

such violation continues: *Provided*, That the Board may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Board by written notice. As used in the section, the term 'violates' includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(2) In determining the amount of the penalty the Board shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the company or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

"(3) The company or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in section 1848 of this title. If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

"(4) If any company or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Board, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

"(5) The Board shall promulgate regulations establishing procedures necessary to implement this subsection.

"(6) All penalties collected under authority of this subsection shall be covered into the Treasury of the United States."

Subsec. (c). Pub. L. 101-73, § 905(i), added subsec. (c).

Subsec. (d). Pub. L. 101-73, § 911(e), added subsec. (d).

1982—Subsec. (b)(1). Pub. L. 97-320 inserted proviso giving the Board discretionary authority to compromise, etc., any civil money penalty imposed under this subsection, and substituted "may be assessed" for "shall be assessed".

1978—Pub. L. 95-630 designated existing provisions as subsec. (a) and added subsec. (b).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 907(j) of Pub. L. 101-73 applicable to conduct engaged in after Aug. 9, 1989, except that increased maximum penalties of \$5,000 and \$25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(l) of Pub. L. 101-73, set out as a note under section 93 of this title.

Amendment by section 911(e) of Pub. L. 101-73 applicable with respect to reports filed or required to be filed after Aug. 9, 1989, see section 911(i) of Pub. L. 101-73, set out as a note under section 161 of this title.

##### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630, relating to imposition of civil penalties, applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95-630, set out as a note under section 93 of this title.

#### § 1848. Judicial review

Any party aggrieved by an order of the Board under this chapter may obtain a review of such

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

(May 9, 1956, ch. 240, § 9, 70 Stat. 138; Pub. L. 85-791, § 34, Aug. 28, 1958, 72 Stat. 951; Pub. L. 89-485, § 10, July 1, 1966, 80 Stat. 240.)

#### Editorial Notes

##### AMENDMENTS

1966—Pub. L. 89-485 reduced from 60 to 30 days the period allowed for the filing of a petition to obtain judicial review of a Board order.

1958—Pub. L. 85-791 substituted, in second sentence, "transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of title 28" for "served upon the Board, and thereupon the Board shall certify and file in the court a transcript of the record made before the Board", and in third sentence, "such petition" for "the transcript".

#### § 1848a. Repealed. Pub. L. 111-203, title VI, § 604(c)(2), July 21, 2010, 124 Stat. 1601

Section, act May 9, 1956, ch. 240, §10A, as added Pub. L. 106-102, title I, §113, Nov. 12, 1999, 113 Stat. 1368, related to limitation on rulemaking, prudential, supervisory, and enforcement authority of the Board.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF REPEAL

Repeal effective on the transfer date, see section 604(j) of Pub. L. 111-203, set out as an Effective Date of 2010 Amendment note under section 1462 of this title.

#### § 1849. Saving provision

##### (a) General rule

Nothing herein contained shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding pending or hereafter instituted on account of any prohibited antitrust or monopolistic act, action, or conduct, except as specifically provided in this section.

##### (b) Antitrust review

###### (1) In general

The Board shall immediately notify the Attorney General of any approval by it pursuant to section 1842 of this title of a proposed acquisition, merger, or consolidation transaction and, if the transaction also involves an acqui-

sition under section 1843 of this title, the Board shall also notify the Federal Trade Commission of such approval. If the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any such transaction, the transaction may be consummated immediately upon approval by the Board. If the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Board. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board or, if the Board has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the Board with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 1842 of this title shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 1842 of this title might be consummated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. In any such action, the court shall review *de novo* the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction approved pursuant to section 1842 of this title on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of title 15, the standards applied by the court shall be identical with those that the Board is directed to apply under section 1842 of this title. Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 1842 of this title in compliance with this chapter and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of title 15, but nothing in this chapter shall exempt any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

**(2) Section 1823(f) cases**

**(A) If—**

- (i) the Federal Deposit Insurance Corporation learns that a bank insured by such Corporation is in danger of closing; and
- (ii) the Corporation is considering assisting the acquisition of such bank and its af-

filiated banks by another bank or holding company under section 1823(f) of this title and such acquisition is subject to the approval of the Board under section 1842 of this title;

the Corporation shall immediately notify the Board of such facts.

(B) Upon receipt of notice from the Federal Deposit Insurance Corporation under subparagraph (A) or at such earlier time as deemed appropriate by the Board, the Board shall immediately notify the Attorney General of the United States of the facts concerning the possible acquisition.

(C) Within 5 days of receiving notice under subparagraph (B), the Attorney General shall notify the Board in writing of the Attorney General's preliminary finding as to the consistency of the possible acquisition with the antitrust laws.

(D) The Board may reduce or eliminate the post-approval waiting period established under paragraph (1) for an acquisition to which this paragraph applies, except that such period may not be eliminated or reduced to less than 5 days without the concurrence of the Attorney General.

**(c) Antitrust proceedings; Board and State banking agency as party; representation by counsel**

In any action brought under the antitrust laws arising out of any acquisition, merger, or consolidation transaction approved by the Board under section 1842 of this title, the Board and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel.

**(d) Treatment of merger transactions consummated prior or subsequent to May 9, 1956, and not in litigation prior to July 1, 1966**

Any acquisition, merger, or consolidation of the kind described in section 1842(a) of this title which was consummated at any time prior or subsequent to May 9, 1956, and as to which no litigation was initiated by the Attorney General prior to July 1, 1966, shall be conclusively presumed not to have been in violation of any antitrust laws other than section 2 of title 15.

**(e) Antitrust litigation; substantive law applicable to proceedings pending on or after July 1, 1966, with respect to merger transactions**

Any court having pending before it on or after July 1, 1966, any litigation initiated under the antitrust laws by the Attorney General with respect to any acquisition, merger, or consolidation of the kind described in section 1842(a) of this title shall apply the substantive rule of law set forth in section 1842 of this title.

**(f) "Antitrust laws" defined**

For the purposes of this section, the term "antitrust laws" means the Act of July 2, 1890 (the Sherman Antitrust Act), the Act of October 15, 1914 (the Clayton Act), and any other Acts in pari materia.

(May 9, 1956, ch. 240, § 11, 70 Stat. 146; Pub. L. 89-485, § 11, July 1, 1966, 80 Stat. 240; Pub. L.

91–607, title I, § 104, Dec. 31, 1970, 84 Stat. 1766; Pub. L. 95–188, title III, § 303, Nov. 16, 1977, 91 Stat. 1390; Pub. L. 100–86, title V, § 502(h)(3), Aug. 10, 1987, 101 Stat. 628; Pub. L. 103–325, title III, § 321(a), Sept. 23, 1994, 108 Stat. 2226; Pub. L. 106–102, title I, § 131, Nov. 12, 1999, 113 Stat. 1382.)

#### Editorial Notes

##### REFERENCES IN TEXT

Act of July 2, 1890 (the Sherman Antitrust Act), referred to in subsec. (f), is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 15, 1914 (the Clayton Act), referred to in subsec. (f), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

##### AMENDMENTS

1999—Subsec. (b)(1). Pub. L. 106–102 inserted before period at end of first sentence “and, if the transaction also involves an acquisition under section 1843 of this title, the Board shall also notify the Federal Trade Commission of such approval”.

1994—Subsec. (b)(1). Pub. L. 103–325 inserted before period at end of fourth sentence “or, if the Board has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the Board with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval”.

1987—Subsec. (b). Pub. L. 100–86 designated existing provisions as par. (1) and added par. (2).

1977—Subsec. (b). Pub. L. 95–188 authorized a proposed acquisition, merger, or consolidation transaction to be consummated immediately upon approval by the Board where the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any such transaction; prohibited a transaction from being consummated before the fifth calendar day after the date of approval by the Board where the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days; continued for all other cases the thirty day waiting period after date of approval by the Board for consummation of the transaction; and substituted provision for commencement of stay actions prior to the earliest time at which the transaction approval under section 1842 of this title might be consummated for prior provision for commencement of such stay actions within the thirty-day waiting period.

1970—Subsec. (b). Pub. L. 91–607, § 104(a), substituted “section 1842 of this title” for “this chapter” where appearing first two times, and inserted “approved under section 1842 of this title” in second sentence before “shall be commended” and in last sentence before “in compliance with this chapter”.

Subsec. (c). Pub. L. 91–607, § 104(b), substituted “under section 1842 of this title” for “pursuant to this chapter”.

1966—Pub. L. 89–485 designated existing provisions as subsec. (a), inserted “except as specifically provided in this section”, and added subsecs. (b) to (f).

#### Statutory Notes and Related Subsidiaries

##### 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.

#### § 1850. Acquisition of subsidiary and tying arrangement: Federal Reserve Board proceedings; application for authorization; competitor as party in interest and person aggrieved; judicial review

With respect to any proceeding before the Federal Reserve Board wherein an applicant seeks authority to acquire a subsidiary which is a bank under section 1842 of this title or to engage in an activity otherwise prohibited under chapter 22 of this title, a party who would become a competitor of the applicant or subsidiary thereof by virtue of the applicant’s or its subsidiary’s acquisition, entry into the business involved, or activity, shall have the right to be a party in interest in the proceeding and, in the event of an adverse order of the Board, shall have the right as an aggrieved party to obtain judicial review thereof as provided in section 1848 of this title or as otherwise provided by law.

(Pub. L. 91–607, title I, § 105, Dec. 31, 1970, 84 Stat. 1766; Pub. L. 106–102, title I, § 102(b)(1), Nov. 12, 1999, 113 Stat. 1341.)

#### Editorial Notes

##### CODIFICATION

Section was enacted as part of the Bank Holding Company Act Amendments of 1970, and not as part of the Bank Holding Company Act of 1956 which comprises this chapter.

##### AMENDMENTS

1999—Pub. L. 106–102 struck out “, to engage directly or indirectly in a nonbanking activity pursuant to section 1843 of this title,” after “section 1842 of this title”.

#### Statutory Notes and Related Subsidiaries

##### 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.

#### § 1850a. Securities holding companies

##### (a) Definitions

In this section—

(1) the term “associated person of a securities holding company” means a person directly or indirectly controlling, controlled by, or under common control with, a securities holding company;

(2) the term “foreign bank” has the same meaning as in section 3101(7) of this title;

(3) the term “insured bank” has the same meaning as in section 1813 of this title;

(4) the term “securities holding company”—

(A) means—

(i) a person (other than a natural person) that owns or controls 1 or more brokers or dealers registered with the Commission; and

(ii) the associated persons of a person described in clause (i); and

(B) does not include a person that is—

(i) a nonbank financial company supervised by the Board under title I;<sup>1</sup>

(ii) an insured bank (other than an institution described in subparagraphs<sup>2</sup> (D),

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Probably should be “subparagraph”.