UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Office of
Legislative Affairs

June 24, 1994

Elisse J. Hoffman
Timothy J. Forde
Counsel
Subcommittee on Telecommunications & Finance
U.S. House of Representatives
316 Ford House Office Building
Washington, DC 20515

Dear Elisse and Tim,

In response to Tim's earlier request for technical assistance, Commission staff has prepared the attached timeline of bank securities activities in connection with the Subcommittee's consideration of HR 3447, the functional regulation bill. The timeline contains important developments affecting bank securities activities and the securities market generally. It is current as of May 1994.

I hope the table will be a useful resource. If you have any questions, please give us a call.

Sincerely,

Kathryn Fulton
Director

cc: Consuela Washington
Stephen Blumenthal
Peter Rich

TIMELINE OF BANK SECURITIES ACTIVITIES

The following is a chronology of developments affecting bank securities activities. In addition to such developments, the timeline includes some important historical developments in the securities market generally.1/

1875

The Supreme Court holds that the National Bank Act ("NBA") impliedly prohibits banks from engaging in stock trading and, therefore, bars national banks from buying and selling corporate securities for profit in the ordinary course of business. First National Bank v. National Exchange Bank, 92 U.S. 122 (1875). However, the prohibitions are not held to affect purchases resulting from ordinary bank transactions. Id. at 128; see also National Bank v. Case, 99 U.S. 628 (1879).

The Supreme court holds that national banks can only exercise powers expressly granted by the NBA, or such incidental powers as are necessary to carry on the business of banking. Logan County National Bank v. Townsend, 139 U.S. 67 (1891). Applying this principle, the Supreme Court subsequently determines that a national bank does not have the power to purchase the stock of another corporation or otherwise deal in such stock. California National Bank v. Kennedy, 167 U.S. 362 (1897).

Some courts interpret the NBA's language -- "by discounting and negotiating promissory notes... and other evidences of debt" -- more broadly to include an implied power for national banks to invest in state, municipal, and corporate bonds.

1/ In compiling this timeline, an attempt was made to address some of the major developments affecting bank securities activities. However, the timeline may not be comprehensive. This timeline covers developments through May 4, 1994.

Sources for this timeline include the following: Fein, Melanie L. and Schonfeld, Victoria E., "Mutual Fund Activities of Banks," Prentice Hall Law & Business, Englewood Cliffs, New Jersey (1993); Pitt, Harvey L., Miles, David M. and Ain, Anthony, "The Law of Financial Services," (Vol. 1), Prentice Hall Law & Business, Clifton, New Jersey (1992-1 Supplement); "Seventh Annual Institute: Securities Activities of Banks," Fitzgerald, Richard V., Goelzer, Daniel L., and Levenson, Alan B., Co-Chairmen, Prentice Hall Law & Business, Clifton, New Jersey (1987).

First National Bank v. Bennington, 9 F. Cas. 97 (C.C.D. Vt. 1879) (No. 4807); Newport National Bank v. Newport Board of Education, 114 Ky. 87, 70 S.W. 186 (1902).

1902

The Comptroller concludes that, while national banks can hold bonds and participate in bond flotations, the NBA does not permit national banks to participate in the underwriting and distribution of equity securities. See 2 F. Redlich, the "Molding of American Banking -- Men and Ideas" 389 (1951).

1902-03

National banks begin using securities affiliates chartered under state law to engage in activities prohibited under the Comptroller's 1902 ruling. The affiliates are not subject to federal regulation and engage in a wide range of securities activities, including the underwriting of corporate stock. The first securities affiliate is formed by the First National Bank of Chicago.

1909

OCC adopts an interpretation of the NBA that permits national banks to invest in state, municipal, and corporate bonds. The Comptroller also permits national banks to participate in the distribution of and to deal in other new securities to the extent that national banks are permitted to invest in such securities for their own accounts. See 1909 Annual Report of the Comptroller of the Currency at 8-9.

1912

Congress establishes the Pujo Committee to recommend changes in the monetary and banking system to prevent banking panics such as occurred in 1907. The Committee concludes that purchases and sales of equity securities by national banks are illegal and should be prohibited. See generally United States v. Morgan, 118 F. Supp. 621, 635-50 (S.D.N.Y. 1953).

No action is taken on the recommendation of the Pujo Committee to limit the underwriting activities of national banks.

1915

Federal Reserve Board promulgates Regulation F, which authorizes national banks to exercise trust powers to the same extent as state banks. 1 Fed. Res. Bull. 43 (1915).

1920

The Federal Reserve Board tacitly endorses the legality of bank securities affiliates by permitting state-chartered banks and trust companies to become members of the Federal Reserve System without requiring them to divest such affiliates.

At this time, some 750 commercial banks are affiliated with securities companies. See S.E. Kennedy, "The Banking Crisis of 1933" 111 (1973).

The Comptroller voices concern over the investment activities of national banks and the close connection between the securities affiliates and the banks. See Comptroller of the Currency, Annual Report 55 (1920).

1924

First U.S. open-end investment company ("mutual fund") is organized. See SEC, Investment Trusts and Investment Companies, H.R. Doc. No. 279, 76th Cong., 1st Sess., pt. 1, 101 (1939).

1925

Senator Glass challenges the authority of the national banks' security affiliates under the NBA during committee hearings on legislation leading to enactment of the McFadden Act. See Hearings on the Consolidation of the National Banking Association Before the Senate Comm. on Banking and Currency, S. 3316, 68th Cong. 2d Sess. 111 (1925).

1927

First common trust fund is established.

McFadden Act is passed. The legislation recognizes and authorizes the practice of national banks engaging in the buying and selling of securities instead of granting national banks a new power. See No. 83, 69 Cong., 1st Sess., 2-4 (1926); No. 473 (March 25, 1966, 6-7). Congress also modifies existing law by giving the Comptroller authority to determine the types of securities that national banks are permitted to underwrite. See Act of Feb. 25, 1927, ch. 191, § 2(b), 44 Stat. 1224, 1226 (codified as amended at 12 U.S.C. § 24(Seventh)).

The affiliate system of national banks continues after the passage of the McFadden Act.

1929

Stock market collapses and thousands of banks fail prompting Congressional hearings on the involvement of banks in securities activities. Senator Glass charges that banks had evaded the prohibitions of the NBA through their securities affiliates.

1930

By this date, securities affiliates are sponsoring 54.4% of all new securities issues. (See Banking Crisis at 212). Banks and bank affiliates also claim a 61% market share of new bond issue participations. See E. J. Perkins, The Divorce of Commercial and Investment Banking, 88 Banking L.J. 483 at 495, 527 (1971).

1932-34

Banking crisis results in declaration of a bank holiday in March 1933. The bank holiday, combined with revelations in the Pecora hearings investigating the investment and commercial banking businesses, galvanizes support for reform of the banking structure.

Congress enacts the Banking Act of 1933, which includes provisions applicable to bank securities activities commonly known as the "Glass-Steagall Act." The Glass-Steagall Act confirms that banks, subject to limited exceptions, may not engage directly in investment banking activities, and also makes it illegal for national and member banks to affiliate with organizations "principally engaged" in such activities.

Congress, in order to promote bank depositor confidence in the banking system, establishes a program of federal deposit insurance. Act of June 16, 1933, ch. 89, § 8, 46 Stat. 162, 168-80 (codified as amended at 12 U.S.C. §§ 1811 - 1832); see H.R. Rep. No. 150, 73d Cong., 1st Sess. 5-7 (1933); S. Rep. No. 77, 73d Cong., 1st Sess. 12 (1933).

Congress, in order to promote investor confidence in the securities markets, enacts the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act"). Congress excludes banks from most provisions of the federal securities laws.

The Securities and Exchange Commission ("Commission") is established.

1935

Congress directs the Commission to conduct a study of investment companies.

1936

The Comptroller expresses the opinion that national banks can purchase and sell securities only for existing customers of the bank and have to receive prior payment or have assets of the customer on hand to cover the transaction. Transactions are to be taken as accommodations to the existing customers, and compensation is limited to the fair cost of handling the transaction. See 1 Bull. of the Comptroller of the Currency, No. 2, at 2-3 (Oct. 26, 1936) (These views were codified in paragraph 220 of the Comptroller's first Digest of Opinions in 1948).

Second Circuit rules that a common trust fund is an "association" for federal income tax purposes and, thus, subject to corporate income tax. Brooklyn Trust Company v. Commissioner of Internal Revenue, 80 F.2d 865 (2d Cir.), cert. denied, 298 U.S. 659 (1936).

Congress, in response to requests by the banking industry, amends the Internal Revenue Code to grant, subject to certain conditions, tax-exempt status to common trust funds maintained by banks. Internal Revenue Code of 1936, ch. 690 § 169, 49 Stat. 1708 (1936).

1937

Federal Reserve Board, in order to implement 1936 amendments to the Internal Revenue Code, amends Regulation F to authorize banks to commingle in common trust funds the assets of pre-existing individual trusts created for fiduciary purposes. 2 Fed. Reg. 2976 (1937).

1938

Congress enacts the Maloney Act, which provides for the registration of national securities associations.

National Association of Securities Dealers ("NASD") is established and over-the-counter securities brokers and dealers are subjected to a regulatory and supervisory scheme.

The Commission submits the first volume of its report to Congress on investment companies. H.R. Doc. No. 707, 75th Cong., 3d Sess. (1938).

1939

The Commission submits additional volumes of its report to Congress regarding investment companies and common trust funds. H.R. Doc. Nos. 70, 279, 380, 76th Cong. 1st Sess. (1939); H.R. Doc. Nos. 476, 477, 76th Cong., 2d Sess. (1939).

1940

Congress enacts Investment Company Act of 1940 ("ICA") and Investment Advisers Act of 1940 ("IAA"). ICA exempts commercial banks from its provisions, in that it does not apply the investment company limitations to "[a]ny bank," to "any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of money contributed thereto by the bank in its capacity as a trustee, executor, administrator or guardian or to any collective investment funds." 15 U.S.C. § 80a-3(c)(3). The IAA excludes banks from the definition of investment adviser. Banks that provide investment advice, therefore, are not required to register or comply with the IAA. 15 U.S.C. § 80b-2(a)(11).

Federal Reserve Board rules that banks may only invest bona fide fiduciary accounts in common trust funds; that banks may not use or promote common trust funds as investment funds. 26 Fed. Res. Bull. 393 (1940); see also 41 Fed. Res. Bull. 142 (1955) and 42 Fed. Res. Bull. 228 (1956).

1942

Congress revises tax treatment of regulated investment companies. Internal Revenue Act of 1942, 56 Stat. 878 (1942).

1955

Federal Reserve Board permits banks to invest assets of tax qualified employee benefit plans collectively. See Collective Investment Trust Funds, 20 Fed. Reg. 3305 (1955).

1956

Congress enacts the Bank Holding Company Act ("BHCA") (12 U.S.C. §§ 1841-1850), which generally requires bank holding companies and their subsidiaries to limit their activities to banking activities or to activities that are closely related to banking.

1959

Supreme Court holds that the Commission has authority to treat a variable life insurance contract as a security within the

meaning of the Securities Act. SEC v. Variable Life Insurance Company of America, 359 U.S. 65 (1959) ("VALIC").

1962

Congress transfers the authority to issue regulations governing the exercise of fiduciary powers by national banks from the Federal Reserve Board to the OCC. See Act of Sept. 28, 1962, Pub. L. 87-722 § 1, 76 Stat. 668 (codified as amended at 12 U.S.C. § 92a).

1963

Commission completes a Congressionally-mandated Special Study of the Securities Markets ("Special Study") undertaken in 1961. (Pub. L. No. 87-196, 75 Stat. 465 (1961)). The Special Study discovers from the results of one of its questionnaires that bank securities constitute a significant segment of the over-the-counter market in the early 1960s. The Commission recommends in the Special Study that banks be included in the statutory pattern of federal securities regulation. This recommendation leads to the enactment of the Securities Acts Amendments of 1964, which, among other things, adds section 12(i) to the Exchange Act. See SEC, Report of Special Study of Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess. 36 (1963).

Commission determines that common trust funds may not rely on federal securities law exemptions applicable to banks if the funds use or are promoted by "vehicles for general investment by the public." Therefore, if a common trust fund is advertised, it may not be exempted under the federal securities laws. See, ICA Release No. 3648 (Mar. 11, 1963); see also, Bankcal Capital Management Corp., SEC No-Action Letter (avail. Dec. 4, 1974).

OCC's Digest of Opinions is superseded by the Comptroller's Manual for National Banks and all provisions limiting the securities brokerage activities of national banks are deleted.

OCC adopts trust regulations (12 CFR Part 9) that liberalize common trust fund requirements for national banks. Regulation 9, among other things, eliminates the requirement of a "true fiduciary purpose" for accounts participating in common trust funds. 28 Fed. Reg. 3309 (1963).

OCC and the Commission participate in Congressional hearings on bank common trust funds.

1966

Citibank establishes common trust fund consisting of managing agency accounts, and registers it as an investment company with the Commission. In the Matter of First National City Bank (Commingled Investment Account) 42 SEC 924 (1966).

The Commission publishes "A Report on the Public Policy Implications of Mutual Fund Growth."

1968

Fifth Circuit holds that a national bank does not have authority to operate a general life and casualty insurance agency; that the grant of insurance agency powers in the NBA (12 U.S.C. § 92) implicitly prohibits national banks not located in small towns from selling fire, life, or other general insurance. Saxon v. Georgia Association of Insurance Agents, 399 F.2d 1010 (5th Cir. 1968).

1970

Congress enacts Investment Company Act amendments of 1970, which, among other things, exempt collective investment funds for tax-qualified corporate-sponsored employee benefit plans and H.R. 10 plans from the requirements of the Act. See ICA Amendments of 1970, Pub. L. No. 91-547; 84 Stat. 1413 (codified as amended at 15 U.S.C. § 80a-3(c)(11)). Congress also amends the Securities Act to create a statutory exemption for interests in collective investment funds for corporate-sponsored plans, but not for interests in collective investment funds for H.R. 10 plans (codified as amended at 15 U.S.C. § 77c(a)(2)).

1971

Supreme Court holds that a national bank is prohibited under §§ 16 and 21 of the Glass-Steagall Act from sponsoring, underwriting or distributing the shares of an open-end investment company. Investment Company Institute v. Camp, 401 U.S. 617 (1971).

First "index" fund is established.

First money market mutual fund is introduced.

1972

Federal Reserve Board amends Regulation Y to forbid a bank holding company to sponsor, organize, or control a mutual fund. However, the Board rules that a bank holding company may act as an investment adviser and sponsor to closed-end

investment companies. The Supreme Court will later uphold the Board's ruling in Board of Governors v. Investment Company Institute, 450 U.S. 46 (1981) (See Timeline 1981).

1974

Congress enacts the Employee Retirement Income Security Act of 1974 ("ERISA"), which amends the Internal Revenue Code to authorize investments in Individual Retirement Accounts ("IRAs"). Pub. L. No. 93-4406, 88 Stat. 829 (codified at 29 U.S.C. §§ 1001-1461).

Federal Reserve Board takes position that, in view of the potential conflicts of interest, a bank holding company should not: (1) purchase for its own account securities of a fund advised by a non-bank holding company subsidiary, or (2) purchase in its sole discretion any such securities in a fiduciary capacity (including as managing agent). Fed. Banking L. Rep. (CCH) ¶ 96,202 (Mar. 8, 1974).

Commission solicits public comment on a variety of bank-sponsored investment services that are comparable to services offered by broker-dealers, investment advisers and investment companies, but generally are not subject to regulation under the federal securities laws. The Commission seeks comment to provide the factual basis on which to determine whether existing regulations governing bank equity security investment services are adequate to protect the interests of investors. SEC Release Nos. 5491, 10,761, 8336 and 409 (April 30, 1974).

OCC rejects its longstanding interpretation that the Glass-Steagall Act prohibits banks from engaging in brokerage activities beyond traditional accommodation services for existing customers. Stating that "the 'accommodation' concept is not contained in the statute and we now believe the ...[earlier] opinions to be erroneous," the OCC authorizes national banks to offer automatic investment service ("AIS") programs to the public. Letter from James E. Smith, Comptroller of the Currency, to G. Duane Vieth, Fed. Banking L. Rep. (CCH) ¶ 96,272 (June 10, 1974).

1975

Congress enacts Securities Law Amendments of 1975 including, inter alia, requirements for the registration and regulation of transfer agents, clearing agencies, and municipal securities brokers and dealers, and establishing a national market system. As a result of these amendments, bank transfer agents and municipal securities dealers become subject to a federal securities law regulatory scheme with respect to their activities, with shared jurisdiction vested both in the Commission and the bank regulatory agencies.

Commission staff determines that a bank collective trust fund that includes assets of individual retirement accounts must register as an investment company. See Continental Illinois National Bank and Trust Company of Chicago (pub. avail. April 28, 1975), reconsideration denied (pub. avail. Jan. 19, 1976).

Congress recognizes that collective trust funds for IRAs are not excepted from the provisions of the securities laws. See Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, "Study Outline: The Securities Activities of Commercial Banks," 94th Cong., 1st Sess. 13 (1975).

1977

Federal Reserve Board issues a study that concludes that the private placement of all types of debt or equity securities directly by a bank does not violate sections 16 and 21 of the Glass Steagall Act. In particular, the Board's staff concludes that such activity is not "underwriting" for purposes of the Glass-Steagall Act because the term "underwriting" in the Glass-Steagall Act connotes a public offering of securities and a private placement does not involve a public offering. See "Federal Reserve Board Staff Study, Commercial Bank Private Placement Activities" (June 1977).

The Commission issues a Report on Bank Securities Activities ("Bank Study") that recommends the enactment of legislation that would require the federal banking agencies to: (1) adopt and enforce, in consultation with the Commission, specific rules governing the conduct of banks engaged in securities activities, with a mandate to provide investor protection; (2) ensure that bank employees and examiners receive training in the securities laws and practices; (3) consult regularly with the Commission regarding their securities examination programs, and (4) advise the Commission of actual or potential violations of federal securities laws. See "Report on Bank Securities Activities of the Securities and Exchange Commission Pursuant to Section 11A of the Securities and Exchange Act of 1934" (P.L. 94-29), August 1977.

OCC authorizes a national bank to sell mortgage-backed securities. The bank may sell participations in a pool of the bank's mortgages to institutional investors through the issuance of pass-through certificates. Letter of Robert Bloom, Acting Comptroller of the Currency , reprinted in Fed. Banking L. Rep. (CCH) ¶ 97,093 (Mar. 29, 1977).

1978

Federal Reserve Board authorizes bank holding companies to engage in underwriting of bank-eligible securities. United

Bancorp, Inc., 64 Fed. Res. Bull. 222 (1978); see also Steppe, Inc., 64 Fed. Res. Bull. 223-24. (1978).

OCC approves the sale by a national bank of a pool of conventional mortgages through the issuance of pass-through certificates, and the marketing by bank employees of the certificates in private placements. OCC Interpretive Letter No. 25, reprinted in Fed. Banking L. Rep. (CCH) ¶ 85,100 (Feb. 14, 1978).

1979

In response to the Commission's Bank Study, the federal banking regulators adopt limited recordkeeping and confirmation requirements in connection with securities transactions effected by banks for their customers. (12 CFR §§ 12.1-7 (OCC); 208.8(k) (Federal Reserve Board); 344.1-7 (FDIC)) See 44 Fed. Reg. 43,254 (1979) (The other recommendations of the bank study were not implemented).

Commission staff concludes that bank common trust funds for IRA assets generally must be registered under the ICA. See e.g., Millikin National Bank of Decatur (pub. avail. Mar. 31, 1979); First National Bank of Peoria (pub. avail. Aug. 4, 1979).

1980

Federal Reserve Board determines that the restrictions of the Glass-Steagall Act against underwriting and dealing in securities do not apply to commercial paper because commercial paper is not a security within the meaning of the Act. Board of Governors, "Statement Regarding Determination Not to Initiate Enforcement Action." (Sept. 26, 1980).

1981

Federal Reserve Board issues a policy statement setting forth guidelines under which state member banks may conduct commercial paper activities. (Board of Governors, "Policy Statement Concerning the Sale of Commercial Paper by State Member Banks," 46 Fed. Reg. 29,333 (1981)). A.G. Becker and the Securities Industry Association ("SIA") sue the Federal Reserve in U.S. District Court, seeking to overturn the Board's commercial paper ruling; the court enters summary judgment on behalf of plaintiffs, concluding that Congress had intended to include instruments such as commercial paper within the Glass-Steagall Act's prohibitions. A.G. Becker, Inc. v. Board of Governors of the Federal Reserve System, 519 F. Supp. 602 (D.D.C. 1981). The D.C. Circuit reverses the court's holding, 639 F.2d 136 (D.C. Cir. 1982). (See Timeline 1982); the U.S. Supreme Court reverses the D.C. Circuit, SIA

v. Board of Governors of the Federal Reserve System, 468 U.S. 137 (1984) (See Timeline 1984).

U.S. Supreme Court holds that the prohibitions of Glass-Steagall Act do not prohibit a bank or bank holding company from serving as investment adviser to a closed-end investment company. Board of Governors v. Investment Company Institute, 450 U.S. 46 (1981).

OCC approves a national bank providing advisory services in connection with a private placement of an industrial revenue bond issue. OCC Interpretive Letter No. 212, Fed. Banking L. Rep. (CCH) ¶ 85,293 (July 2, 1981).

1982

Congress enacts legislation directing the Depository Institutions Deregulation Committee to create a new insured deposit account directly equivalent to and competitive with money market funds.

D.C. Circuit rules that the Federal Reserve was within its authority to permit a bank to act as agent in the sale of commercial paper. According to the D.C. Circuit, commercial paper has the traditional characteristics of a commercial loan, and commercial paper placement does not give rise to the hazards the Glass-Steagall Act was designed to prevent. A.G. Becker, Inc. v. Board of Governors of the Federal Reserve System, 639 F.2d 136 (D.C. Cir. 1982). The U.S. Supreme Court reverses the D.C. Circuit ruling in SIA v. Board of Governors of the Federal Reserve System, 468 U.S. 137 (1984) (See Timeline 1984).

Commission issues no-action letter stating that a thrift may not be required to register a separate broker-dealer if it enters into a "networking" arrangement with a registered broker-dealer under which the broker-dealer contracts to perform securities activities in a segregated area of the thrift, provided that the arrangement is fully subject to the securities laws, that adequate measures are taken to make it clear that the broker-dealer and not the thrift is offering the service, and the Commission and SROs are permitted to inspect the area where the services are offered. Letter dated July 8, 1982, from Jeffrey L. Steele, Associate Director, Division of Market Regulation, to Savings Association Investment Securities, Inc. (later known as INVEST, a service of ISFA Corporation).

FDIC issues a policy statement, which concludes that the securities activities of a bona fide subsidiary of an insured nonmember bank are not prohibited by the Glass-Steagall Act. Statement of Policy on the Applicability of Glass-Steagall Act

to Securities of Insured Non-Member Banks, FDIC News Release PR-72-82 (Sept. 3, 1982), 47 Fed. Reg. 38,984 (1982).

OCC rules that a national bank may offer discount brokerage services through an operating subsidiary without violating the Glass-Steagall Act. The OCC notes that although Section 16 of Glass-Steagall Act specifically prohibits purchases and sales of stock by banks acting as principal, the Act on its face permits those securities purchases and sales for customers in which the bank acts in the capacity of agent. See Decision of the Comptroller of the Currency on the Application of Security Pacific National Bank to establish an Operating Subsidiary, reprinted in Fed. Banking L. Rep. (CCH) ¶ 99,284 (August 26, 1982).

OCC authorizes Citibank to establish and underwrite shares of a common trust fund comprised of commingled IRAs' trust assets, called the Collective Investment Trust ("CIT"). The Comptroller states that national banks, consistent with ERISA, may collectively invest funds in a common trust fund if the bank is acting in a fiduciary capacity, such as trustee, or if the fund is comprised solely of tax-exempt trusts. Decision of the Comptroller to Establish Common Trust Funds for Collective Investment of IRA Trusts Exempt from Taxation under IRC of 1954 § 408. 1 OCC Qtrly. J. No. 4 (December 1982). The Investment Company Institute ("ICI") challenges the Comptroller's decision to allow national banks to establish and market a trust for assets of IRAs. The District Court grants the Comptroller's motion for summary judgment, and ICI appeals. Investment Company Institute v. Conover, 596 F. Supp. 1496 (D.D.C. 1984). The Court of Appeals affirms the decision of the District Court, 790 F.2d 925 (D.C. Cir. 1986) (See Timeline 1986). (CIT registers as an investment company in 1982.)

1983

Over 600 banks have entered the discount brokerage business by early 1983. See Speech of SEC Commissioner Treadway, Georgia Southern University, Stetsboro Georgia (April 7, 1983), transcript at 6.

Federal Reserve Board Order authorizes BankAmerica Corporation to offer discount brokerage services by acquiring Charles Schwab & Co., the nation's largest discount broker. Schwab offers various services, including "sweep" arrangements whereby idle customer balances exceeding a predetermined minimum are automatically invested in an unaffiliated money market mutual fund. The Federal Reserve Board determines that the "sweep" arrangement is closely related to banking and incidental to Schwab's securities brokerage activities. 69 Fed. Res. Bull. 105 (1983); Fed. Banking L. Rep. (CCH) ¶

99,475. The Securities Industry Association ("SIA") petitions for judicial review of the Board's order. SIA contends that the acquisition of Schwab violates both the Glass-Steagall Act and the BHCA. The Second Circuit upholds the Federal Reserve Board's approval of the Schwab acquisition in Securities Industry Association v. Board of Governors, 716 F.2d 92 (2d Cir. 1983). The Supreme Court affirms the decision of the Court of Appeals, 468 U.S. 207 (1984) (See Timeline 1984).

OCC permits national banks to underwrite and deal in certain mortgage-backed, pass-through certificates where the pool of loans consists of obligations expressly eligible under section 24(Seventh) of the NBA. OCC Interpretive Letter No. 257, Fed. Banking L. Rep. (CCH) ¶ 85,421 (April 12, 1983).

OCC sets forth guidelines for national banks purchasing and selling financial futures and options on bank eligible instruments for their own account. Banking Circular 79, "National Bank Participation in the Financial Futures and Forward Placement Markets, " (3rd Rev., April 19, 1983).

OCC approves (against the Federal Reserve Board's opposition) national bank charters for subsidiaries of mutual fund advisers. See Decision of the Comptroller of the Currency on the Application to Charter J. & W. Seligman Trust Company, N.A., 2-2 OCC Qtrly. J. 33 (June 1983); Decision of the Comptroller of the Currency to Charter Dreyfus National Bank & Trust Company, 2-2 OCC Qtrly. J. 41 (June 1983). See also Letter from William W. Wiles, Secretary of the Board of Governors of the Federal Reserve System, to C.T. Conover, Comptroller of the Currency (Dec. 14, 1982); Letter from A. Marshall Puckett, Vice President, Federal Reserve Bank of New York, to William H. Hazen, President, J. & W. Seligman Trust Co. (Mar. 28, 1983).

Federal Reserve Board amends Regulation Y's "laundry list" of permissible activities to allow bank holding companies to provide securities brokerage services and related securities lending activities, provided that securities underwriting or dealing or investment advice or research services are not included. 48 Fed. Reg. 37,003 (1983).

OCC issues Banking Bulletin (BB-83-58) permitting national bank investment in money-market mutual funds whose portfolios consist wholly of bank eligible instruments.

OCC allows a national bank to establish an operating subsidiary to provide specific types of investment advice to individual and institutional clients. The Comptroller authorizes the bank's investment advisory subsidiary to refer its customers to the bank's brokerage subsidiary, thereby linking the bank's investment advisory and brokerage services.

Decision of Comptroller concerning American National Bank of Austin, Texas to Establish an Operating Subsidiary to Provide Investment Advice, Fed. Banking L. Rep. (CCH) ¶ 99,732 (September 6, 1983).

OCC announces that national banks should not effect securities transactions for trust accounts that they administer through an affiliated broker unless such transactions are performed without profit. Trust Banking Cir. 23 (Oct. 4, 1983), Fed. Banking L. Rep. (CCH) ¶ 60,575.

FDIC permits bank discount brokerage of shares of closed-end fund that was not an advised fund. FDIC Advisory Letter No. 83-14, Fed. Banking L. Rep. ¶ 81,159 (Oct. 11, 1983).

FDIC allows a trust department to share in commissions paid to an affiliated broker for securities transactions respecting trust accounts only if the trust instrument expressly authorizes the bank trustee to share in commissions and the settlor of the trust enters into the authorization after full disclosure of the facts. FDIC Advisory Opinion No. 83-17, Fed. Banking L. Rep. ¶ 81,014 (Nov. 3, 1983).

1984

The Task Group on Regulation of Financial Services ("Task Group") reviews the federal system for regulating financial services and publishes its recommendations for legislative changes. The Task Group, chaired by Vice President Bush, recommends major changes in the structure of federal bank regulation that include a proposal to implement the functional regulation of securities matters. Specifically, the Task Group recommends making the registration requirements of the Securities Act applicable to publicly offered securities of banks and thrifts (but not deposit instruments) and transferring to the Commission the administration and enforcement authorities granted to bank and thrift regulatory agencies under Section 12(i) of the Exchange Act. See "Blueprint for Reform: The Report of the Task Group on Regulation of Financial Services." Washington, D.C. (July 2, 1984).

OCC allows national banks to act as investment advisers to mutual funds pursuant to their fiduciary powers and based on conclusion that the provision of investment advice is an activity incidental to banking. OCC Interpretive Letter No. 298, Fed. Banking L. Rep. (CCH) ¶ 85,468 (Aug. 24, 1984).

FDIC adopts regulations setting forth conditions under which state nonmember banks can engage in a broad range of securities activities, including mutual fund activities, through "bona-fide" securities subsidiaries. A bona fide

subsidiary is defined as a physically separate operation that has separate records, employees and capitalization. 49 Fed. Reg. 46,723 (1984), codified at 12 CFR § 337.4. U.S. District Court upholds FDIC's regulations, Investment Company Institute v. Federal Deposit Insurance Corporation, 606 F. Supp. 683 (D.D.C. 1985) (See Timeline 1985).

FDIC concludes that a bank may broker units of several unit investment trusts ("UITs") with a single sponsor and underwriter and receive commissions from the underwriter on each order executed without violating the Glass-Steagall Act. FDIC Advisory Opinion No. 84-20 (Nov. 1, 1984), Fed. Banking L. Rep. (CCH) ¶ 81,089.

U.S. Supreme Court upholds the Federal Reserve Board's order in the Schwab case to allow a nonbank subsidiary of a bank holding company to conduct discount brokerage activity categorized as being "closely related" to banking. Securities Industry Association v. Board of Governors, 468 U.S. 207 (1984).

U.S. Supreme Court (reversing D.C. Circuit) holds that commercial paper is a security within the plain meaning of the Glass-Steagall Act, and must be treated as such for purposes of the Act's prohibitions. (The Supreme Court viewed the inclusion of commercial paper within the definition of "security" in the Securities Act, enacted two weeks before the Glass-Steagall Act, as confirming this conclusion.) SIA v. Board of Governors of the Federal Reserve System, 468 U.S. 137 (1984) ("Bankers Trust I").

1985

OCC issues a no-objection letter to national banks participating in "INVEST"-type arrangements, under which a third party broker-dealer leases space in the national bank to provide, through dual employees of the bank and the broker-dealer, limited brokerage and investment advisory services. Letter from Richard Fitzgerald to Thomas Russo, June 4, 1985, reprinted in 4-3 OCC Qtrly. J. 67 (Sept. 1985).

OCC authorizes national banks to participate in brokering variable annuity contracts. The OCC concludes that variable annuity contracts are securities, functionally resembling shares in a mutual fund, and that national banks are authorized pursuant to the NBA (12 U.S.C. § 24(Seventh)), to buy and sell them for the account of customers. OCC Interpretive Letter No. 331, Fed. Banking L. Rep. (CCH) ¶ 85,501 (April 4, 1985).

OCC authorizes national banks to broker mutual fund shares and offer a variety of administrative and shareholder services

with respect to the operation of a mutual fund, such as recordkeeping, order execution functions, and shareholder information. OCC Interpretive Letter No. 332, Fed. Banking L. Rep. (CCH) ¶ 85,502 (March 8, 1985).

OCC approves a national bank's provision of brokerage and financial planning services to its customers. OCC Interpretive Letter No. 353, Fed. Banking L. Rep. (CCH) ¶ 85,523 (July 30, 1985).

OCC authorizes national banks to provide stock quotation and transaction services. OCC Interpretive Letter No. 346, Fed. Banking L. Rep. (CCH) ¶ 85,516 (July 31, 1985).

FDIC states that customer authorization alone would not necessarily be sufficient to remove potential conflicts of interest when a bank employs its own brokerage department to effect transactions on behalf of trust accounts held by the bank and receives a fee for such services. FDIC Advisory Opinion No. 85-10, Fed. Banking L. Rep. (CCH) ¶ 81,115 (May 21, 1985).

Federal Reserve Board approves bank holding company's application to provide through a nonbank subsidiary: (1) discount brokerage; (2) underwriting and dealing in certain governmental obligations and money market instruments which a bank may underwrite and deal in ("bank-eligible securities") and (3) investment advice relating only to such bank-eligible securities. (December 20, 1985).

U.S. District Court of D.C. upholds FDIC's rule authorizing state nonmember banks to establish bona fide securities subsidiaries. Investment Company Institute v. Federal Deposit Insurance Corporation, 606 F. Supp. 683 (D.D.C. 1985), aff'd, 815 F.2d 1540 (D.C. Cir), cert denied, 484 U.S. 847 (1987).

The Commission adopts Rule 3b-9, which requires banks engaged in public brokerage business to register as broker-dealers with the Commission. 50 Fed. Reg. 28,385 (1985). The Commission announces that it will liberally grant temporary exemptions to banks that are unable to comply with the rule by its effective date (Jan. 1, 1986), despite a good faith effort to do so. 50 Fed. Reg. 52,440 (1985).

The American Bankers Association ("ABA") sues the Commission asking that Rule 3b-9 be declared unlawful and that a permanent injunction be issued against its operation. Complaint for Declaratory Judgement and Injunctive Relief, American Bankers Association v. Securities & Exchange Commission ("ABA v. SEC"), No. 85-2482 (D.D.C., filed Aug. 5, 1985).

U.S. District Court for D.C. issues a bench ruling dismissing the ABA's complaint and upholding the Commission's authority to promulgate Rule 3b-9. Bench Ruling, ABA v. SEC, No. 85-2482 (D.D.C. Oct. 30, 1985). The District Court's decision is subsequently reversed by the D.C. Circuit, 804 F.2d 739 (1986) (See Timeline 1986).

1986

Court of Appeals upholds OCC's ruling allowing national banks to offer discount brokerage services to the public through an operating subsidiary. Securities Industry Ass'n v. Comptroller of the Currency, 758 F.2d 739 (D.C. Cir. 1986), cert. denied, 474 U.S. 1054 (1986), rev'd in part on other grounds, 479 U.S. 388 (1987).

Congress enacts Government Securities Act of 1986 ("GSA"), in response to the failures of a number of unregulated government securities dealers between 1975 and 1986. The GSA amends the Exchange Act and establishes, for the first time, a limited scheme of federal regulation of all entities engaged in government securities broker and dealer activities, including bank government securities dealers.

Federal Reserve Board approves a combination of investment advisory services and securities brokerage services by a member bank's affiliate. The Board finds that both investment advice and brokerage services are closely related to banking, and that the combination of the two activities does not change the permissibility of either for purposes of the BHCA or the Glass-Steagall Act. National Westminster Bank PLC, 72 Fed. Res. Bull. 584 (1986). D.C. Circuit upholds Federal Reserve Board's Order, Securities Industry Association v. Board of Governors, 821 F.2d 810 (See Timeline 1987).

OCC authorizes national banks to issue, underwrite, and deal in bonds partially collateralized by pools of agency mortgage certificates and/or mortgage loans. OCC No-Action Letter No. 86-9 (May 22, 1986), reprinted in Fed. Banking L. Rep. (CCH) ¶ 85,015.

OCC approves national bank participation in UIT and mutual fund programs, under which banks would make interests in UITs and shares of mutual funds available to their customers, provide certain specified marketing and servicing activities for the UIT or mutual fund, and receive a portion of the sales loan or 12b-1 fees as compensation. OCC Interpretive Letter No. 363, Fed. Banking L. Rep. (CCH) ¶ 85,533 (May 23, 1986).

OCC approves a national bank establishing a subsidiary as a registered futures commission merchant that also offers

investment advisory services. OCC Interpretive Letter No. 356, Fed. Banking L. Rep. (CCH) ¶ 85,535 (August 11, 1986).

Federal Reserve Board authorizes bank holding companies to broker mutual funds. F.R.R.S. § 4-655.

Federal Reserve Board publishes letter authorizing securities brokerage "networking" arrangements between member bank and securities broker. F.R.R.S. § 3-447.11.

Federal Reserve Board permits discount brokerage subsidiary of a bank holding company (Charles Schwab & Co.) to sell its customer lists to the underwriter of a closed-end investment company for a fixed fee and to receive a transaction-related fee based on customers' purchases of shares in such investment company through Schwab. Letter from Michael Bradfield to Margery Waxman, June 5, 1986 (unpublished).

OCC allows two subsidiaries of a national bank to provide advisory or research and brokerage services essentially in tandem. OCC Interpretive Letter No. 367, Fed. Banking L. Rep. (CCH) ¶ 85,537 (August 19, 1986).

OCC authorizes Citibank to engage in riskless principal transactions through its subsidiary, Vickers Da Costa Securities, Inc. OCC Interpretive Letter No. 375, Fed. Banking L. Rep. (CCH) ¶ 85,545 (September 25, 1986).

U.S. Court of Appeals for D.C. reverses the district court's decision in ABA v. SEC. The Court of Appeals invalidates Rule 3b-9, ruling that the Commission has no authority to regulate banks as broker-dealers. (804 F.2d 739 (D.C. Cir. 1986)).

OCC determines that national bank subsidiary may conduct brokerage activities as a riskless principal under section 16 of the Glass-Steagall Act without presenting any of the "hazards" that the Act was designed to prevent. OCC Interpretive Letter No. 371, Fed. Banking L. Rep. (CCH) ¶ 85,541 (December 19, 1986)

OCC concludes that a registered broker-dealer bank subsidiary's securities lending and borrowing activities are incidental to its authorized brokerage activities and margin lending and are, therefore, authorized under the incidental powers clause of 12 U.S.C. § 24(Seventh). OCC Interpretive Letter No. 380, Fed. Banking L. Rep. (CCH) ¶ 85,604 (December 29, 1986).

U.S. Courts of Appeal uphold the OCC's decisions allowing national banks to establish IRA common trust funds that are registered as investment companies. Investment Company Institute v. Conover, 790 F.2d 925 (D.C. Cir.), cert. denied,

479 U.S. 939 (1986); See also, Investment Company Institute v. Clarke, 793 F.2d 220 (9th cir.), cert. denied, 479 U.S. 939 (1986); Investment Company Institute v. Clarke, 789 F.2d 175 (2d Cir.), cert. denied, 479 U.S. 940 (1986) (national bank commingled IRA accounts upheld).

Reversing the District Court's decision that declared Bankers Trust's placement of commercial paper impermissible under the Glass-Steagall Act, the D.C. Circuit holds that placement of third party commercial paper is not underwriting. Securities Industry Association v. Board of Governors, 807 F.2d 1052 (D.C. Cir. 1986), cert. denied, 483 U.S. 1005 (1987) ("Bankers Trust II").

FDIC states that a bank may make mutual funds available to customers and receive compensation under 12b-1 plans as long as the bank does not advise the customer with respect to the purchase of fund shares and the transactions do not involve the bank in a trustee capacity. FDIC Advisory Opinion No. 86-34, Fed. Banking L. Rep. (CCH) ¶ 81,090 (Nov. 21, 1986).

OCC interprets the NBA to authorize a national bank or its branches located in a place of 5,000 or under population, to sell insurance to existing and potential customers located anywhere. See Letter from Judith A. Walter, Senior Deputy Comptroller for National Operations (1986). Trade associations file suit arguing that the Comptroller has exceeded his statutory authority. (See Timeline 1990, National Ass'n. of Life Underwriters v. Clarke, 736 F. Supp. 1162).

1987

Congress passes the Competitive Equality Banking Act ("CEBA") which, among other things, imposes a one-year moratorium on any new bank securities activities. Banks are prohibited from engaging in any securities, insurance, or real estate activities that have not been authorized in writing -- i.e., by statute, regulation, or federal banking agency order -- prior to the start of the moratorium period. The federal banking agencies may approve such activities in the interim, but banks cannot commence the newly-approved activities until after the moratorium expires.

Supreme Court holds that restrictions on branch banking contained in the NBA only apply to core banking functions, not to discount brokerage activity. Clarke v. Securities Industry Association, 479 U.S. 388 (1987).

U.S. Court of Appeals for D.C. Circuit upholds combined offering of securities brokerage and investment advice for institutional customers by bank holding companies. Securities

Industry Association v. Board of Governors, 821 F.2d 810 (D.C. Cir. 1987), cert. denied, 484 U.S. 1005 (1988).

Commission recommends that Congress enact the Bank Broker-Dealer Act, legislation that would bring most bank broker-dealer activities within the regulatory framework established under the federal securities laws. (The Bank Broker-Dealer Act was introduced in the Senate by Senator D'Amato on May 8, 1987, and in the House by Congressman Markey on May 28, 1987, but was never passed.)

FDIC rule authorizing state nonmember banks' subsidiaries or affiliates to engage in securities activities is upheld. Investment Company Institute and Securities Industry Association v. FDIC, 815 F.2d 1540 (D.C. Cir.), cert. denied, 484 U.S. 847 (1987).

OCC permits a national bank subsidiary to, among other things, act as broker in buying and selling municipal securities; render financial advice to municipal debt issuers; underwrite and deal in state and local government general obligations and other bank-eligible securities; render financial and investment advisory services; assist in arranging acquisitions, divestitures and private placements; and provide full-service brokerage to institutional customers. See Letter dated Feb. 17, 1987, to Chase Manhattan Bank.

OCC authorizes national banks to provide full-service brokerage to retail customers through its broker-dealer operating subsidiary in connection with shares of mutual funds and interests in UITs sponsored and distributed by unaffiliated securities firms. OCC Interpretive Letter No. 386, Fed. Banking L. Rep. (CCH) ¶ 85,610 (June 19, 1987).

OCC authorizes Security Pacific National Bank to sell mortgage-backed pass-through certificates evidencing interests in pools of conventional mortgage loans. OCC Interpretive Letter No. 388, Fed. Banking L. Rep. (CCH) ¶ 85,612 (June 16, 1987).

OCC authorizes a national bank to establish a subsidiary which would recommend, purchase or sell shares of the mutual fund for which the bank will also act as investment adviser. OCC Interpretive Letter No. 403, Fed. Banking L. Rep. (CCH) ¶ 85,627 (December 9, 1987). OCC's decision is upheld by Second Circuit, Securities Industry Association v. Clarke, 885 F.2d 1034 (See Timeline 1989).

OCC approves several networking arrangements for discount brokerage similar to the previously approved INVEST program. The arrangements differ from the INVEST program in certain respects, including providing for: a compensation and

commission structure that could result in potentially greater fees for the participating bank; greater, but limited, potential liability for the participating bank; the participating bank to purchase securities for its own account; participating bank sponsorship of its own advertising of the arrangement; and a third party broker-dealer (unaffiliated to the participating bank or the securities firm providing the securities brokerage services) to act in a consulting capacity in connection with certain administrative, marketing, training and other "back office" services. OCC Interpretive Letter No. 406, Fed. Banking L. Rep. (CCH) ¶ 85,630 (August 4, 1987); OCC Interpretive Letter No. 407, Fed. Banking L. Rep. (CCH) ¶ 85,631 (August 4, 1987); and OCC Interpretive Letter No. 408, Fed. Banking L. Rep. (CCH) ¶ 85,632 (August 4, 1987).

Federal Reserve Board issues Section 20 Orders authorizing Citicorp, J.P. Morgan & Co., Inc., and other bank holding companies to establish nonbank subsidiaries to underwrite and deal in commercial paper, asset-backed securities, and municipal revenue bonds subject to a 5% gross revenue limit and firewalls. 73 Fed. Res. Bull. 473 (1987).

1988

U.S. Courts of Appeal uphold Federal Reserve Board's Section 20 Orders allowing bank holding company member bank subsidiaries to underwrite and deal in certain securities (commercial paper, municipal revenue bonds and mortgage-backed securities). Securities Industry Association v. Board of Governors, 839 F.2d 47 (2d Cir.), cert. denied, 486 U.S. 1059 (1988); Securities Industry Association v. Board of Governors, 847 F.2d 890 (D.C. Cir. 1988).

OCC permits national bank investment advisers to manage and supervise the investment and reinvestment of cash, securities or other properties comprising the assets of the mutual funds. See OCC Letter from William B. Glidden (January 14, 1988).

CEBA moratorium on new bank securities activities expires.

Commission supports the Financial Modernization Act of 1988 (S. 1886), introduced by Senator Proxmire, which would have required banks to move much of their broker-dealer activities into Commission-regulated affiliates and would have brought bank advisers within the regulatory framework established by the IAA. The legislation was not enacted.

Federal Reserve Order authorizes the Bank of New England Corporation to provide, through a nonbank subsidiary, full-service brokerage to retail customers. 74 Fed. Res. Bull. 700 (1988). See also Bankers Trust New York Corporation, 74 Fed.

Res. Bull. 695 (1988); and PNC Financial Corp. 75 Fed. Res. Bull. 396 (1989).

OCC allows a national bank subsidiary to engage in dealing in U.S. government securities, full-service brokerage, the sale of annuities as agent, municipal lease activities as agent, private placement services, and CP and Euro-time deposit account activities as agent. OCC Interpretive Letter No. 415, Fed. Banking L. Rep. (CCH) ¶ 85,639 (February 12, 1988).

OCC authorizes private placement of registered mortgage pass-through certificates. OCC Interpretive Letter No. 417, Fed. Banking L. Rep. (CCH) ¶ 85,641 (February 17, 1988).

OCC issues a no-objection letter to networking arrangement for discount brokerage to bank customers at branches of a national bank. The bank will not share its employees with the broker-dealer or be deemed to participate in the sale of securities products, but may engage in selected, limited marketing activities to promote the availability of the brokerage services. The letter expresses no opinion as to the permissibility of the broker-dealer effecting securities transactions for fiduciary accounts for which the bank retains investment discretion. OCC Interpretive Letter No. 441, Fed. Banking L. Rep. (CCH) ¶ 85,665 (February 17, 1988).

OCC approves establishment by a national bank of new operating subsidiary to facilitate the securitization of mortgage assets held by the bank's mortgage subsidiaries. OCC Interpretive Letter No. 418, Fed. Banking L. Rep. (CCH) ¶ 85,642 (February 17, 1988).

FDIC concludes that riskless principal transactions qualify as permitted brokerage. FDIC Advisory Opinion No. 88-31 (Mar. 28, 1988) Fed. Banking L. Rep. (CCH) ¶ 81,076.

The Federal Financial Institutions Examination Council ("FFIEC") approves a supervisory statement of policy on the "Selection of Securities Dealers and Unsuitable Investment Practices," which is subsequently adopted by the Federal Reserve Board, FDIC, NCUA, and the OCC. (April 1988) The OCC adopts the FFIEC supervisory policy statement in Banking Circular 228 on April 14, 1988.

OCC approves national bank providing, through a wholly-owned operating subsidiary, full service brokerage services, including with respect to mutual funds for which the bank acts as the investment adviser. See OCC Letter from Emory W. Rushton, Deputy Comptroller for Multinational Banking, to Deborah G. Patterson, Wells Fargo (August 9, 1988).

1989

Second Circuit upholds OCC decision approving a national bank's sale of mortgage pass-through certificates. Securities Industry Association v. Clarke, 885 F.2d 1034 (2d Cir. 1989), cert. denied, 110 S. Ct. 1113 (1990).

Federal Reserve Board issues Section 20 Orders authorizing bank holding companies to underwrite and deal in debt and equity securities subject to a gross revenue limit, firewalls, and a one-year waiting period for equity underwriting. 75 Fed. Res. Bull. 192 (1989).

FDIC authorizes a non-member bank to act as "servicing agent" for a mutual fund sponsor and to make available to its customers, as agent, shares of even a single fund, under circumstances where no investment advice is provided. FDIC Advisory Letter No. 89-4 (Jan. 30, 1989), Fed. Banking L. Rep. (CCH) ¶ 81,212.

Federal Reserve Board Order increases gross revenue limit on Section 20 subsidiaries' underwriting activities from 5% to 10% and authorizes Section 20 subsidiaries to underwrite and deal in rated affiliates' securities and in securitized mortgages issued or guaranteed by Freddie Mac, Fannie Mae or Ginnie Mae. 75 Fed. Res. Bull. 751 (1989).

Federal Reserve Board Order determines that acting as agent in the private placement of securities, and purchasing and selling securities on the order of investors as a "riskless principal," do not constitute underwriting or dealing in securities for purposes of Section 20 of Glass-Steagall, and that revenue derived from these activities is not subject to the 10% revenue limitation on ineligible securities underwriting and dealing. Bankers Trust New York Corporation, 75 Fed. Res. Bull. 829 (1989).

Federal Reserve Board Order authorizes several bank holding companies' Section 20 subsidiaries to underwrite and deal in debt and equity securities. See Letter dated June 19, 1989 from Federal Reserve Board to J.P. Morgan Securities, Inc.; see also letters dated July 26, 1989, from Federal Reserve Board to Bankers Trust New York Corporation, The Chase Manhattan Bank, and Citicorp.

OCC authorizes national banks to engage in real estate investment advisory services. OCC Interpretive Letter No. 389, Fed. Banking L. Rep. (CCH) ¶ 85,613 (July 7, 1989).

OCC concludes that a state statute that required licensing of individuals engaged in the sale of insurance could not be enforced against national bank employees engaged in the sale

of variable annuities, as the effect of the statute would be to require the bank to have a state license in order to conduct activities allowed by 12 U.S.C. § 24(Seventh). OCC Interpretive Letter No. 475, Fed. Banking L. Rep. (CCH) ¶ 83,012 (March 22, 1989).

1990

OCC permits national bank subsidiaries to provide execution, clearing and advisory services for customer transactions in agricultural, petroleum and metal futures and options on such futures, subject to compliance with certain prudential conditions. The Comptroller concludes that the power to broker these instruments for customers is similar to the power to broker any other financial instrument. See OCC Interpretive Letter No. 494, Fed. Banking L. Rep. (CCH) ¶ 83,083 (December 20, 1989); see also Letter No. 507, Fed. Banking L. Rep. (CCH) ¶ 83,205 (May 5, 1990).

D.C. Circuit upholds Federal Reserve Board Section 20 orders authorizing bank affiliates to underwrite and deal in corporate debt and equity securities, subject only to revenue limitation. Securities Industry Association v. Board of Governors, 900 F.2d 360 (D.C. Cir. 1990).

The Commission publishes notice requesting comments for its study of the ICA, including bank activities. The notice states that if national banks advertise common trust funds, they must be registered as investment companies.

District Court grants OCC's motion for summary judgment in a consolidated action filed by two trade associations (the Independent Insurance Agents of America and the National Association of Life Underwriters) objecting to OCC's approval under 12 U.S.C. § 92 for the United States National Bank of Oregon to sell insurance from its branch, which is located in a community with a population of less than 5,000, to insurance customers everywhere. National Ass'n. of Life Underwriters v. Clarke, 736 F. Supp. 1162 (D.D.C. 1990), rev'd sub. nom., Independent Ins. Agents of America, Inc. v. Clarke, 955 F.2d 731, 739 (D.C. Cir. 1992), rev'd sub. nom. and remanded, U.S. Nat'l. Bank of Oregon v. Indep. Ins. Agents of America, 113 S.Ct. 2173 (1993). The Court of Appeals for the District of Columbia, on remand from the Supreme Court in U.S. Nat'l Bank, upholds the Comptroller's determination that section 92 allows a national bank with a branch office located in a town with a population of 5,000 or less to solicit and serve customers everywhere. Independent Insurance Agents of America, Inc. v. Ludwig, 997 F.2d 958 (D.C. Cir. 1993). [Note: These decisions do not definitively establish the scope of bank insurance powers, however: among other pending issues is the question whether the sale of insurance falls within the

"incidental powers" of national banks. (See Timeline 1992, American Land Title Ass'n. v. Clarke, 968 F.2d 150; see also VALIC v. Clarke below)].

The OCC rules that the brokerage of fixed rate annuities is authorized for national banks under the "incidental powers" clause, reasoning that annuities are essentially investment products rather than insurance and that a fixed rate annuity is the functional equivalent of a financial investment instrument such as a certificate of deposit. OCC Interpretive Letter No. 499, Fed. Banking L. Rep. (CCH) ¶ 83,090 (February 12, 1990). The District Court affirms the OCC's approval of proposed annuities sales by a national bank, holding that fixed annuities are not insurance for purposes of 12 U.S.C. § 92. VALIC v. Clarke, 786 F. Supp. 639 (S.D. Texas 1991). On appeal in 1993, the Fifth Circuit Court of Appeals concludes that annuities are a form of insurance, that section 92 of the NBA impliedly prohibits national banks from selling annuities in cities with a population larger than 5,000, and that the OCC's determination that banks may sell annuities pursuant to the incidental powers clause of section 24(Seventh) of the NBA is erroneous because the specific limitation on the power of national banks to sell insurance contained in section 92 controls the general grant of incidental power in section 24(Seventh). VALIC v. Clarke, 998 F.2d 1295 (1993), rehearing denied, 13 F.3d 833 (5th Cir. 1994). A petition for a writ of certiorari is filed with the Supreme Court. Certiorari is granted on June 6, 1994. (See Timeline 1994).

OCC proposes amendments to trust regulations permitting banks to advertise common trust funds. See 55 Fed. Reg. 4184 (1990). The Commission informs the OCC, and testifies before Congress, that common trust funds that are advertised are not exempt from registration under the Securities Act or the ICA. See Letter from Richard C. Breeden, Chairman, SEC, to Robert L. Clarke, Comptroller of the Currency (July 9, 1990); Testimony of Richard C. Breeden, Chairman, SEC, Concerning Proposed Revision to Rules Governing Bank Common Trust Funds, Before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce (Oct. 4, 1990).

OCC permits a national bank to act as investment adviser to an investment company as one of its fiduciary powers under 12 U.S.C. § 92a without having to obtain additional approval from the Comptroller, provided that such a bank is not involved in the "promotion or distribution" of fund shares in violation of Glass-Steagall and that the rules against self-dealing/conflicts of interest normally applicable to a national bank with fiduciary powers are observed. See OCC Interpretive Letter No. 525, Fed. Banking L. Rep. (CCH) ¶

83,236 (Aug. 8, 1990) (describing federal law framework for national bank fiduciary powers).

OCC advises national banks that operate common trust funds that they must comply with the applicable provisions of federal securities laws; that all such funds must be registered with the Commission where underlying trust accounts are established solely or primarily for purposes of investment in the fund or lack a "bona fide fiduciary purpose." Comptroller of the Currency Banking Cir. 247, Fed. Banking L. Rep. (CCH) ¶ 60,576 (Sept. 12, 1990).

OCC permits a national bank subsidiary to act as a co-investment adviser with a securities firm to a closed-end municipal fund and, in that capacity, to provide investment research, identify bonds for fund purchase, monitor the risks of the municipal bond market and the credit risk in the fund's portfolio and identify trading opportunities. OCC Interpretive Letter No. 515, Fed. Banking L. Rep. (CCH) ¶ 83,219 (July 9, 1990).

OCC advises national bank that state law that purports to require a national bank or its employees to obtain state licenses and submit to examination by state officials as a condition to the bank's engaging in certain brokerage activities is preempted by federal law. See Letter from Harold J. Hansen, Assistant Director, October 26, 1990.

Federal Reserve Board proposes to relax interlocks and joint marketing firewalls applicable to section 20 underwriting subsidiaries. 55 Fed. Reg. 28,295 (1990).

1991

Federal Reserve Board allows several more bank holding companies to commence underwriting and dealing in equity securities through their section 20 subsidiaries. See Dauphin Deposit Corporation, 77 Fed. Res. Bull. 672 (1991); see also letters from William W. Wiles to Royal Bank of Canada, Bankers Trust New York Corp. and Canadian Imperial Bank of Commerce (January 14, 1991).

Federal Reserve Board amends Regulation K to authorize expanded securities activities abroad. 56 Fed. Reg. 19,549 (1991).

Commission supports functional regulation of bank securities activities during the debates leading up to the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"). In particular, the Commission supports legislation introduced by Senator Riegle (S. 543), which would have provided for functional regulation of bank brokerage and

investment advisory activities, and would have established "firewalls" and other important safeguards against conflicts of interest. At the same time, the Commission also supports a bill introduced by Representative Dingell (H.R. 797) that would have provided for full functional regulation of bank securities activities. Ultimately, however, the Glass-Steagall and functional regulation provisions were not included in FDICIA.

Treasury Department issues a report on the federal deposit insurance system as directed by Congress under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). The report contains proposals to reform and strengthen the federal deposit insurance system; modernize the financial system to make banks safer and more competitive; and streamline the bank regulatory structure. The proposals include a recommendation that financial activities be regulated by function, rather than by institution: banking activities by the banking regulator; securities activities by the Commission. See "Modernizing the Financial System: Recommendations for Safer, More Competitive Banks." (February 1991).

New York State Banking Department opines that "brokerage of fixed-rate annuities by state-chartered banks is permissible because such activity falls within the banks' power to broker financial investment instruments." Letter dated January 24, 1991. New York Supreme Court upholds the decision of the New York State Banking Department (New York State Association of Insurance Underwriters, Inc. v. New York State Banking Department, 598 N.Y.S.2d 824 (See Timeline 1993)); Supreme Court's decision is affirmed by the New York Court of Appeals (WL 102978 (N.Y.)). (See Timeline 1994).

Second Circuit holds that Federal Reserve Board's regulatory authority under BHCA does not extend to a subsidiary of a bank that is owned by a bank holding company. See Citicorp v. Board of Governors, 936 F.2d 66 (2nd Cir. 1991), cert. denied, 116 L.Ed. 2d 775 (1992).

FFIEC revises the April 1988 supervisory policy statement on the "Selection of Securities Dealers and Unsuitable Investment Practices." The revised statement addresses the selection of securities dealers, requires depository institutions to establish prudent policies and strategies for securities transactions, defines securities trading or sales practices that are viewed by the agencies as being unsuitable when conducted in an investment portfolio, indicates characteristics of loans held for sale or trading, and establishes a framework for identifying when certain mortgage derivative products are high-risk mortgage securities which must be held either in a trading or held for sale account.

(December 3, 1991). The effective date of the revised policy is February 10, 1992.

1992

The OCC, FDIC, Federal Reserve Board and OTS adopt FFIEC's revised supervisory policy statement on securities activities. The OCC's Banking Circular 228, which incorporates FFIEC's policy statement, is also revised. (January 10, 1992).

The Commission staff publishes report on the ICA, "Protecting Investors: A Half-Century of Investment Company Regulation" (May 1992), analyzing the existing regulatory scheme applicable to investment companies and making a number of reform proposals to the ICA and Commission regulations. The staff report recommends partial repeal of the Securities Act exception for bank collective trust funds.

Federal Reserve Board approves a revised interpretation regarding the activities of a bank holding company and its subsidiaries with respect to proprietary mutual funds. The revision allows bank holding companies and their nonbank subsidiaries to provide both brokerage and investment advisory services to customers regarding investment companies for which the holding company or any of its subsidiaries -- bank or non-bank -- acts as adviser, provided certain conditions are met. 57 Fed. Reg. 30,387 (1992).

FDIC states that it has no objection if Wilmington Trust Company, a state nonmember bank, distributes through a subsidiary shares of mutual funds that it advises through a subsidiary. See Letter from Nicholos J. Ketcha, Jr., Regional Director, to Matthew Lynch, Assistant Vice President, Wilmington Trust Company (Sept. 2, 1992).

Federal Reserve Board amends Regulation Y to add full-service brokerage activities and expanded investment advisory activities to the list of activities permissible for bank holding companies. 57 Fed. Reg. 41,381 (1992).

OCC issues letter noting its concerns relating to issues of bank liability, conflicts of interest and customer confusion with regard to the use of a national bank's name in mutual fund materials. OCC Interpretive Letter No. 619, Fed. Banking L. Rep. (CCH) ¶ 83,501 (Oct. 14, 1992).

The Second Circuit rules in favor of the insurance industry in a case concerning the sale of title insurance under the incidental powers clause (12 U.S.C. § 24(Seventh)) of the NBA. The court cites the view of the Comptroller in 1916 when Section 92 was proposed that national banks lacked the power expressly or by necessary implication to act as insurance

agents. American Land Title Ass'n. v. Clarke, 968 F.2d 150 (2d Cir. 1992), cert. denied, 61 U.S.L.W. 3831 (June 14, 1993).

1993

House Committee on Energy and Commerce begins review of bank-related mutual fund sales.

Federal Reserve Board issues final order approving the use by section 20 subsidiaries of an indexed revenue-based test, but allowing the option of continuing to use the unadjusted revenue test to measure compliance with the "engaged principally" standard. 79 Fed. Res. Bull. 226 (January 26, 1993).

OCC approves joint venture between NationsBank and Dean Witter to provide retail securities brokerage services in NationsBank's offices. Activities approved include: making lobby materials available on services, placing newspaper advertisements, sending statement stuffers and providing other descriptions of the variety of services that are available. OCC Interpretive Letter No. 622 (April 9, 1993).

OCC approves a national bank establishing two wholly-owned subsidiaries to acquire the equity and partnership interest of an options firm for the purpose of engaging in the purchase and sale, for its own account, of options of foreign currencies traded on the Philadelphia Stock Exchange and futures on foreign currencies traded on the Philadelphia Board of Trade and Chicago Mercantile Exchange. OCC Interpretive Letter No. 624, Fed. Banking L. Rep. (CCH) ¶ 83,506 (June 30, 1993).

OCC approves national bank engaging in securities brokerage activities by participating in brokerage program under which broker-dealer operates service center on bank premises (like INVEST Letter), but also uses dual employees and licenses -- rather than leases -- space in national bank. OCC Interpretive Letter No. 630, Fed. Banking L. Rep. (CCH) ¶ 83,513 (May 11, 1993).

The Commission publishes guidance on disclosures required for mutual funds with name similar to a bank or sold in a bank's offices. See Letter from Barbara J. Green, Deputy Director, Division of Investment Management to Registrants (May 13, 1993).

GAO begins study of bank mutual fund activities, at requests of Congressmen Dingell and Gonzalez (May 12 & 20, 1993).

Federal Reserve Board approves application by Mellon Bank Corporation to acquire Boston Group Holding, Inc., and thereby to acquire nonbanking subsidiaries to engage in providing administrative and certain other services to mutual funds, activities which had not previously been approved for a bank holding company. 79 Fed. Res. Bull. 626 (June 1993).

New York Supreme Court, Appellate Division, holds that New York state-chartered banks are authorized to sell annuities as agents, under "incidental powers" clause of New York banking law. New York State Association of Insurance Underwriters, Inc. v. New York State Banking Department, 190 A.D.2d 338, 598 N.Y.S.2d 824 (June 3, 1993).

Federal Reserve Board issues guidelines on mutual fund sales practices. Letter from Richard Spillenkothen, Director, Federal Reserve Division of Banking Supervision and Regulation, on "Separation of Mutual Fund Sales Activities from Insured Deposit-taking Activities" (June 17, 1993).

OCC permits national bank to establish wholly-owned operating subsidiary to participate, as a general partner, in a general partnership with an insurance company subsidiary to offer investment products, including securities and annuities. OCC Interpretive Letter No. 625, Comptroller of the Currency, Fed. Banking L. Rep. (CCH) ¶ 83,507 (July 1, 1993).

OCC concludes that a national bank does not need to register as an investment adviser or a dealer under a state securities act as a result of the bank's trust activities because federal law preempts the registration requirement of the state's securities act. OCC Interpretive Letter No. 628, Fed. Banking L. Rep (CCH) ¶ 83,511 (July 19, 1993).

OCC publishes guidelines on sale of retail nondeposit investment products. Banking Circular 274 (July 19, 1993); See also OCC Interpretive Letter No. 637 (Sept. 17, 1993) (interpreting BC-274 (¶ 58,716)).

OTS issues guidelines addressing various aspects of the retail sale of nondeposit investment products by savings associations. OTS Thrift Bulletin 23-1 (Sept. 7, 1993).

FDIC issues supervisory statement to alert state nonmember banks to concerns and issues raised by bank sales of mutual funds and annuities, which are investment products not covered by federal deposit insurance or other guarantees against loss. See "FDIC Supervisory Statement on State Nonmember Bank Sales of Mutual Funds and Annuities" (Oct. 8, 1993).

Chairman Gonzalez of the House Banking Committee and Congressman Schumer introduce on October 19, 1993, a bill

(H.R. 3306) that would amend the federal banking laws to create a separate bank regulatory scheme to govern the sale of mutual funds and other nondeposit investments by insured banks and thrifts. On October 27, 1993, Congressman Neal introduces a less comprehensive bill (H.R. 3389) that takes a disclosure-oriented approach to bank sales of mutual funds. Like H.R. 3306, Congressman Neal's bill would require mandatory written disclosures by bank salespersons and in bank advertising materials regarding the uninsured nature of the mutual funds sold, but H.R. 3389 would not establish sales practice standards or training and qualification requirements, as does H.R. 3306.

Chairman Dingell of the House Committee on Energy and Commerce introduces a functional regulation bill (H.R. 3447) that would bring bank securities activities within the existing framework of the federal securities laws and regulation. The bill, among other things, would repeal the existing exemptions for bank and thrift securities from Securities Act registration and would consolidate within the Commission jurisdiction over periodic reporting by banks and thrifts through repeal of Exchange Act section 12(i).

Commission releases the results of a survey conducted by the Commission to discern the degree to which investors understand the risks associated with mutual funds sold through banks. The results of the survey show, among other things, that 66% of bank fund holders surveyed believe that money market mutual funds sold through banks are federally insured. See SEC News Release 93-55, "Chairman Levitt Announces Results of SEC's Mutual Fund Survey" (Nov. 10, 1993).

Comptroller sends letter to all national bank chief executives regarding concerns that many consumers still do not understand that mutual funds, annuities, and other nondeposit products are not insured by the FDIC. Fed. Banking L. Rep. (CCH) ¶ 89,599 (November 16, 1993).

OCC, in order to reduce regulatory burden, amends its securities regulations (12 CFR Part 1) to remove the requirement that national banks maintain for specified periods of time credit information on issuers of certain securities. Fed. Banking L. Rep. (CCH) ¶ 89,431 (effective June 9, 1993).

First Union National Bank of North Carolina files a notice with the OCC advising the OCC of its intent to acquire three operating subsidiaries that include two affiliated investment advisory companies. OCC Control No. 93-ML08023 (November 1, 1993).

OCC releases brochure describing the differences between bank deposits and investment products offered by banks, including

mutual funds and annuities. See "Deposits and Investments: There's a Critical Difference" (November 1993).

FDIC adopts rule relating to brokerage "networking" contracts of state-chartered insured banks. Under the rule, a contract involving a third-party providing brokerage services on the bank's premises would not constitute an "as principal" activity and would not require the FDIC's prior consent. 58 Fed. Reg. 64,462 (1993).

Mellon Bank, N.A., files a notice with OCC of its intent to acquire, through operating subsidiaries, most of the assets, operations and activities of The Dreyfus Corporation, investment adviser to the sixth largest family of mutual funds in the U.S. OCC Control No. 93-NE-08043 (December 30, 1993).

1994

FDIC and Federal Reserve Board publish changes to call report forms that would require banks to provide data on their mutual fund and annuity sales. (The OCC is making the same changes to the call reports filed by the national banks). See 59 Fed. Reg. 2603 (1994); 59 Fed. Reg. 3101 (1994).

Six national banking trade associations develop and issue guidelines regarding bank retail sales of nondeposit investment products. See "Retail Investment Sales, Guidelines for Banks," a joint project of: American Bankers Association, The Bankers Roundtable, Consumer Bankers Association, Independent Bankers Association of America, National Bankers Association, and Savings & Community Bankers of America (February 1994).

Federal banking agencies issue an Interagency Statement to provide "uniform guidance" to banks that sell mutual funds, annuities, and other nondeposit investment products. The statement supersedes prior separate guidelines that were issued by the banking agencies. See Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994).

OCC rescinds and replaces Banking Circular 274, Retail Nondeposit Investment Sales, with new section 413 to the Comptroller's Handbook for National Bank Examiners. Section 413 provides national bank examiners with guidance for examining mutual fund or other retail nondeposit investments sales operations of national banks. The guidance implements and incorporates the Interagency Statement. See OCC Bulletin 94-13 (February 24, 1994).

OCC solicits public comment on notices filed by First Union and Mellon to establish operating subsidiaries that will engage in mutual fund activities. 59 Fed. Reg. 9017 (1994).

The Commission and other securities regulators issue a pamphlet designed to provide investors with basic information to help them select a brokerage firm, make initial investment decisions, monitor their investments, and address investment problems. See "Invest Wisely: Advice from Your Securities Industry Regulators." (March 1994).

Subcommittee on Oversight and Investigations of the House Energy and Commerce Committee holds hearings on Mellon/Dreyfus merger. The hearings focus on the legal, public policy, and consumer protection issues raised by the proposed transaction, as well as the adequacy of existing safeguards in connection with mutual funds and other securities products advised on or sold by banks or their affiliates. (March 2 and 3, 1994).

Federal Reserve Board approves an exemption from the anti-tying provisions of the BHCA, allowing a brokerage subsidiary of a First Union bank to offer discounts on commissions for brokerage services to customers who maintain a minimum balance in accounts at any First Union bank. 80 Fed. Res. Bull. 166 (1994).

Federal Reserve Board proposes to amend Regulation Y to create an exemption under which banks and their affiliates could offer certain traditional bank products and services (a loan, discount, deposit, or "trust services") on a discounted, packaged basis without violating the anti-tying provisions of the BHCA. 59 Fed. Reg. 12,202 (1994).

The New York Court of Appeals upholds the Appellate Division's decision in the New York State Association of Life Underwriters case that held that state-chartered banks have the right under State banking law to sell fixed-rate and variable-rate annuities, either directly or through a subsidiary, as an "incidental power" of the "business of banking" within the meaning of the State banking law. The court rejected the assertion that annuities are insurance that banks are not authorized to sell. (No. 38, N.Y., March 30, 1994), affirming 190 A.D.2d 338, 598 N.Y.S.2d 824 (1993).

OCC calls for an interagency task force comprised of federal banking and securities regulators to develop a program to test the sales procedures of all mutual funds providers, including depository institutions and securities firms. OCC News Release 94-38 (April 11, 1994).

The OCC files a petition for certiorari with the Supreme Court to review the judgment of the Court of Appeals in VALIC v.

Clarke, which held that annuities are insurance and section 92 of the NBA limits the authority of national banks to sell insurance in towns with a population larger than 5,000. (April 13, 1994). The Supreme Court grants certiorari on June 6, 1994.

Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce holds hearings on a functional regulation bill, H.R. 3447, the "Securities Regulatory Equality Act of 1993." H.R. 3447 would bring bank securities activities within the existing framework of the federal securities laws and regulations. (April 14, 1994).

OCC approves First Union's operating subsidiary notice to establish wholly-owned operating subsidiaries to engage in investment advisory, brokerage and administrative services to various clients, including the Evergreen family of mutual funds. OCC Letter to Robert L. Andersen, First Union Corporation (April 15, 1994).

OCC approves Mellon Bank's notice to establish operating subsidiaries to acquire most of the assets, operations and activities of The Dreyfus Corporation for the purpose of primarily engaging in investment advisory, brokerage and administrative services to the Dreyfus family of mutual funds. OCC Letter to Michael E. Bleier, General Counsel, Mellon Bank, N.A. (May 4, 1994).