

BANK EXPORT SERVICES

Section 202 of Pub. L. 97-290 provided that: “The Congress hereby declares that it is the purpose of this title [enacting section 635a-4 of this title, amending sections 372 and 1843 of this title, and enacting provisions set out as notes under section 1843 of this title] to provide for meaningful and effective participation by bank holding companies, bankers’ banks, and Edge Act [12 U.S.C. 611 et seq.] corporations, in the financing and development of export trading companies in the United States. In furtherance of such purpose, the Congress intends that, in implementing its authority under section 4(c)(14) of the Bank Holding Company Act of 1956 [subsec. (c)(14) of this section] the Board of Governors of the Federal Reserve System should pursue regulatory policies that—

“(1) provide for the establishment of export trading companies with powers sufficiently broad to enable them to compete with similar foreign-owned institutions in the United States and abroad;

“(2) afford to United States commerce, industry, and agriculture, especially small- and medium-size firms, a means of exporting at all times;

“(3) foster the participation by regional and smaller banks in the development of export trading companies; and

“(4) facilitate the formation of joint venture export trading companies between bank holding companies and nonbank firms that provide for the efficient combination of complementary trade and financing services designed to create export trading companies that can handle all of an exporting company’s needs.”

REPORT TO CONGRESS BY FEDERAL RESERVE BOARD
REGARDING CHANGES IN FINANCING OF UNITED
STATES EXPORTS

Section 205 of Pub. L. 97-290 required Federal Reserve Board, within two years after Oct. 8, 1982, to report to Congress its recommendations with respect to implementation of this section, on any changes in United States law to facilitate financing of United States exports, and on effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in United States.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24a, 371c, 635a-4, 1467a, 1815, 1828b, 1841, 1844, 1849, 1864, 1972, 2903, 3105, 3106, 3401 of this title; title 15 sections 18a, 78c, 78q, 6809; title 31 section 5318.

§ 1844. Administration

(a) Registration of bank holding company

Within one hundred and eighty days after May 9, 1956, or within one hundred and eighty days after becoming a bank holding company, whichever is later, each bank holding company shall register with the Board on forms prescribed by the Board, which shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry out the purposes of this chapter. The Board may, in its discretion, extend the time within which a bank holding company shall register and file the requisite information. A declaration filed in accordance with section 1843(l)(1)(C) of this title shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 1842 of this title.

(b) Regulations and orders

The Board is authorized to issue such regulations and orders as may be necessary to enable it to administer and carry out the purposes of this chapter and prevent evasions thereof.

(c) Reports and examinations

(1) Reports

(A) In general

The Board, from time to time, may require a bank holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—

(i) its financial condition, systems for monitoring and controlling financial and operating risks, and transactions with depository institution subsidiaries of the bank holding company; and

(ii) compliance by the company or subsidiary with applicable provisions of this chapter or any other Federal law that the Board has specific jurisdiction to enforce against such company or subsidiary.

(B) Use of existing reports

(i) In general

For purposes of compliance with this paragraph, the Board shall, to the fullest extent possible, accept—

(I) reports that a bank holding company or any subsidiary of such company has provided or been required to provide to other Federal or State supervisors or to appropriate self-regulatory organizations;

(II) information that is otherwise required to be reported publicly; and

(III) externally audited financial statements.

(ii) Availability

A bank holding company or a subsidiary of such company shall provide to the Board, at the request of the Board, a report referred to in clause (i).

(iii) Reports filed with other agencies

(I) In general

In the event that the Board requires a report under this subsection from a functionally regulated subsidiary of a bank holding company of a kind that is not required by another Federal or State regulatory authority or an appropriate self-regulatory organization, the Board shall first request that the appropriate regulatory authority or self-regulatory organization obtain such report.

(II) Availability from other subsidiary

If the report is not made available to the Board, and the report is necessary to assess a material risk to the bank holding company or any of its depository institution subsidiaries or compliance with this chapter or any other Federal law that the Board has specific jurisdiction to enforce against such company or subsidiary or the systems described in paragraph (2)(A)(ii)(II), the Board may require such functionally regulated sub-

subsidiary to provide such a report to the Board.

(2) Examinations

(A) Examination authority for bank holding companies and subsidiaries

Subject to subparagraph (B), the Board may make examinations of each bank holding company and each subsidiary of such holding company in order—

(i) to inform the Board of the nature of the operations and financial condition of the holding company and such subsidiaries;

(ii) to inform the Board of—

(I) the financial and operational risks within the holding company system that may pose a threat to the safety and soundness of any depository institution subsidiary of such holding company; and

(II) the systems for monitoring and controlling such risks; and

(iii) to monitor compliance with the provisions of this chapter or any other Federal law that the Board has specific jurisdiction to enforce against such company or subsidiary and those governing transactions and relationships between any depository institution subsidiary and its affiliates.

(B) Functionally regulated subsidiaries

Notwithstanding subparagraph (A), the Board may make examinations of a functionally regulated subsidiary of a bank holding company only if—

(i) the Board has reasonable cause to believe that such subsidiary is engaged in activities that pose a material risk to an affiliated depository institution;

(ii) the Board reasonably determines, after reviewing relevant reports, that examination of the subsidiary is necessary to adequately inform the Board of the systems described in subparagraph (A)(ii)(II); or

(iii) based on reports and other available information, the Board has reasonable cause to believe that a subsidiary is not in compliance with this chapter or any other Federal law that the Board has specific jurisdiction to enforce against such subsidiary, including provisions relating to transactions with an affiliated depository institution, and the Board cannot make such determination through examination of the affiliated depository institution or the bank holding company.

(C) Restricted focus of examinations

The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a bank holding company to—

(i) the bank holding company; and

(ii) any subsidiary of the bank holding company that could have a materially adverse effect on the safety and soundness of any depository institution subsidiary of the holding company due to—

(I) the size, condition, or activities of the subsidiary; or

(II) the nature or size of transactions between the subsidiary and any depository institution that is also a subsidiary of the bank holding company.

(D) Deference to bank examinations

The Board shall, to the fullest extent possible, for the purposes of this paragraph, use the reports of examinations of depository institutions made by the appropriate Federal and State depository institution supervisory authority.

(E) Deference to other examinations

The Board shall, to the fullest extent possible, forego an examination by the Board under this paragraph and instead review the reports of examination made of—

(i) any registered broker or dealer by or on behalf of the Securities and Exchange Commission;

(ii) any registered investment adviser properly registered by or on behalf of either the Securities and Exchange Commission or any State;

(iii) any licensed insurance company by or on behalf of any State regulatory authority responsible for the supervision of insurance companies; and

(iv) any other subsidiary that the Board finds to be comprehensively supervised by a Federal or State authority.

(3) Capital

(A) In general

The Board may not, by regulation, guideline, order, or otherwise, prescribe or impose any capital or capital adequacy rules, guidelines, standards, or requirements on any functionally regulated subsidiary of a bank holding company that—

(i) is not a depository institution; and

(ii) is—

(I) in compliance with the applicable capital requirements of its Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority;

(II) properly registered as an investment adviser under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], or with any State; or

(III) is licensed as an insurance agent with the appropriate State insurance authority.

(B) Rule of construction

Subparagraph (A) shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to—

(i) activities of a registered investment adviser other than with respect to investment advisory activities or activities incidental to investment advisory activities; or

(ii) activities of a licensed insurance agent other than insurance agency activities or activities incidental to insurance agency activities.

(C) Limitations on indirect action

In developing, establishing, or assessing bank holding company capital or capital

adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board may not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], unless the investment company is—

- (i) a bank holding company; or
- (ii) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, and the shares owned by the bank holding company have a market value equal to more than \$1,000,000.

(4) Functional regulation of securities and insurance activities

(A) Securities activities

Securities activities conducted in a functionally regulated subsidiary of a depository institution shall be subject to regulation by the Securities and Exchange Commission, and by relevant State securities authorities, as appropriate, subject to section 6701 of title 15, to the same extent as if they were conducted in a nondepository institution subsidiary of a bank holding company.

(B) Insurance activities

Subject to section 6701 of title 15, insurance agency and brokerage activities and activities as principal conducted in a functionally regulated subsidiary of a depository institution shall be subject to regulation by a State insurance authority to the same extent as if they were conducted in a nondepository institution subsidiary of a bank holding company.

(5) Definition

For purposes of this subsection, the term “functionally regulated subsidiary” means any company—

- (A) that is not a bank holding company or a depository institution; and
- (B) that is—
 - (i) a broker or dealer that is registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.];
 - (ii) a registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;
 - (iii) an investment company that is registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.];
 - (iv) an insurance company, with respect to insurance activities of the insurance company and activities incidental to such insurance activities, that is subject to supervision by a State insurance regulator; or
 - (v) an entity that is subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activi-

ties incidental to such commodities activities.

(d) Reports to the Congress; recommendations

Before the expiration of two years following May 9, 1956, and each year thereafter in the Board’s annual report to the Congress, the Board shall report to the Congress the results of the administration of this chapter, stating what, if any, substantial difficulties have been encountered in carrying out the purposes of this chapter, and any recommendations as to changes in the law which in the opinion of the Board would be desirable.

(e) Termination of activities or ownership or control of nonbank subsidiaries constituting serious risk

(1) Notwithstanding any other provision of this chapter, the Board may, whenever it has reasonable cause to believe that the continuation by a bank holding company of any activity or of ownership or control of any of its nonbank subsidiaries, other than a nonbank subsidiary of a bank, constitutes a serious risk to the financial safety, soundness, or stability of a bank holding company subsidiary bank and is inconsistent with sound banking principles or with the purposes of this chapter or with the Financial Institutions Supervisory Act of 1966, at the election of the bank holding company—

(A) order the bank holding company or any such nonbank subsidiaries, after due notice and opportunity for hearing, and after considering the views of the bank’s primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank or the Federal Deposit Insurance Corporation and the appropriate State supervisory authority in the case of an insured nonmember bank, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its ownership or control of any such subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the bank holding company; or

(B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the primary supervisor for the bank, which shall be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) the ownership or control of any such bank by such company.

The distribution referred to in subparagraph (A) shall be pro rata with respect to all of the shareholders of the distributing bank holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

(2) The Board may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the holding company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance

therewith, but except as provided in section 1848 of this title, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(f) Powers of Board respecting applications, examinations, or other proceedings

In the course of or in connection with an application, examination, investigation or other proceeding under this chapter, the Board, or any member or designated representative thereof, including any person designated to conduct any hearing under this chapter, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum; and the Board is empowered to make rules and regulations to effectuate the purposes of this subsection. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any party to proceedings under this chapter may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted or where the witness resides or carries on business, for the enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any service required under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide. Any court having jurisdiction of any proceeding instituted under this subsection may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the Board, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year or both.

(g) Authority of State insurance regulator and the Securities and Exchange Commission

(1) In general

Notwithstanding any other provision of law, any regulation, order, or other action of the Board that requires a bank holding company to provide funds or other assets to a subsidiary depository institution shall not be effective nor enforceable with respect to an entity described in subparagraph (A) if—

(A) such funds or assets are to be provided by—

(i) a bank holding company that is an insurance company, a broker or dealer registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], or an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State; or

(ii) an affiliate of the depository institution that is an insurance company or a broker or dealer registered under the Securities Exchange Act of 1934, an investment company registered under the Investment Company Act of 1940, or an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State; and

(B) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker, dealer, investment adviser (solely with respect to investment advisory activities or activities incidental thereto), or investment company, as the case may be, determines in writing sent to the holding company and the Board that the holding company shall not provide such funds or assets because such action would have a material¹ adverse effect on the financial condition of the insurance company or the broker, dealer, investment company, or investment adviser, as the case may be.

(2) Notice to State insurance authority or SEC required

If the Board requires a bank holding company, or an affiliate of a bank holding company, that is an insurance company or a broker, dealer, investment company, or investment adviser described in paragraph (1)(A) to provide funds or assets to a depository institution subsidiary of the holding company pursuant to any regulation, order, or other action of the Board referred to in paragraph (1), the Board shall promptly notify the State insurance authority for the insurance company, the Securities and Exchange Commission, or State securities regulator, as the case may be, of such requirement.

(3) Divestiture in lieu of other action

If the Board receives a notice described in paragraph (1)(B) from a State insurance authority or the Securities and Exchange Commission with regard to a bank holding company or affiliate referred to in that paragraph, the Board may order the bank holding company to divest the depository institution not later than 180 days after receiving the notice, or such longer period as the Board determines consistent with the safe and sound operation of the depository institution.

(4) Conditions before divestiture

During the period beginning on the date an order to divest is issued by the Board under paragraph (3) to a bank holding company and

¹ So in original. Probably should be "materially".

ending on the date the divestiture is completed, the Board may impose any conditions or restrictions on the holding company's ownership or operation of the depository institution, including restricting or prohibiting transactions between the depository institution and any affiliate of the institution, as are appropriate under the circumstances.

(5) Rule of construction

No provision of this subsection may be construed as limiting or otherwise affecting, except to the extent specifically provided in this subsection, the regulatory authority, including the scope of the authority, of any Federal agency or department with regard to any entity that is within the jurisdiction of such agency or department.

(May 9, 1956, ch. 240, § 5, 70 Stat. 137; Pub. L. 95-630, title I, §§ 105(a), 106(b), Nov. 10, 1978, 92 Stat. 3646, 3648; Pub. L. 106-102, title I, §§ 111, 112(a), 116, Nov. 12, 1999, 113 Stat. 1362, 1366, 1372.)

REFERENCES IN TEXT

The Investment Advisers Act of 1940, referred to in subsec. (c)(3)(A)(ii)(II), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (§ 80b-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80b-20 of Title 15 and Tables.

The Investment Company Act of 1940, referred to in subsecs. (c)(3)(C), (5)(B)(iii) and (g)(1)(A), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsecs. (c)(5)(B)(i) and (g)(1)(A), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Financial Institutions Supervisory Act of 1966, referred to in subsec. (e)(1), is Pub. L. 89-695, Oct. 16, 1966, 80 Stat. 1028. For complete classification of this Act to the Code, see Short Title of 1966 Amendment note set out under section 1464 of this title and Tables.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106-102, § 116(a), inserted at end “A declaration filed in accordance with section 1843(l)(1)(C) of this title shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 1842 of this title.”

Subsec. (c). Pub. L. 106-102, § 111, inserted heading and amended text of subsec. (c) generally. Prior to amendment, text read as follows: “The Board from time to time may require reports under oath to keep it informed as to whether the provisions of this chapter and such regulations and orders issued thereunder have been complied with; and the Board may make examinations of each bank holding company and each subsidiary thereof, the cost of which shall be assessed against, and paid by, such holding company. The Board shall, as far as possible, use the report of examinations made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this section.”

Subsec. (e)(1). Pub. L. 106-102, § 116(b), in first sentence, substituted “Financial Institutions Supervisory Act of 1966, at the election of the bank holding company—” along with subpar. (A) designation and “order”

for “Financial Institutions Supervisory Act of 1966, order” and “shareholders of the bank holding company; or” along with subpar. (B) for “shareholders of the bank holding company.”, designated second sentence as concluding provisions, and substituted “The distribution referred to in subparagraph (A)” for “Such distribution”.

Subsec. (g). Pub. L. 106-102, § 112(a), added subsec. (g). 1978—Subsec. (e). Pub. L. 95-630, § 105(a), added subsec. (e).

Subsec. (f). Pub. L. 95-630, § 106(b), added subsec. (f).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106-102, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsection (d) of this section is listed on page 171), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1828, 1831v, 1841, 1843, 1848a of this title; title 7 section 6f.

§ 1845. Repealed. Pub. L. 89-485, § 9, July 1, 1966, 80 Stat. 240

Section, act May 9, 1956, ch. 240, § 6, 70 Stat. 137, prohibited any subsidiary bank from lending to or investing in its parent holding company or a fellow subsidiary bank. See section 371c of this title.

§ 1846. Reservation of rights to States

(a) In general

No provision of this chapter shall be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to companies, banks, bank holding companies, and subsidiaries thereof.

(b) State taxation authority not affected

No provision of this chapter shall be construed as affecting the authority of any State or political subdivision of any State to adopt, apply, or administer any tax or method of taxation to any bank, bank holding company, or foreign bank, or any affiliate of any bank, bank holding company, or foreign bank, to the extent that such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law.

(May 9, 1956, ch. 240, § 7, 70 Stat. 138; Pub. L. 100-86, title I, § 101(f), Aug. 10, 1987, 101 Stat. 563; Pub. L. 103-328, title I, § 101(b), Sept. 29, 1994, 108 Stat. 2341.)

AMENDMENTS

1994—Pub. L. 103-328 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1987—Pub. L. 100-86 substituted “No provision of this chapter shall” for “The enactment by the Congress of