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MERGER OF TWO OR MORE NATIONAL BANKING ASSOCIATIONS AND MERGER OF STATE BANKS WITH NATIONAL BANKING ASSOCIATIONS

SEPTEMBER 14 (legislative day, SEPTEMBER 13), 1951—Ordered to be printed

Mr. MAYBANK, from the Committee on Banking and Currency, submitted the following

REPORT

[To accompany S. 2128.]

The Committee on Banking and Currency, having considered a bill to provide for the merger of two or more national banking associations and for the merger of State banks with national banking associations, and for other purposes, report favorably a committee bill (S. 2128) and recommend that the bill do pass.

GENERAL STATEMENT

The bill would provide for the merger of two or more national banking associations, and for the merger of State banks with national banking associations under Federal charter.

Section 1 of the act of November 7, 1918, as amended (12 U. S. C. 33), provides a method whereby two or more national banks may consolidate into one bank under the charter of one of the existing banks. Section 3 of the same act, as added (12 U. S. C. 34a), provides a method whereby a State bank may consolidate with a national bank under the Federal charter of the national bank. There are no Federal statutes providing for the merger of national banks or the merger of State banks with national banks under Federal charter.

One of the characteristics of the provisions authorizing consolidations under Federal charter is that the dissenting shareholders of each constituent bank are entitled to be paid in cash by the consolidated bank for the value of their shares. On the other hand, there is authority in some States for consolidations or mergers of State banks under which the right of dissenting shareholders to obtain the value of their shares in cash either does not exist or is confined to shareholders of the absorbed bank (in most instances a small bank being absorbed by a large bank).

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The fact that dissenting shareholders of each constituent bank are entitled to be paid in cash for the value of their shares when banks consolidate under the Federal statute has not presented an impediment to consolidations of banks of approximately the same size. It has been an impediment, however, to large national banks with correspondingly large numbers of shareholders acquiring small banks by consolidation, because of the risk that hundreds or thousands of the absorbing bank's own shareholders may demand the value of their shares in cash, particularly where the actual value is higher than the prevailing market price. There is therefore a disadvantage to consolidating under Federal charter as compared to consolidating under State law.

While this comparative disadvantage has existed for some time, it did not become significant until the act of August 17, 1950 (Public Law 706, 81st Cong.), favorably reported by your committee, provided a method through which national banks can transfer into State systems. It is your committee's view that in view of the fact that these transfers out of the national system are now easily consummated, the existence of the comparative disadvantage to consolidations under Federal charter may cause banks in some States to leave the national system in order to secure the benefits of State law for subsequent consolidations or mergers which they have in mind.

Your committee therefore believes that it is desirable that there be made available a method whereby national banks may combine with other national banks, and State banks may combine with national banks under Federal charter, without a right in dissenting shareholders of the absorbing bank to demand cash payment for shares. This would achieve that desirable end by authorizing a new method of merger, one feature of which would be that only the dissenting shareholders of the absorbed bank would be entitled to demand cash for their shares.

These merger provisions would be added to the present provisions of the act of November 7, 1918, as amended, which provide for consolidations, and would leave in existence without change that method of combining. In either a case of consolidation under the existing statute or merger under the proposed bill, the approval of the Comptroller of the Currency would have to be obtained. Hence there would be an administrative determination in each case as to whether a particular combination should be under the consolidation or merger provisions of the statute.

This bill is not intended to and does not repeal the congressional policy on branches as reflected in sections 36 and 81 of title 12 of the United States Code.

The Treasury Department and the Comptroller of the Currency recommend its enactment.

CHANGES IN EXISTING LAW IN COMPLIANCE WITH THE CORDON RULE

In compliance with subsection (4) of the rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECOND PARAGRAPH OF SECTION 3 OF THE ACT OF NOVEMBER 7, 1918, AS AMENDED (U.S.C., TITLE 12, SEC. 34a), AND ADDITIONAL NEW SECTIONS

[The words "State bank", "State banks", "bank", or "banks", as used in this section, shall be held to include trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of State laws.]

Where a dissenting shareholder has given notice as provided in this section to the bank of which he is a shareholder of his dissent from the plan of consolidation, and the directors thereof fail for more than thirty days thereafter to appoint an appraiser of the value of his shares, said shareholder may request the Comptroller of the Currency to appoint such appraiser to act on the appraisal committee for and on behalf of such bank. In the event one of the appraisers fails to agree with the others as to the value of said shares, then the valuation of the remaining appraisers shall govern.

SEC. 4. (a) One or more national banking associations or one or more State banks, with the approval of the Comptroller, under an agreement not inconsistent with this Act, may merge into a national banking association located within the same State, under the charter of the receiving association.

(b) The merger agreement shall—

(1) be agreed upon in writing by a majority of the board of directors of each association or State bank participating in the plan of merger;

(2) be ratified and confirmed by the affirmative vote of the shareholders of each association or State bank owning at least two-thirds of the capital stock outstanding, at a meeting to be held on the call of the directors, after publishing notice of the time, place, and object of the meeting for four consecutive weeks in a newspaper with general circulation in the place where the association or State bank is located, and after sending such notice to each shareholder of record by registered mail at least ten days prior to the meeting, except to those shareholders who specifically waive notice;

(3) specify the amount of the capital stock of the receiving association which will be outstanding upon completion of the merger, the amount of stock (if any) to be allocated, and cash (if any) to be paid to the shareholders of the association or State bank being merged into the receiving association; and

(4) provide the manner of disposing of any shares of the receiving association not taken by the shareholders of the association or State bank merged into the receiving association.

If a merger shall be voted for at the called meetings by the necessary majorities of the shareholders of each association or State bank participating in the plan of merger, any shareholder of any association or State bank to be merged into the receiving association who has voted against the merger at the meeting of the shareholders, or has given notice in writing at or prior to the meeting to the presiding officer that he dissents from the plan of merger, shall be entitled to receive the value of the shares held by him if and when the merger shall be approved by the Comptroller. The value of the shares shall be ascertained, as of the date of the meeting of the shareholders of the association or State bank approving the merger, by an appraisal made by a committee of three persons, composed of (i) one selected by the vote of the holders of a majority of the stock, the owners of which are entitled to payment in cash; (ii) one selected by the directors of the receiving association; and (iii) one selected by the two so selected. The valuation agreed upon by any two of the three appraisers shall govern. If the value so fixed shall not be satisfactory to any dissenting shareholder who has requested payment, that shareholder may, within five days after being notified of the appraised value of his shares, appeal to the Comptroller, who shall cause a reappraisal to be made which shall be final and binding as to value of the shares of the appellant. If, within ninety days from the date of consummation of the merger, for any reason, one or more of the appraisers have not been selected, or the appraisers have failed to determine the value of the shares, the Comptroller, upon written request of any interested party, shall cause an appraisal to be made which shall be final and binding on all parties. The expenses of the Comptroller in making the reappraisal or the appraisal, as the case may be, shall be paid by the receiving association. The value of the shares ascertained shall be promptly paid to the shareholders by the receiving association, and the shares so paid for shall be surrendered to and canceled by the receiving association. The provisions of this paragraph shall apply only to shareholders of and stock owned by them in a bank or association being merged into the receiving association.

(c) The corporate existence of the merging association or State bank shall be merged into that of the receiving association. All rights, franchises, and interests of the merging association or State bank in and to every type of property (real, personal

and mixed) and choses in action shall be transferred to and vested in the receiving association by virtue of such merger without any deed or other transfer. The receiving association, upon the merger and without any order or other action on the part of any court or otherwise, shall hold and enjoy all rights of property, franchises and interests, including appointments, designations and nominations, and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any merging association or State bank at the time of the merger, subject to the conditions hereinafter provided.

Where any merging association or State bank, at the time of the merger, was acting under appointment of any court as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity, the receiving association shall be subject to removal by a court of competent jurisdiction in the same manner and to the same extent as was the merging association or State bank prior to the merger. Nothing contained in this section shall be considered to impair in any manner the right of any court to remove a receiving association and to appoint in lieu thereof a substitute trustee, executor, or other fiduciary, except that such right shall not be exercised in such a manner as to discriminate against national banking associations, nor shall any receiving association be removed solely because of the fact that it is a national banking association.

(d) Any national banking association which is a receiving association may issue stock, with the approval of the Comptroller and in accordance with law, to be delivered to the shareholders of a merging State bank or national banking association as provided for by a merger agreement, free from any preemptive rights of the shareholders of the receiving association.

Sec. 5. As used in this Act the term—

(1) "State bank" means any bank, banking association, trust company, savings bank (other than a mutual savings bank), or other banking institution which is engaged in the business of receiving deposits and which is incorporated under the laws of any State, or which is operating under the Code of Law for the District of Columbia (except a national banking association located in the District of Columbia);

(2) "State" means the several States, the several Territories, Puerto Rico, the Virgin Islands, and the District of Columbia;

(3) "Comptroller" means the Comptroller of the Currency; and

(4) "Receiving association" means the national banking association into which one or more national banking associations or one or more State banks, located within the same State, merge.

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