of this chapter or be included as part of the total deposits or of an insured deposit:

(A) any obligation of a bank or savings association which is payable only at an office of such bank or savings association located outside of the States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands; and

(B) any international banking facility deposit, including an international banking facility time deposit, as such term is from time to time defined by the Board of Governors of the Federal Reserve System in regulation D or any successor

regulation issued by the Board of Governors of the Federal Reserve System.

(m) Insured Deposit. -

(1) In general. - Subject to paragraph (2), the term "insured deposit" means the net amount due to any depositor for deposits in an insured depository institution as determined under sections 1817(I) and 1821(a) of this title.

(2) In the case of any deposit in a branch of a foreign bank, the term "insured deposit" means an insured deposit as defined in paragraph (1) of this subsection which -

(A) is payable in the United States to -

(I) an individual who is a citizen or resident of the United States,

(ii) a partnership, corporation, trust, or other legally cognizable entity created under the laws of the United States or any State and having its principal place of business within the United States or any State, or

(iii) an individual, partnership, corporation, trust, or other legally cognizable entity which is determined by the Board of Directors in accordance with its regulations to have such business or financial relationships in the United States as to make the insurance of such deposit consistent with the purposes of this chapter; and

(B) meets any other criteria prescribed by the Board of Directors by regulation as necessary or appropriate in its judgment to carry out the purposes of this chapter or to facilitate the administration thereof.

(3) Uninsured deposits. - The term "uninsured deposit" means the amount of any

deposit of any depositor at any insured depository institution in excess of the amount of the insured deposits of such depositor (if any) at such depository institution.

(4) Preferred deposits. - The term "preferred deposits" means deposits of any public unit (as defined in paragraph (1)) at any insured depository institution which are secured or collateralized as required under State law.

(n) The term "transferred deposit" means a deposit in a new bank or other insured depository institution made available to a depositor by the Corporation as payment of the insured deposit of such depositor in a closed bank, and assumed by such new bank or other insured depository institution.

(o) The term "domestic branch" includes any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State of the United States or in any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands at which deposits are received or checks paid or money lent; and the term "foreign branch" means any office or place of business located outside the United States, its territories, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, at which banking operations are conducted.

(p) The term "trust funds" means funds held by an insured depository institution in a fiduciary capacity and includes, without being limited to, funds held as trustee, executor, administrator, guardian, or agent.

(q) Appropriate Federal Banking Agency. - The term "appropriate Federal banking agency"

means -

(1) the Comptroller of the Currency, in the case of any national banking association, any District bank, or any Federal branch or agency of a foreign bank;

(2) the Board of Governors of the Federal Reserve System, in the case of -

(A) any State member insured bank (except a District bank),

(B) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act (12 U.S.C. 221 et seq.) which is made applicable under the International Banking Act of 1978 (12 U.S.C. 3101 et seq.),

© any foreign bank which does not operate an insured branch,

(D) any agency or commercial lending company other than a Federal agency,

(E) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(1)), including such proceedings under the Depository Institutions Supervisory Act, and

(F) any bank holding company and any subsidiary of a bank holding company (other than a bank);

(3) the Federal Deposit Insurance Corporation in the case of a State nonmember insured bank (except a District bank), or a foreign bank having an insured branch; and

(4) the Director of the Office of Thrift Supervision in the case of any savings association or any savings and loan holding company. Under the rule set forth in this subsection, more than one agency may be an appropriate Federal banking agency with

respect to any given institution.

(r) State Bank Supervisor. -

(1) In general. - The term "State bank supervisor" means any officer, agency, or other entity of any State which has primary regulatory authority over State banks or State savings associations in such State.

(2) Interstate application. - The State bank supervisors of more than 1 State may be the appropriate State bank supervisor for any insured depository institution.

(s) Definitions Relating to Foreign Banks and Branches. -

(1) Foreign bank. - The term "foreign bank" has the meaning given to such term by section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(b)(7)).

(2) Federal branch. - The term "Federal branch" has the meaning given to such term by section 1(b)(6) of the International Banking Act of 1978 (12 U.S.C. 3101(b)(6)).

(3) Insured branch. - The term "insured branch" means any branch (as defined in section 1(b)(3) of the International Banking Act of 1978 (12 U.S.C. 3101(b)(3))) of a foreign bank any deposits in which are insured pursuant to this chapter.

(t) Includes, Including. -

(1) In general. - The terms "includes" and "including" shall not be construed more restrictively than the ordinary usage of such terms so as to exclude any other thing not referred to or described.

(2) Rule of construction. - Paragraph (1) shall not be construed as creating any inference that the term "includes" or "including" in any other provision of Federal law

may be deemed to exclude any other thing not referred to or described.

(u) Institution-Affiliated Party. - The term "institution-affiliated party" means -

(1) any director, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, an insured depository institution;

(2) any other person who has filed or is required to file a change-in-control notice with the appropriate Federal banking agency under section 1817(j) of this title;

(3) any shareholder (other than a bank holding company), consultant, joint venture partner, and any other person as determined by the appropriate Federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution; and

(4) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in -

(A) any violation of any law or regulation;

(B) any breach of fiduciary duty; or

© any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution.

(v) Violation. - The term "violation" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(w) Definitions Relating to Affiliates of Depository Institutions. -

(1) Depository institution holding company. - The term "depository institution holding company" means a bank holding company or a savings and loan holding company.

(2) Bank holding company. - The term "bank holding company" has the meaning given to such term in section 1841 of this title.

(3) Savings and loan holding company. - The term "savings and loan holding company" has the meaning given to such term in section 1467a of this title.

(4) Subsidiary. - The term "subsidiary" -

(A) means any company which is owned or controlled directly or indirectly by another company; and

(B) includes any service corporation owned in whole or in part by an insured depository institution or any subsidiary of such a service corporation.

(5) Control. - The term "control" has the meaning given to such term in section 1841 of this title.

(6) Affiliate. - The term "affiliate" has the meaning given to such term in section 1841(k) of this title.

(7) Company. - The term "company" has the same meaning as in section 1841(b) of this title.

(x) Definitions Relating to Default. -

(1) Default. - The term "default" means, with respect to an insured depository institution, any adjudication or other official determination by any court of competent jurisdiction, the appropriate Federal banking agency, or other public authority pursuant

to which a conservator, receiver, or other legal custodian is appointed for an insured depository institution or, in the case of a foreign bank having an insured branch, for such branch.

(2) In danger of default. - The term "in danger of default" means an insured depository institution with respect to which (or in the case of a foreign bank having an insured branch, with respect to such insured branch) the appropriate Federal banking agency or State chartering authority has advised the Corporation (or, if the appropriate Federal banking agency is the Corporation, the Corporation has determined) that -

(A) in the opinion of such agency or authority -

(I) the depository institution or insured branch is not likely to be able to meet the demands of the institution's or branch's depositors or pay the institution's or branch's obligations in the normal course of business; and

(ii) there is no reasonable prospect that the depository institution or insured branch will be able to meet such demands or pay such obligations without Federal assistance; or

(B) in the opinion of such agency or authority -

(I) the depository institution or insured branch has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(ii) there is no reasonable prospect that the capital of the depository institution or insured branch will be replenished without Federal assistance.

(y) The term "deposit insurance fund" means the Bank Insurance Fund or the Savings Association Insurance Fund, as appropriate.

(z) Federal Banking Agency. - The term "Federal banking agency" means the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

In the United States Court of Appeals

District of Columbia Circuit

UNITED STATES CODE

TITLE 12 - BANKS AND BANKING

CHAPTER 17 - BANK HOLDING COMPANIES

§ 1848. Judicial review

Any party aggrieved by an order of the Board under this chapter may obtain a review of such order in the United States Court of Appeals within any circuit wherein such party has its principal place of business or in the Court of Appeals in the District of Columbia, by filing in the court, within thirty days after the entry of the Board's order, a petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of title 28. Upon the filing of such petition the court shall have the jurisdiction to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper. The findings of the Board as to the facts, if supported by substantial evidence, shall be conclusive.

In the United States Court of Appeals

District of Columbia Circuit

UNITED STATES CODE

TITLE 12 - BANKS AND BANKING

CHAPTER 30 - COMMUNITY REINVESTMENT

§ 2901. Congressional findings and statement of purpose

(a) The Congress finds that -

(1) regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business;

(2) the convenience and needs of communities include the need for credit services as well as deposit services; and

(3) regulated financial institutions have continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.

(b) It is the purpose of this chapter to require each appropriate Federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.

In the United States Court of Appeals

District of Columbia Circuit

UNITED STATES CODE

TITLE 12 - BANKS AND BANKING

CHAPTER 30 - COMMUNITY REINVESTMENT

§ 2902. Definitions

For the purposes of this chapter -

(1) the term "appropriate Federal financial supervisory agency" means -

(A) the Comptroller of the Currency with respect to national banks;

(B) the Board of Governors of the Federal Reserve System with respect to State chartered banks which are members of the Federal Reserve System and bank holding companies;

© the Federal Deposit Insurance Corporation with respect to State chartered banks and savings banks which are not members of the Federal Reserve System and the deposits of which are insured by the Corporation; and

(2) (FOOTNOTE 1) section 1818 of this title, by the Director of the Office of Thrift Supervision, in the case of a savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and a savings and loan holding company;

(FOOTNOTE 1) So in original. Text reading "(2) section 1818 of this title, by the Director" probably should read "(D) the Director".

(2) the term "regulated financial institution" means an insured depository institution (as defined in section 1813 of this title); and

(3) the term "application for a deposit facility" means an application to the appropriate Federal financial supervisory agency otherwise required under Federal law or regulations thereunder for -

(A) a charter for a national bank or Federal savings and loan association;

(B) deposit insurance in connection with a newly chartered State bank, savings bank, savings and loan association or similar institution;

© the establishment of a domestic branch or other facility with the ability to accept deposits of a regulated financial institution;

(D) the relocation of the home office or a branch office of a regulated financial institution;

(E) the merger or consolidation with, or the acquisition of the assets, or the assumption of the liabilities of a regulated financial institution requiring approval under section 1828© of this title or under regulations issued under the authority of title IV (FOOTNOTE 2) of the National Housing Act (12 U.S.C. 1724 et seq.); or

(FOOTNOTE 2) See References in Text note below.

(F) the acquisition of shares in, or the assets of, a regulated financial institution requiring approval under section 1842 of this title or section 408(e) (FOOTNOTE 2) of the National Housing Act (12 U.S.C. 1730a(e)).

(4) A financial institution whose business predominately consists of serving the needs of military personnel who are not located within a defined geographic area may define its "entire community" to include its entire deposit customer base without regard to geographic

proximity.

In the United States Court of Appeals

District of Columbia Circuit

UNITED STATES CODE

TITLE 12 - BANKS AND BANKING

CHAPTER 30 - COMMUNITY REINVESTMENT

§ 2903. Financial institutions; evaluation

(a) In general

In connection with its examination of a financial institution, the appropriate Federal financial supervisory agency shall -

(1) assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution; and

(2) take such record into account in its evaluation of an application for a deposit facility by such institution.

(b) Majority-owned institutions

In assessing and taking into account, under subsection (a) of this section, the record of a nonminority-owned and nonwomen-owned financial institution, the appropriate Federal financial supervisory agency may consider as a factor capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and

women-owned financial institutions and low-income credit unions provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered.

UNITED STATES CODE

TITLE 12 - BANKS AND BANKING

CHAPTER 30 - COMMUNITY REINVESTMENT

§ 2906. Written evaluations

(a) Required

(1) In general

Upon the conclusion of each examination of an insured depository institution under section 2903 of this title, the appropriate Federal financial supervisory agency shall prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods.

(2) Public and confidential sections

Each written evaluation required under paragraph (1) shall have a public section and a confidential section.

(b) Public section of report

(1) Findings and conclusions

The public section of the written evaluation shall -

(A) state the appropriate Federal financial supervisory agency's conclusions for

each assessment factor identified in the regulations prescribed by the Federal financial supervisory agencies to implement this chapter;

(B) discuss the facts and data supporting such conclusions; and

© contain the institution's rating and a statement describing the basis for the rating.

(2) Assigned rating

The institution's rating referred to in paragraph (1)(C) shall be 1 of the following:

(A) "Outstanding record of meeting community credit needs".

(B) "Satisfactory record of meeting community credit needs".

© "Needs to improve record of meeting community credit needs".

(D) "Substantial noncompliance in meeting community credit needs". Such ratings shall be disclosed to the public on and after July 1, 1990.

© Confidential section of report

(1) Privacy of named individuals

The confidential section of the written evaluation shall contain all references that identify any customer of the institution, any employee or officer of the institution, or any person or organization that has provided information in confidence to a Federal or State financial supervisory agency.

(2) Topics not suitable for disclosure

The confidential section shall also contain any statements obtained or made by the appropriate Federal financial supervisory agency in the course of an examination

which, in the judgment of the agency, are too sensitive or speculative in nature to disclose to the institution or the public.

(3) Disclosure to depository institution

The confidential section may be disclosed, in whole or part, to the institution, if the appropriate Federal financial supervisory agency determines that such disclosure will promote the objectives of this chapter. However, disclosure under this paragraph shall not identify a person or organization that has provided information in confidence to a Federal or State financial supervisory agency.

In the United States Court of Appeals

District of Columbia Circuit

UNITED STATES CODE

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE

PART IV - JURISDICTION AND VENUE

CHAPTER 81 - SUPREME COURT

§ 1253. Direct appeals from decisions of three-judge courts

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

In the United States Court of Appeals

District of Columbia Circuit

UNITED STATES CODE

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE

PART IV - JURISDICTION AND VENUE

CHAPTER 81 - SUPREME COURT

§ 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

In the United States Court of Appeals

District of Columbia Circuit

UNITED STATES CODE

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE

PART V - PROCEDURE

CHAPTER 123 - FEES AND COSTS

§ 1915. Proceedings in forma pauperis

(a) Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b) Upon the filing of an affidavit in accordance with subsection (a) of this section, the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under

section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

© The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(d) The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.

(e) Judgment may be rendered for costs at the conclusion of the suit or action as in other cases, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.