

Crossing the State Line: New Jersey Enters the New Age of Interstate Banking

The United States commercial banking industry has been described as both a dual banking system¹ and a unit banking system.² Under the dual banking model, the federal and the state governments charter and regulate the individual banks by their own respective agencies and standards.³ The unit banking system defines the composition of the commercial banking industry.⁴ This unitary system consists primarily of numerous single-office banks "rather than a few mammoth banking companies controlling extensive, nationwide systems of branch offices".⁵ It is possible this traditional characterization may soon change with the current trend toward national interstate banking.⁶

Historically, the banking industry has been a highly regulated industry.⁷ Commercial banks⁸ are limited in the services that they may provide and the geographic areas into which they may expand.⁹

At the federal level, the McFadden Act¹⁰ and the Douglas Amendment¹¹ to the Bank Holding Company Act of 1956¹² have

¹ H. HUTCHINSON, MONEY, BANKING, AND THE UNITED STATES ECONOMY 79 (5th ed. 1984).

² *Id.*

³ *Id.*

⁴ *Id.* at 79, 81.

⁵ *Id.* at 79.

⁶ *Id.* at 88.

⁷ *Id.* at 90; Note, *States May Selectively Authorize Regional Bank Holding Company Acquisitions*, 17 SETON HALL L. REV. 106 (1987) [hereinafter Note].

⁸ A commercial bank has been defined as:

[A]n institution authorized to receive both demand and time deposits, to make loans of various types, to engage in trust services and other fiduciary functions, to issue letters of credit, to accept and pay drafts, to rent safety deposits boxes, and to engage in many similar activities . . . [and] are the only institutions authorized to receive demand deposits.

United States v. Philadelphia Nat'l. Bank, 201 F. Supp. 348, 360 (E.D. Pa. 1962).

⁹ Note, *supra* note 7, at 106.

¹⁰ Pub. L. No. 95-359, 44 Stat. 1224 (1927) (codified as amended in scattered sections of 12 U.S.C. (1982)) (the purpose of this Act was to limit national banks from branching across state lines).

¹¹ 12 U.S.C. § 1842(d) (1982). For further explanation, see *infra* note 17.

¹² 12 U.S.C. §§ 1841-1850 (1982).

barred interstate banking.¹³ The McFadden Act requires national banks¹⁴ to adhere to the branching laws of the State in which their home office is located.¹⁵ The Douglas Amendment prohibits holding companies¹⁶ from owning more than five percent of the stock of a bank in a different state unless the host state has passed legislation permitting such actions.¹⁷

With the advent of changes in technology and deregulations operating on a national basis, the commercial banking industry has been unable to expand to meet the needs of business.¹⁸ Consequently, the majority of states have passed legislation allowing commercial banks greater flexibility.¹⁹

Similar to the majority of states that have passed interstate banking legislation,²⁰ New Jersey has legislated in this develop-

¹³ Note, *supra* note 7, at 107-8.

¹⁴ 12 U.S.C. §§ 21-38 (1982). A national bank has been defined as a bank whose "charter has been granted by the federal government, . . . is part of what is called the national banking system, . . . [and has] the word 'national' in their titles." Banks that are not national banks receive their charters from the state governments."

D. LUCKETT, *MONEY AND BANKING* 35 (2d ed. 1980).

¹⁵ See Pub. L. No. 95-359, 44 Stat. 1224 (1927) (codified as amended in scattered sections of 12 U.S.C. (1982)).

¹⁶ A bank holding company is defined as "any company which has control over any bank or over any company that is or becomes a bank holding company by virtue of this chapter." 12 U.S.C. § 1841(a)(1) (1982); for an example of a state definition of a holding company, see N.J. STAT. ANN. § 17:9A-370(a) (West Supp. 1987).

¹⁷ 12 U.S.C. § 1842(d) (1982), is commonly known as the Douglas Amendment to the Federal Bank Holding Act of 1956. This amendment gives states the authority to determine the structure of the banking system within their own borders. Therefore, it prevents a bank holding company from acquiring a bank outside their home state, unless the law of the foreign state explicitly permits such an acquisition.

¹⁸ Shipley, *Loosen The Reins on Commercial Banking*, BUS. WK., Apr. 1, 1985, at 18 [hereinafter Shipley]; *Interstate Banking and Cap Bills, 1986: Hearings on S. 1466, S. 1467 and S. 1468 Before the Senate Labor, Industry and Professions Committee* 20 (1986) [hereinafter N.J. Senate Hearings].

¹⁹ See *infra* notes 206-24 and the accompanying text.

²⁰ At present, 44 states and the District of Columbia have enacted laws allowing out-of-state bank holding companies to acquire in-state banks under various circumstances. See, e.g., ALA. CODE §§ 5-13A-1 to -10 (1986); ALASKA STAT. § 06.05.235 (1987); ARIZ. REV. STAT. ANN. §§ 6-321 to -327 (West Supp. 1986); CAL. FIN. CODE §§ 3770 to 3778 (West Supp. 1988); CONN. GEN. STAT. ANN. §§ 36-552 to -563 (West 1987); DEL. CODE ANN. tit. 5, §§ 801 to 826 (1985); D.C. CODE ANN. §§ 26-801 to -809.1 (1987); FLA. STAT. ANN. § 658-295 (West 1984); GA. CODE ANN. §§ 7-1-620 to -623 (1987); IDAHO CODE §§ 26-2601 to -2612 (Supp. 1987); ILL. ANN. STAT. ch. 17, para. 2510 (Smith-Hurd 1987); IND. CODE ANN. §§ 28-2-15 to -16 (West Supp. 1987); IOWA CODE ANN. §§ 524.1801 to -.1807 (West Supp. 1987); KY. REV. STAT. ANN. §§ 287.900 to -.910 (Michie/Bobbs-Merrill

ing area.²¹ This article will analyze interstate banking in New Jersey, setting forth three basic components: the legal reasoning for the development of regional interstate banking in New Jersey; the current state of the law in New Jersey; and the present status of regional and national interstate banking by reviewing the majority of states that have addressed the issue by enacting legislation.

I. Introduction

The commercial banking industry in New Jersey is thriving, which is a reflection of the state's economic prosperity.²² The economic boom has created a substantial increase in bank deposits, making New Jersey the ninth largest banking market in the United States.²³ This expanding economy is partially attributable to corporations relocating their New York City headquarters to

Supp. 1986); LA. REV. STAT. ANN. § 6:531-40 (West Supp. 1988); ME. REV. STAT. ANN. tit. 9B §§ 1011 to 1019 (Supp. 1987); MD. [FIN. INST.] CODE ANN. §§ 5-901 to -903 (1986 & Supp. 1987); MASS. GEN. LAWS ANN. ch. 167A, §§ 1 to -4A (West 1984); MICH. COMP. LAWS ANN. § 23.710 (West 1987); MINN. STAT. ANN. §§ 48.90 to -.99 (West 1988); MISS. CODE ANN. §§ 81-8-1 to -7 (1987); MO. ANN. STAT. §§ 362.910 to -.925 (Vernon Supp. 1988); NEB. REV. STAT. §§ 8-901 to -907 (1983); NEV. REV. STAT. ANN. §§ 666.070 to .132 (Michie 1987); N.H. REV. STAT. ANN. § 384:44-54 (1987); N.M. STAT. ANN. § 58-5-11 (1978); N.Y. BANKING LAW §§ 141 to 142(b) (McKinney 1988); N.C. GEN. STAT. §§ 53-210 to -212 (1987); OHIO REV. CODE ANN. §§ 1101.01 to 1103.14 (Anderson Supp. 1986); OKLA. STAT. ANN. tit. 6, §§ 501 to 506 (West Supp. 1988); OR. REV. STAT. §§ 715.010 to .616 (1987); PA. STAT. ANN. tit. 7, § 116 (Purdon Supp. 1987); R.I. GEN. LAWS §§ 19-30-1 to -13 (Supp. 1987); S.C. CODE ANN. §§ 34-24-10 to -90 (Law. Co-op. 1987); S.D. CODIFIED LAWS ANN. §§ 51-16-40 to -41 (Supp. 1987); TENN. CODE ANN. § 45-2-1403 (Supp. 1987); TEX. REV. CIV. STAT. ANN. art. 342-912 to -914 (Vernon Supp. 1988); UTAH CODE ANN. §§ 7-1-101 to -104 (1988); VT. STAT. ANN. tit. 8, §§ 1051-1064 (Supp. 1987); VA. CODE ANN. §§ 6.1-398 to -402 (Supp. 1987); WASH. REV. CODE ANN. §§ 30.04.230, 30.04 -.232 (Supp. 1988); W. VA. CODE §§ 31A-8A-1 to -7 (Supp. 1987); WIS. STAT. ANN. §§ 13-9-301 to -305 (West 1987); WYO. STAT. §§ 13-9-301 to -305 (Supp. 1987).

²¹ 1986 N.J. Sess. Law Serv. c.5 (West) (codified at N.J. STAT. ANN. § 17:9A-370 (West Supp. 1987)).

²² Courtney, *Diversified Economy Allows New Jersey Banks to Prosper*, N.J. Success, May 1987, at 20 [hereinafter Courtney]; Milch, *Jersey Banks Prosper Along with State's Economy*, THE STAR-LEDGER (Newark, N.J.), Jan. 25, 1987, § 10, at 3, col. 1 [hereinafter Milch]; Milch, *Interstate Banking in Full Focus as Industry Advances*, The Star-Ledger (Newark, N.J.), Jan. 26, 1986, § 10, at 3, col. 2 [hereinafter *Full Focus*].

²³ See generally *Full Focus*, *supra* note 22. The eleven largest states by commercial bank deposits are: N.Y., \$202 billion; Cal., \$183.3 billion; Tex., \$146.7 billion; Ill., \$95.5 billion; Pa., \$86.6 billion; Fla., \$61.1 billion; Mich., \$58.5 billion; Ohio, \$56.1 billion; N.J., \$44.2 billion; Mass., \$37.8 billion; Mo., \$36.9 billion. O'Mara, *Big and*

New Jersey, thereby lowering the state's unemployment rate below the national average, increasing the state's wealth rating to third in the nation and finally increasing the construction activity which has helped to foster record earnings for New Jersey banks.²⁴ As a consequence, New Jersey has become an attractive target for competing out-of-state banks.²⁵

On April 28, 1986, New Jersey joined the majority of states²⁶ in allowing commercial banks more flexibility by adopting the New Jersey's Interstate Bank Holding Company Reciprocity Act (the "New Jersey Reciprocity Act").²⁷ This legislation established a regional²⁸ and national²⁹ interstate banking system. However, it qualified access by limiting entry to holding companies from other states which offered reciprocity to New Jersey holding companies.³⁰ The thrust of the enactment is its allowance of New Jersey bank holding companies to expand into adjacent states, while allowing qualified³¹ out-of-state bank holding

Small Banks are Cashing in on New Jersey's Prosperous Economy, Garden St. Rep., Sept. 1985, at 16 (hereinafter O'Mara).

²⁴ O'Mara, *supra* note 23, at 15.

²⁵ *Id.*

²⁶ See *supra* note 17 and accompanying text. See also *infra* notes 206-24 and accompanying text.

²⁷ N.J. STAT. ANN. §§ 17:9A-370 to -380 (West Supp. 1987). "The New Jersey Interstate Bank Holding Company Reciprocity Act incorporates by reference the provisions in the N.J. Bank Holding Company law (N.J. STAT. ANN. 17:9A-344 et seq.) and these provisions would apply to all out-of-state companies owning New Jersey banks." N.J. Bankers Ass'n Bulletin No. 51 (Apr. 1, 1986) [hereinafter NJBA Bulletin].

²⁸ N.J. STAT. ANN. § 17:9A-370(c) (West Supp. 1987). The law establishes a Central-Atlantic region, which is defined as fourteen states and the District of Columbia. The states are: "New Jersey, Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, Wisconsin. . . ."

²⁹ *Id.* at § 17:9A-370(a). National interstate banking was triggered on January 1, 1988. Milch, *Jan. 1 to Mark New Banking Era*, The Star-Ledger (Newark, N.J.), June 21, 1987, § 3, at 5, col. 1 [hereinafter *Banking Era*]. See also Brooks, *Will Banking Bar Lose Out With Interstate Banking*, N.J.L.J., July 9, 1987, at 1, col. 1 [hereinafter Brooks].

³⁰ The Commissioner of Banking in New Jersey, Mary Little Parell, defined reciprocity as "[I]mplicitly [recognizing] the broad diversity of interstate banking laws among the states, and expresses the legislative intent of New Jersey to harmonize its law with those of the other legislatures to the maximum degree feasible." *Banking Era*, *supra* note 29, at 5, col.4.

³¹ Under the New Jersey Reciprocity Act, a state has to establish itself as an "eligible state" as defined pursuant to N.J. STAT. ANN. § 17:9A-370(f). The statute defines an "eligible state" as:

companies to conduct business in New Jersey. This has increased competition among the banks in their efforts to obtain both business and individual customers. Simultaneously, newly chartered banks in New Jersey continue steady growth and expansion of their business base.³²

New Jersey currently lists 134 commercially chartered banks, many of which are controlled by an estimated thirty bank holding companies.³³ Consistent with the state's economic growth, bank mergers and openings are projected to continue.³⁴ This will inevitably lead to the discovery of new techniques to meet customer demands as well as broadening the market area.

Prior to 1986, New Jersey excluded out-of-state banks and bank holding companies from entering the state's banking market and thereby providing full service³⁵ retail banking.³⁶ This restrictive system, however, was conceived under a different economic and political climate.³⁷ The status of today's banking industry has been described as "crying for the freedom to compete. Banking industry leaders, regulators, and Congress must act now to restore economic viability to the system. That can be

any state which meets either or both of the following conditions:

- (1) Any state in the Central-Atlantic Region, [see *supra* note 28] when at least three of those states (in addition to this State), each of which has at least \$20,000,000,000.00 in commercial bank deposits, have reciprocal legislation in effect, and
- (2) Any state or territory of the United States, when at least 13 states in addition to this state (for this purpose the District of Columbia is included as a state, but all other territories are excluded), at least four (other than this state) of which are among the 10 states (other than this State) with the largest amount of commercial bank deposits, have reciprocal legislation in effect.

N.J. STAT. ANN. § 17:9A-370(f).

³² *Full Focus*, *supra* note 22, at 3, col. 2.

³³ *Milch*, *supra* note 22, at 3, col. 1.

³⁴ *Id.*; See *Banking Era*, *supra* note 29, where the Commissioner of Banking stated: "The advent of nationwide Banking to New Jersey will ensure that New Jersey's bank holding companies will continue to be progressive and effective players in the ever-expanding financial services marketplace."

³⁵ Full service bank denotes a commercial bank. The converse is a limited service bank such as a nonbank bank. See Schellie and Climo, *Nonbank Banks: Current Status and Opportunities*, 102 *BANKING L.J.* 4 (1985) [hereinafter Schellie].

³⁶ The Douglas Amendment bars interstate banking, unless the state enacts legislation to that respect. See 12 U.S.C. § 1842(d) (1982). For further explanation, see *supra* note 17.

³⁷ *Shipley*, *supra* note 18, at 18.

done only through genuine structural change.”³⁸

Another factor contributing towards interstate banking, aside from the state's economic growth, is the elimination of the void found in the federal regulation in the Bank Holding Company Act of 1956 (the "Act").³⁹ The Act defines a bank as an institution that "(1) accepts deposits that the depositor has the legal right to withdraw on demand and (2) engages in the business of making commercial loans."⁴⁰ A literal interpretation of this definition enables a bank to practice all phases of banking, except the making of commercial loans, while not being legally considered a bank for purposes of the Act.⁴¹ The significance of this inadequate definition with respect to interstate banking is overwhelming.⁴² If an institution does not fall under the Act's legal definition, the Douglas Amendment, which severely limits interstate banking through the use of holding companies, is not applicable. Therefore, such an institution may cross state borders without any state or federal⁴³ restrictions. The Dreyfus Consumer Bank was an example of such an institution, because it provides only one service mentioned in the Act. It accepts deposits, but does not make commercial loans.⁴⁴ The influx of these limited service banks prompted New Jersey Governor Thomas Kean to sign a moratorium in January of 1985.⁴⁵ The moratorium served to bar limited service banks, commonly referred to as nonbank banks, from entering the state's banking

³⁸ *Id.*

³⁹ See 12 U.S.C. § 1841(c) (1982). The Act defines "bank" as follows: "'Bank' means any institution organized under the laws of the United States, any State of the United States . . . which (1) accepts deposits that the depositor has a legal right to withdraw on demand, and (2) engages in the business of making commercial loans."

⁴⁰ *Id.*; see also Schellie, *supra* note 35, at 5.

⁴¹ See 12 U.S.C. § 1841(c) (1982). See Schellie, *supra* note 35, at 5.

⁴² Schellie, *supra* note 35, at 4, 5.

⁴³ *Id.* at 5.

⁴⁴ O'Mara, *supra* note 23, at 18; Malloy, *Nonbanks and Nondefinitions: New Challenges in Bank Regulatory Policy*, 10 SETON HALL LEGIS. J. 1, 53 n. 299-300 [hereinafter Malloy].

⁴⁵ O'Mara, *supra* note 23, at 18; see also Malloy, *supra* note 44, at 52, which discusses the New Jersey Act Regulating Control of Certain Depository Institutions. This legislation barred the establishment of new nonbank institutions in New Jersey; see 1985 N.J. Laws 58, § 6 (the moratorium was in existence until January 1986), and see 1985 N.J. Laws 521, § 1 (this law extended the moratorium until January 1987).

market for a specific time period.⁴⁶

In 1968, the banking industry, still one of the most regulated industries in the nation, began to deregulate.⁴⁷ After the Act became effective, New Jersey's Banking Commissioner permitted regional branching. In 1973, regional restrictions were removed and statewide branching became a reality.⁴⁸ Inevitably, New Jersey's banks were then faced with decisions regarding their future growth and development.⁴⁹ Banks were forced to decide if they were going to seek a statewide growth, and if so, would it be through a merger in a holding company structure.⁵⁰

II. Legislative History

Interstate banking legislation in New Jersey has been designed to allow New Jersey banking institutions time to grow in size and to expand geographically.⁵¹ The reasons behind allowing expansion were to allow these institutions to prepare themselves, through mergers and acquisitions, for the eventual entry of money-center banks.⁵² For three years, the New Jersey Bankers Association ("NJBA")⁵³ and the New Jersey Banking Department ("NJBD") coordinated their efforts in developing the Regional Banking Act (the "Regional Act").⁵⁴ To design an interstate banking structure incorporating the best interests of New Jersey, the NJBA monitored other states' activities and legislation.⁵⁵ The NJBA considered the national approach and the New

⁴⁶ Malloy, *supra* note 44, at 52.

⁴⁷ O'Mara, *supra* note 23, at 18. Banks are heavily regulated by numerous state and federal regulatory agencies. Some of the highly regulated areas of banking are "investment types, deposit insurance, reserve requirements, and divestiture of credit."

⁴⁸ N.J. Senate Hearings, *supra* note 18, at 17. Richard F. Schaub, Chairman and Chief Executive Officer of First Fidelity Bank, N.A., West Jersey, *id.* at 15, explained to the Senate Committee, New Jersey's history on the deregulation of the banking industry. *Id.* at 15-26.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See generally N.J. STAT. ANN. § 17:9A-370 (West Supp. 1987).

⁵² Money-center banks is a term used to describe large commercial banking institutions such as New York's Chase Manhattan Bank and Chemical Bank. O'Mara, *supra* note 23, at 24. For further explanation, see *infra* note 70.

⁵³ The New Jersey Bankers Association is a group of bankers representing all facets of the banking industry.

⁵⁴ N.J. Senate Hearings, *supra* note 18, at 56-57.

⁵⁵ *Reciprocal Regional Interstate Banking: Hearings on A. 1808 and A. 1809 before the*

England regional approach.⁵⁶

The national approach,⁵⁷ the more liberal, allows the entry of banking organizations from any state without any restrictions or limitations, such as reciprocity.⁵⁸ However, this approach should be enacted by federal legislation,⁵⁹ not by individual states, because of its need for a broad uniform application.⁶⁰ Furthermore, at that time, a majority of states⁶¹ were not in a position to be competitive with New Jersey's banking industry.⁶²

The second approach, considered by the NJBA, was the New England regional approach.⁶³ The regional approach is the most common interstate banking state-based law.⁶⁴ It allows only those organizations that are headquartered in a state within a defined region to acquire a bank or bank holding company located

Assembly Financial Institutions Committee 1, 18 (1986) [hereinafter N.J. Assembly Hearings]. Al Griffith, Vice President of the New Jersey Bankers Association, *id.* at 17, stated:

The New Jersey Bankers Association has been working for almost three years [on this bill]. Through a task force, which is made up of banks of all sizes, we try not to take any particular position on any type of legislative issue in the State House as an association unless a vast majority of our members are in accord. Our decision-making committees essentially represent a cross-section of our banking community—North Jersey, Central Jersey, South Jersey banks, [including] small-, medium-sized and large banks, nationally chartered and State-chartered banks.

Id. at 18.

⁵⁶ *Id.* at 18-19.

⁵⁷ The national approach allows the entry by banking organizations from any state, with reciprocal legislation, to acquire a bank within the state. There are four states with such a law: Kentucky; New York; Washington; and West Virginia. Calem, *Interstate Bank Mergers and Competition in Banking*, BUS. REV. OF THE FED. RESERVE BANK OF PHILADELPHIA, Jan.-Feb. 1987, at 4 [hereinafter Calem].

⁵⁸ *Id.* (Bank Holding Company Reporting Proposed New Rule: N.J.A.C. 3:13-1).

⁵⁹ N.J. Assembly Hearings, *supra* note 55, at 19.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*; the New England regional approach denotes the concept where the state passes legislation which discriminates in favor of a region. See *Northeast Bancorp, Inc. v. Board of Governors of the Fed. Reserve Sys.*, 472 U.S. 159 (1985); see also Simonson, Pringle & Cardwell, *Regional Interstate Banking Developments*, 10 OKLA. CITY U.L. REV. 69, 71-72 (1985) [hereinafter Simonson]. "Regional reciprocal" is defined as limiting "the interstate privilege to certain specified states located geographically near the legislating state." The result of such a limitation divides the country into banking regions or zones; see, e.g., Dunlap, *Interstate Banking Developments in Florida: Pushing Through Legal Barriers and Toward a Level Playing Field*, 9 NOVA L.J. 1, 12 (1984) [hereinafter Dunlap].

⁶⁴ Calem, *supra* note 57, at 4.

in the host state.⁶⁵

After evaluating both approaches, the NJBA adopted the regional structure to implement interstate banking in New Jersey.⁶⁶ The underlying reason being the regional structure would create an "interim basis"⁶⁷ for certain banks in New Jersey and the designated regional states.⁶⁸ This interim basis affords banks in the regional states an opportunity to expand⁶⁹ across state lines using devices such as acquisitions, mergers, or the opening of a new bank within the reciprocal state. The importance of the interim basis was conceived in anticipation of the possibility of having larger money-center banks,⁷⁰ such as from New York, inundating New Jersey institutions before they were prepared to compete.⁷¹

The application of the New Jersey Reciprocity Act is limited to specific banking institutions, while excluding other financial institutions.⁷² It applies solely to interstate bank holding companies and the institutions which they may acquire.⁷³ Thrift institutions, such as savings and loan associations and savings banks, are not included in the regional reciprocity provision of the statute.⁷⁴ The NJBA had given the New Jersey Council of Savings Institutions (NJCSI) and the New Jersey Savings League, the trade organizations for savings and loan associations, the option of being included or excluded from the legislation.⁷⁵ The NJCSI initially opposed interstate banking because they were content with their business being concentrated within New Jersey. Today,

⁶⁵ See Simonson, *supra* note 63, at 71-72.

⁶⁶ N.J. Assembly Hearings, *supra* note 55, at 21-22.

⁶⁷ *Id.* at 20. "Interim basis" refers to the regional approach which allows banking institutions within the state the opportunity to grow in size by geographical expansion. This allows regional institutions to become competitive when national banking becomes a reality.

⁶⁸ *Id.*

⁶⁹ *Id.*; see Simonson, *supra* note 63, at 92.

⁷⁰ Money-center banks is a term of art used to define large, out-of-state banks that seek to offer full-service banking on a national scale. These institutions are opposed to regional reciprocal banking because they are excluded from owning full-service banks in those localities that have established a regional area. O'Mara, *supra* note 23, at 24. See also Simonson, *supra* note 63, at 87.

⁷¹ Simonson, *supra* note 63, at 87.

⁷² N.J. STAT. ANN. § 17:9A-370(a) (West Supp. 1987).

⁷³ *Id.* N.J. Senate Hearings, *supra* note 18, at 63.

⁷⁴ N.J. Senate Hearings, *supra* note 18, at 63; N.J. STAT. ANN. § 17:9A-370(a).

⁷⁵ N.J. Senate Hearings, *supra* note 18, at 63-65.

however, the organization has changed its position to one of neutrality.⁷⁶ In contrast to New Jersey's position, the previously mentioned New England regional approach has included all thrift institutions.⁷⁷

Florida serves as a prime example of a state equally concerned with the strong advances of several of the large money-center banks.⁷⁸ Accordingly, Florida and surrounding states organized and devised a southeastern region.⁷⁹ Both the New England and Southeastern regions have become constructive models for the conception of the Central-Atlantic region of which New Jersey is a member.

The United States Supreme Court addressed the issue of whether a state legislature could establish its own banking region, in effect discriminating against other states from participation in *Northeast Bancorp, Inc. v. Board of Governors of the Federal Reserve System*.⁸⁰ The Court held that it was constitutionally permissible for a state to enact legislation discriminating in favor of a region.⁸¹ This regional approach violated neither the Douglas Amendment nor "the commerce, compact, and equal protection clauses of the United States Constitution."⁸²

When the NJBA endorsed the regional approach, it allowed a number of states of significant size⁸³ to contract with New

⁷⁶ *Id.*

⁷⁷ *See, e.g.*, MASS. GEN. LAWS ANN. ch. 167A, §§ 1 to -4A (West 1984); Munro, *The Laws Granting Thrifts Interstate Powers*, AM. BANKER, June 30, 1987. The following list of states have passed, or are expected to have their thrift interstate acts signed by their state governor. The states are: Alabama, 1982; Arizona, 1986; Arkansas, 1987; California, 1987; Connecticut, 1983; Delaware, 1988; Florida, 1987; Georgia, 1987; Indiana, 1987; Iowa, interprets a 1907 law; Louisiana, 1987; Maine, 1975; Maryland, 1987; Massachusetts, 1982; Minnesota, 1986; Mississippi, 1982; Missouri, 1986; New Hampshire, 1987; Nevada, 1985; North Carolina, 1984; Ohio, 1985; Oklahoma, 1986; Oregon, 1985; Pennsylvania, 1986; Rhode Island, 1983; South Carolina, 1985; Tennessee, 1985; Texas, 1986; Utah, 1987; Vermont, 1988; Virginia, 1985; Washington, 1981; West Virginia, 1988; Wisconsin, 1987; Wyoming, 1987. *See* Simonson, *supra* note 63, at 96.

⁷⁸ N.J. Senate Hearings, *supra* note 18, at 58; Dunlap, *supra* note 63, at 1-3.

⁷⁹ The states which comprise the southeastern region are "Alabama, Arkansas, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, and the District of Columbia." FLA. STAT. ANN. § 658.295(2)(j) (West 1984).

⁸⁰ 472 U.S. 159 (1985).

⁸¹ *Id.*; *see* Note, *supra* note 7, at 108, 115-16.

⁸² Note, *supra* note 7, at 108-9.

⁸³ "Significant size" refers to the statutory requirement that "[A]ny state in the

Jersey to organize the Central-Atlantic region. This agreement was used to achieve the geographic expansion and the economic stability sought during the interim period.⁸⁴

III. The Regional Phase

The New Jersey Reciprocity Act was enacted in two stages: the regional and the national.⁸⁵ A state must first satisfy the regional stage⁸⁶ which authorizes the recognition of a Central-Atlantic region.⁸⁷ It "became effective on August 24, 1986, pursuant to a Decision and Determination of Reciprocity issued by the New Jersey Commissioner of Banking on August 8, 1986."⁸⁸

The establishment of the Central-Atlantic region was conditioned upon certain events occurring.⁸⁹ First, the law stipulated that three states, as a minimum, need to be from the regional alliance.⁹⁰ These three states must be among the fifteen states designated in the legislation.⁹¹ Second, each of the three states must hold a minimum of \$20 billion in deposits.⁹² Each state was also obligated to adopt legislation permitting New Jersey bank holding companies to enter the respective state to acquire banks or bank holding companies.⁹³ Once these prerequisites have been fulfilled, the regional stage is established.⁹⁴

Central-Atlantic Region, when at least three of those states (in addition to this State) each of which has at least \$20,000,000.00 in commercial bank deposits, have reciprocal legislation in effect. . . ." N.J. STAT. ANN. § 17:9A-370(f)(1) (West Supp. 1987) (emphasis added).

⁸⁴ N.J. Assembly Hearings, *supra* note 55, at 21.

⁸⁵ N.J. Senate Hearings, *supra* note 18, at 58-59; N.J. STAT. ANN. § 17:9A-370(f)(1) (West Supp. 1987).

⁸⁶ N.J. STAT. ANN. § 17:9A-370(f)(1) (West Supp. 1987).

⁸⁷ *Id.* § 17:9A-370(c); N.J. Assembly Hearings, *supra* note 55, at 21-22; N.J. Senate Hearings, *supra* note 18, at 58.

⁸⁸ New Jersey Commissioner of Banking issued a DECISION AND DETERMINATION OF EFFECTIVE DATE AND RECIPROCAL STATES FOR NATIONWIDE RECIPROCITY PURSUANT TO PUB. L. 1986, ch. 5 on June 22, 1987, at 1 [hereinafter DECISION AND DETERMINATION].

⁸⁹ N.J. STAT. ANN. § 17:9A-370(f)(1) (West Supp. 1987).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* On August 24, 1986, the first phase of the Interstate Banking Act became effective pursuant to a Decision and Determination of Reciprocity with Kentucky,

At the time of the adoption of the legislation, there were twelve states in the Central-Atlantic region that had significant⁹⁵ bank deposits.⁹⁶ These twelve states qualified as potential candidates, as long as each state offered similar reciprocity.⁹⁷ The legislature's original intent was that the moment any one state in the region had reciprocity with New Jersey, regional interstate banking would become a reality.⁹⁸

However, some of the NJBA members suggested that direct competition with one state, such as Pennsylvania, would place New Jersey in an unfavorable position⁹⁹ by subjecting New Jersey institutions to immediate out-of-state competition.¹⁰⁰ This concern was addressed by requiring at least three states as a prerequisite to establishing the regional alliance.¹⁰¹

Reciprocal legislation embodies the notion that there is no uniformity in legislation,¹⁰² but rather a broad variation of interstate banking laws between the states.¹⁰³ However, reciprocal legislation "expresses the legislative intent of New Jersey to harmonize its law with those of the other jurisdictions to the maximum degree reasonably feasible."¹⁰⁴ The New Jersey

Ohio, and Pennsylvania by the New Jersey Commissioner of Banking on August 8, 1986. DECISION AND DETERMINATION, *supra* note 88, at 1.

⁹⁵ N.J. STAT. ANN. § 17:9A-370(f)(1) (West Supp. 1987). For further explanation, see *supra* note 77.

⁹⁶ Zarate, *Assembly Panel Clears Measure to Let Jersey Join Interstate Banking Zone*, The Star-Ledger (Newark, N.J.), Feb. 21, 1986, at 50, col. 5-6. The twelve states eligible are: New Jersey, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, Ohio, Pennsylvania, Tennessee, Virginia, and Wisconsin. The three states within the Central-Atlantic region that failed to meet the \$20 billion in deposit limitation are Delaware, West Virginia, and the District of Columbia.

⁹⁷ *Id.* at col. 5; N.J. STAT. ANN. § 17:9A-370(f)(1) (West Supp. 1987).

⁹⁸ N.J. Assembly Hearings, *supra* note 55, at 21-22.

⁹⁹ *Id.* at 22.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² DECISION AND DETERMINATION, *supra* note 88, at 3.

¹⁰³ *Id.*

¹⁰⁴ *Id.* N.J. STAT. ANN. § 17:9A-370(i) (West Supp. 1987), defines reciprocal legislation as the

[s]tatutory law of a state of the United States (including the District of Columbia) which authorizes or permits a bank holding company located in this State to acquire banks or bank holding companies located in that state on terms and conditions substantially the same as the terms and conditions pursuant to which a bank holding company located in that state may acquire banks or bank holding companies located in that state. The fact that the law of that other state imposes limitations or restric-

Reciprocity Act defined reciprocal legislation and effectuated a two-step analysis to be used in considering a potential acquisition of a bank or bank holding company in New Jersey.¹⁰⁵ These steps have been referred to as “threshold reciprocity”¹⁰⁶ and the “particular restriction.”¹⁰⁷

The “threshold reciprocity” step asks:

[D]oes the other jurisdiction permit a New Jersey bank holding company to make acquisitions there on ‘terms and conditions substantially the same’ as the terms and conditions applicable to its own bank holding companies making acquisitions there?¹⁰⁸

Second, the “particular restriction” analysis takes into consideration the following:

[O]nce threshold reciprocity is recognized, does the interstate law of the other jurisdiction impose ‘limitations or restrictions’ on the acquisition or ownership of a banking institution there by a New Jersey bank holding company? If so, then substantially the same limitations and restrictions shall be applicable when bank holding companies from that jurisdiction seek to make acquisitions in New Jersey.¹⁰⁹

The three states which effectuated the phase-in stage were Pennsylvania, Ohio, and Kentucky.¹¹⁰ Each had at least \$20 billion

tions on the acquisitions of banks or bank holding companies located in that state by a bank or bank holding company located in this State shall not necessarily mean that the law of that state is not reciprocal legislation; provided, however, that if the law of the other state limits acquisitions by a bank or bank holding company located in this State to banks or bank holding companies which are not in competition with banks or bank holding companies located in or chartered by that state or to banks or bank holding companies which do not have customary banking deposit and commercial loan powers, the law of that other state shall not be reciprocal legislation. If the reciprocal legislation of that other state imposes limitations or restrictions on the acquisition or ownership of a bank or bank holding company located in that state by a bank holding company located in this State, substantially the same limitations and restrictions shall be applicable to the eligible bank holding company located in that other state with respect to its acquisition of banks or bank holding companies located in this State.

¹⁰⁵ DECISION AND DETERMINATION, *supra* note 88, at 3.

¹⁰⁶ *Id.* at 3.

¹⁰⁷ *Id.* at 4.

¹⁰⁸ *Id.* at 3.

¹⁰⁹ *Id.* at 4.

¹¹⁰ *Id.* at 1.

in commercial bank deposits and their legislatures enacted reciprocal legislation.¹¹¹

Pennsylvania's Reciprocal Interstate Banking Act (the "Pennsylvania Act")¹¹² was signed on June 25, 1986, and became effective on August 25, 1986.¹¹³ It permits out-of-state acquisitions as long as two conditions are met. First, the out-of-state bank holding company must hold seventy-five percent of its deposits in subsidiaries located within the region consisting of Delaware, Kentucky, Maryland, New Jersey, Ohio, Virginia, West Virginia, and the District of Columbia.¹¹⁴ Second, a bank holding company must maintain its principal place of business in one of the regional states which accords reciprocal acquisition privileges to Pennsylvania banks.¹¹⁵ The Pennsylvania Act expressly defines as reciprocal, the interstate banking laws of Kentucky, Maryland, Michigan, New Jersey, New York, Ohio, Rhode Island, Utah, Washington, and West Virginia.¹¹⁶

Ohio passed its reciprocal Interstate Banking Act (the "Ohio Act") in October 1985.¹¹⁷ The Ohio Act stipulates that regional reciprocal acquisitions by out-of-state bank holding companies are required to hold the largest share of their deposits in one of the following states: Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, New Jersey, Pennsylvania, Tennessee, Virginia, West Virginia, Wisconsin, and the District of Columbia.¹¹⁸ It also prohibits out-of-state acquisitions that would result in the acquiror having more than twenty percent of the total deposits of all Ohio banks, savings banks, and savings and loan associations.¹¹⁹

Kentucky enacted legislation in July of 1984¹²⁰ which automati-

¹¹¹ *Id.* See OHIO REV. CODE ANN. §§ 1101.01 to 1103.14 (Anderson Supp. 1986); PA. STAT. ANN. tit. 7, § 116 (Purdon Supp. 1987); KY. REV. STAT. ANN. §§ 287.900 to .910 (Michie/Bobbs-Merrill Supp. 1986).

¹¹² PA. STAT. ANN. tit. 7, § 116 (Purdon Supp. 1987).

¹¹³ *Id.* Muldoon, *Law Clears Way For Pennsy to Join Jersey in Regional Banking Compact*, The Star-Ledger (Newark, N.J.), June 26, 1986, at 1, col. 1 [hereinafter Muldoon]; see also Milch & Muldoon, *Pennsy Legislature Opens Door to Interstate Banking*, The Star-Ledger (Newark, N.J.), June 25, 1986, at 38, col. 1 [hereinafter Milch & Muldoon].

¹¹⁴ PA. STAT. ANN. tit. 7, § 116(a)(iii) (Purdon Supp. 1987); see also Milch & Muldoon, *supra* note 113, at 38, col. 1.

¹¹⁵ PA. STAT. ANN. tit. 7, § 116(b)(ii) (Purdon Supp. 1987).

¹¹⁶ *Id.* tit. 7, § 116(c)(iv).

¹¹⁷ OHIO REV. CODE ANN. § 1101.05 (Anderson Supp. 1986). Ohio enacted its interstate banking law in October 17, 1985.

¹¹⁸ *Id.* § 1101.05(I).

¹¹⁹ *Id.* § 1101.05(E).

¹²⁰ KY. REV. STAT. ANN. § 287.900 (Michie/Bobbs-Merrill Supp. 1986).

cally provided for reciprocity with New Jersey, effective July 13, 1986.¹²¹ After July 13, 1986, Kentucky allowed nationwide reciprocal interstate acquisitions of banks and bank holding companies which had been in existence for at least five years.¹²² However, this statute prohibits acquisitions which would result in a state-wide share of deposits in excess of fifteen percent.¹²³ It also prohibits acquisitions which would result in a single entity controlling four or more banks in the state.¹²⁴

The acts of these three states made it possible for New Jersey to become an active participant in the interstate banking industry.¹²⁵ Midlantic Corp., a New Jersey bank holding company, was the first banking institution to take advantage of the New Jersey Reciprocity Act by merging with Continental Bancorp., Inc. of Pennsylvania, on January 30, 1987.¹²⁶

Anti-Leapfrog Provision

The New Jersey Reciprocity Act includes an "anti-leapfrog" provision which addresses the situation of overlapping regions with non-reciprocal states.¹²⁷ As such, a financial institution is prohibited from entering a foreign region by "leaping over" the regional limitations by purchasing a bank holding company in a state which is within the region.¹²⁸

Applying the leapfrog provision, a bank holding company located in the Central-Atlantic region, which has reciprocity with

¹²¹ *Id.* NJBA Bulletin, *supra* note 27, at 1.

¹²² KY. REV. STAT. ANN. § 287.900(2) (Michie/Bobbs-Merrill Supp. 1986).

¹²³ *Id.* § 287.900(3).

¹²⁴ *Id.* § 287.900(4)(a).

¹²⁵ DECISION AND DETERMINATION, *supra* note 88, at 1.

¹²⁶ Courtney, *supra* note 22, at 21, col. 2. Another illustration of this new banking trend was the interstate merger of CoreState Financial Corp. of Philadelphia which acquired New Jersey National Bank. Brooks, *supra* note 29, at 24, col. 1. Other mergers that were announced in the summer of 1987 are First Fidelity of Newark to merge with Fidelcor of Philadelphia; Carteret Savings will be purchased by Home Group (a New York insurance company); and National Westminster agreed to buy First Jersey National (the fourth largest bank in New Jersey). Perlman, *Merger Mania Hits Jersey Banks*, The N.Y. Times, Aug. 9, 1987, at 14, col. 1. Horizon Bancorp of Morristown agreed to be acquired by Chemical Bank of New York. The deal became effective when New Jersey's national phase was triggered. Muldoon, *supra* note 113, at 67.

¹²⁷ N.J. STAT. ANN. § 17:9A-370(g) (West Supp. 1987); *see also* N.J. Assembly Hearings, *supra* note 55, at 31.

¹²⁸ N.J. Assembly Hearings, *supra* note 55, at 31.

New Jersey, may not acquire a New Jersey bank holding company if the controlling bank holding company is not located in the region. Furthermore, the law limited the acquisition of a New Jersey bank holding company by requiring at least seventy-five percent of the deposits of any bank or bank holding company owning a New Jersey bank to be located in an eligible¹²⁹ reciprocal state in the region.¹³⁰

The seventy-five percent minimum was not so restrictive that banks were without the flexibility to retain assets in other states.¹³¹ This minimum level, a consensual figure reached by bankers,¹³² their reasoning was based on the figure's reasonableness and its likelihood of effectuating the purpose of the anti-leapfrog provision.¹³³ Thus, if a bank holding company violates the leapfrog provision subsequent to an acquisition, its New Jersey holdings are then required to be divested in accordance with the regulations promulgated by the Commissioner of Banking.¹³⁴

IV. National Phase

The national stage,¹³⁵ the most important stage, became effective on January 1, 1988.¹³⁶ The regional system, which limited the interstate privilege to certain specified states located geographically near New Jersey, was automatically converted to the more liberal and competitive national system.¹³⁷ This conversion extended the privilege of entry to any out-of-state banking institution whose home state had extended reciprocity to New Jersey.¹³⁸ By allowing access to its financial markets, New Jersey

¹²⁹ N.J. STAT. ANN. § 17:9A-370(g) (West Supp. 1987).

¹³⁰ *Id.*

¹³¹ N.J. Assembly Hearings, *supra* note 55, at 33.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ Senate Labor, Industry and Professions Committee Statement, Senate, No. 1467, L. 1986, c.5.

¹³⁵ N.J. STAT. ANN. § 17:9A-370(f)(2) (West Supp. 1987), states that the national phase becomes effective "[w]hen at least 13 states in addition to this state. . . , at least four (other than this state) of which are among the 10 states (other than this State) with the largest amount of commercial bank deposits, have reciprocal legislation in effect."

¹³⁶ *Banking Era*, *supra* note 29, at 5, col.1.

¹³⁷ DECISION AND DETERMINATION, *supra* note 88, at 7.

¹³⁸ *Id.*

created a highly competitive environment.¹³⁹

The national phase was contingent upon thirteen states, with twenty-five percent of all commercial bank deposits, enacting reciprocal interstate legislation with New Jersey.¹⁴⁰ However, the New Jersey Reciprocity Act further mandated that a minimum of four of the ten states with the largest amount of commercial bank deposits be included in the thirteen states.¹⁴¹ In addition to the national phase requirements, there were proposals to establish a phase-in date within the legislation.¹⁴² However, the NJBA purposely excluded such a proposal based on its belief that there would not be adequate regional bank consolidation prior to the effective date.¹⁴³ Otherwise, New Jersey's banking institutions would be in an emergency situation because the industry would be quickly dominated by a small number of money-center institutions. NJBA, therefore, recognized that the need for this gradual approach would give New Jersey bank holding companies sufficient time to enter and compete in the national banking system.¹⁴⁴ During this interim period, New Jersey experienced an economic gain partially due to the additional capital acquired through regional acquisitions.¹⁴⁵ In 1986, nine mergers occurred in New Jersey which resulted in the procurement of \$5 billion worth of assets and \$4.3 billion in deposits.¹⁴⁶ Thus, this phase-in period has provided New Jersey banking institutions the opportunity to expand through in-state and out-of-state acquisitions and mergers.¹⁴⁷

A. *Commissioner Authority To Implement The National Phase*

The New Jersey Commissioner of Banking, Mary Little Parell,¹⁴⁸ has the authority to determine when the threshold reci-

¹³⁹ *Id.*

¹⁴⁰ N.J. STAT. ANN. §§ 17:9A-370(g)(1) and (f)(2) (West Supp. 1987).

¹⁴¹ *Id.* § 17:9A-370.

¹⁴² N.J. Assembly Hearings, *supra* note 55, at 22-23.

¹⁴³ *Id.* at 23.

¹⁴⁴ *Id.*

¹⁴⁵ Milch, *supra* note 22, at 4, col. 1.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Mary Little Parell is Commissioner of the New Jersey Department of Banking. Appointed in 1984, Parell's official duties include service on the boards of the New Jersey Housing and Mortgage Finance Agency, the Corpora-

procuity and other requirements have been met.¹⁴⁹ Based on these determinations, the Commissioner issued a Decision and Determination making national interstate banking a reality in New Jersey.¹⁵⁰ The states that did adopt the necessary laws to implement the national phase of the law were New York, Maine, Alaska, Arizona, Kentucky, Ohio, Pennsylvania, Texas, Wyoming, Oklahoma, Washington, Delaware, Utah, and West Virginia.¹⁵¹ The four states with the largest amounts of deposits, also meeting the minimum requirements of the New Jersey Reciprocity Act, were New York, Pennsylvania, Ohio, and Texas.¹⁵²

In response to an opinion forwarded by the New Jersey Attorney General,¹⁵³ the Commissioner announced that "entry into New Jersey will be possible as well by chartering of new or 'denovo' banks in this state by the outside institution, again subject to approval of the regulators."¹⁵⁴ According to the Commissioner, the implementation of the nationwide approach will ensure that the state's bank holding companies will maintain their successful and progressive position.¹⁵⁵ Consequently, this approach will allow New Jersey institutions to have the ability to compete effectively in an expanding financial service market.

B. *Method of Acquisition by an Out-of-State Institution*

The Commissioner may enforce the requirements of the New Jersey Reciprocity Act through self-promulgated rules and regulations.¹⁵⁶ An out-of-state bank holding company that proposes to procure a New Jersey bank or bank holding company must file an application with the Department of Banking.¹⁵⁷ This application requires out-of-state bank holding companies to sup-

tion for Business Assistance, the New Jersey Cemetery Board and the Executive Commission on Ethical Standards.

Parell, *Interstate Banking Consumer Dividend*, N.J. Success, Dec. 1986, at 46, col. 3.

¹⁴⁹ DECISION AND DETERMINATION, *supra* note 88, at 4. See also N.J. STAT. ANN. § 17:9A-371(a)(3) (West Supp. 1987).

¹⁵⁰ DECISION AND DETERMINATION, *supra* note 88, at 4.

¹⁵¹ *Id.* at 5-6.

¹⁵² *Banking Era*, *supra* note 29, at 5, col. 3.

¹⁵³ *Id.* at col. 1.

¹⁵⁴ *Id.* at col. 3. "Denovo" refers to the creation of a new subsidiary. Calem, *supra* note 57, at 10.

¹⁵⁵ *Banking Era*, *supra* note 29, at 5, col. 4.

¹⁵⁶ N.J. STAT. ANN. § 17:9A-371(a)(3) (West Supp. 1987).

¹⁵⁷ 18 N.J. Reg. 1434 (Proposed New Rule to be codified at N.J. ADMIN. CODE tit.

ply sufficient information to the Commissioner.¹⁵⁸ Based on this information, the Commissioner analyzes the proposal for the take over, merger, or acquisition, and determines whether all the requirements have been met. Then the Commissioner will then issue a written determination concerning the transaction.¹⁵⁹ The application process ensures that all proposed acquisitions meet the statutory requirements.¹⁶⁰ The reasons behind this process are attributable to the potential impact on New Jersey's economy. The acquisition of an out-of-state bank or bank holding company will transfer the control of a New Jersey banking institution to a non-New Jersey institution.¹⁶¹ One possible consequence would be a net drain of capital from a local community or even the entire state.¹⁶² However, a general consensus favors the proposition that "money being mobile, will naturally flow to the areas with the greatest potential for return, regardless of geographic barriers."¹⁶³ Nevertheless, one authority has stated, "with so little relevant empirical evidence, the question of the effect of interstate banking on credit availability will be debated with emotional arguments rather than the facts."¹⁶⁴

V. Companion Bills

A contemporary piece of legislation to the New Jersey Reciprocity Act is the New Jersey Banking Oversight and Change of Control Act (the "Bank Oversight Act").¹⁶⁵ The Bank Oversight Act provides the banking Commissioner with the authority to review acquisitions of state chartered banks by out-of-state bank holding companies or individuals.¹⁶⁶ As changes have been occurring in the banking industry, the Bank Oversight Act is neces-

3, ch. 13, § 1 (1986) by Mary Little Parell). Procurement is done through take-overs, mergers, and acquisitions.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Simonson, *supra* note 63, at 93.

¹⁶³ *Id.*

¹⁶⁴ *Id.* (citing Rhoades, *The Effect of Interstate Banking on Small Banks and Local Communities*, presented at the American Political Science Ass'n Annual Meeting (Aug. 31, 1984) at 13).

¹⁶⁵ N.J. STAT. ANN. §§ 17:9A-373 to -376 (West Supp. 1987).

¹⁶⁶ N.J. STAT. ANN. §§ 17:9A-374(a) and (c) (West Supp. 1987).

sary to provide a secure banking industry in New Jersey.¹⁶⁷ In addition, with the phase-in of the national approach, New Jersey institutions may be subject to increased acquisitions by individuals and companies from out-of-state and other New Jersey institutions.¹⁶⁸ Therefore, the Bank Oversight Act gives the Commissioner the authority¹⁶⁹ to monitor the control of New Jersey's financial institutions.¹⁷⁰

First, the Act establishes a reporting requirement.¹⁷¹ Thus, the Commissioner may request a bank holding company or individual to submit copies of their filings or any other reports given to other regulatory agencies.¹⁷² These reports will be used exclusively in an informational capacity and applies to state and federally chartered banks.¹⁷³ An individual who controls a bank must also submit personal and financial information to the Department of Banking on an annual basis.¹⁷⁴

Second, the Commissioner has the right to conduct an examination of a bank holding company having control over a state chartered bank.¹⁷⁵ If an examination is conducted, the examined company is assessed the cost of the examination.¹⁷⁶ It may be "conducted jointly, concurrently or in lieu of examination made by a federal or other state bank regulatory agency."¹⁷⁷ More-

¹⁶⁷ Introductory Statement, Senate, No. 1468, L.1986, c.6.

¹⁶⁸ *Id.*

¹⁶⁹ The Act defines "control" of a banking institution as:

(i) ownership, control, or power to vote 25% or more of the outstanding shares of any class of voting securities of the bank or banking institution, directly or indirectly, or acting through one or more persons;

(ii) control in any manner over the election of a majority of the directors, trustees, general partners, or individuals exercising similar functions of the bank or banking institution; or

(iii) the power to exercise, directly or indirectly, a controlling influence over the management or policies of the bank or banking institution, as determined by the commissioner after notice and opportunity for hearing;

N.J. STAT. ANN. § 17:9A-373(f)(1) (West Supp. 1987).

¹⁷⁰ Introductory Statement, Senate, No. 1468, L.1986, c.6.

¹⁷¹ N.J. STAT. ANN. § 17:9A-374 (West Supp. 1987).

¹⁷² *Id.*

¹⁷³ *Id.* § 17:9A-374(b) (West Supp. 1987); Introductory Statement, Senate, No. 1468, L.1986, c.6.

¹⁷⁴ N.J. STAT. ANN. §§ 17:9A-374(b)(i) to (iii) (West Supp. 1987).

¹⁷⁵ *Id.* § 17:9A-375 (West Supp. 1987).

¹⁷⁶ *Id.* § 17:9A-375.

¹⁷⁷ *Id.* § 17:9A-375(b).

over, the examination report, which is prepared by the New Jersey Department of Banking, is available to any federal or state bank agency.¹⁷⁸ However, this exchange of information is limited by the signing of a written agreement between the agencies to provide for the reciprocation of information.¹⁷⁹

Finally, the Commissioner must approve any transfer of bank control before the transaction can be consummated.¹⁸⁰ The Commissioner must be given advance notice of a proposal for the acquisition of a New Jersey bank.¹⁸¹ Upon which the Commissioner has sixty days to object to the acquisition, or the transaction will be completed.¹⁸² Extensions are permitted if the Commissioner determines that the party seeking to acquire the New Jersey bank has not provided all the necessary information.¹⁸³

However, the Commissioner's authority to prohibit the acquisition is limited.¹⁸⁴ The acquisition can be prohibited if the financial condition of the purchaser may endanger the institution or its depositors,¹⁸⁵ or if the purchaser does not have the experience or the competence to operate the institution.¹⁸⁶ In addition, if the purchaser has failed to meet the statutory informational requirement, the Commissioner may deny the acquisition.¹⁸⁷

If a holding company already owns at least one New Jersey bank, both the holding company and the bank are subject to the Commissioner's examination authority.¹⁸⁸ This situation is one exception to the Commissioner's authority to prohibit acquisitions. The Bank Oversight Act, in addition, provides a fee schedule for the filings, reports, and other requirements under the

¹⁷⁸ *Id.* § 17:9A-375(c).

¹⁷⁹ *Id.*

¹⁸⁰ N.J. STAT. ANN. § 17:9A-376 (commonly referred to as the Change in Bank Control Act).

¹⁸¹ *Id.* § 17:9A-376(a).

¹⁸² *Id.*

¹⁸³ *Id.* § 17:9A-376(f) lists the information that has to be filed in order for the Commissioner to approve the change of control of a state chartered institution.

¹⁸⁴ *Id.* § 17:9A-376(g).

¹⁸⁵ *Id.* § 17:9A-376(g)(i).

¹⁸⁶ *Id.* § 17:9A-376(g)(ii).

¹⁸⁷ *Id.* § 17:9A-376(g)(iii).

¹⁸⁸ *Id.* § 17:9A-376(k).

Act.¹⁸⁹

Another concurrent piece of legislation was the Deposit Caps Act.¹⁹⁰ This Act reassessed the percentage limitation on aggregate average deposits¹⁹¹ held by banks other than savings banks within the state. Such percentage limitations were established seventeen years prior to the passage of the interstate banking law.¹⁹² However, with today's changes, such as coast-to-coast interstate banking, the reassessment of the limitations was necessary.¹⁹³ The primary motive behind the enactment of the Deposit Caps Act was to impose a limitation on the size of a New Jersey bank holding company through mergers and acquisitions.¹⁹⁴ The Deposit Caps Act places a restraint on banks having more than twenty percent of the state's commercial bank deposits.¹⁹⁵

The primary debate surrounding the Deposit Caps Act was whether it should be associated with the passage of the New Jersey Reciprocity Act.¹⁹⁶ Opponents to the Deposit Caps Act contended that it would invariably inhibit the leading New Jersey banking institutions from engaging in mergers and acquisitions.¹⁹⁷ While hindering New Jersey financial institutions, larger out-of-state institutions would be free to cross the border into New Jersey pursuant to the New Jersey Reciprocity Act and acquire banks from which the New Jersey institutions were prohibited.¹⁹⁸

The proponents of the Deposit Caps Act also supported the maintenance of a competitive banking system in New Jersey.¹⁹⁹ They justified their position by the fact that the purpose of the deposit caps was to prevent the dominance of New Jersey's banking system by its two largest New Jersey institutions.²⁰⁰ Endorsing this position, Paul A. Volker, former chairman of the Federal

¹⁸⁹ *Id.* § 17:9A-377.

¹⁹⁰ *Id.* § 17:9A-344.1.

¹⁹¹ *Id.* § 17:9A-344.1(b).

¹⁹² *Id.* § 17:9A-344.1(a).

¹⁹³ *Id.* § 17:9A-344.1(b).

¹⁹⁴ N.J. Senate Hearings, *supra* note 18, at 15-16.

¹⁹⁵ *Id.* at 30.

¹⁹⁶ *Id.* at 15-16.

¹⁹⁷ *Id.* at 16.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 29.

²⁰⁰ *Id.*

Reserve System,²⁰¹ stated:

[to] forestall any substantial risk of excessive concentration, the Federal government may permit, or even encourage, states to set limitations on the proportion of banking assets within their own borders that could be acquired through acquisitions or mergers of significant size.²⁰²

The debate was rendered moot by the enactment of the Banks-Deposits-Elimination of Restriction on Control Act.²⁰³ This Act, signed on July 23, 1987 by Governor Thomas Kean, eliminated the restrictions on the amount of bank deposits controlled by a bank holding company or an individual.²⁰⁴ Therefore, New Jersey institutions may continue to expand through mergers and acquisitions despite holding twenty percent of New Jersey's commercial bank deposits. Although some concentration of banking resources is bound to occur, the entry of new competitors into the New Jersey financial marketplace is expected to produce a healthier competitive environment.

VI. *Summation of Variant State Laws*

The interstate banking movement of the past several years is part of a broad set of changes affecting the financial industry.²⁰⁵ The state statutes which permit interstate bank acquisitions by bank holding companies are: i) the nationwide non-reciprocal model; ii) the nationwide reciprocal model; iii) the limited purpose model; iv) the emergency acquisition model; and v) the regional interstate model.²⁰⁶

The nationwide non-reciprocal model is the least restrictive interstate banking statute.²⁰⁷ It allows entry by a financial institu-

²⁰¹ *Id.* at 30. Paul A. Volker served as chairman of the Federal Reserve Board from August 6, 1979 to August 6, 1987. Kilborn, *Already a New Look at a Legend*, N.Y. Times, Jan. 24, 1988, § 3, at 25, col. 1.

²⁰² N.J. Senate Hearings, *supra* note 18, at 30.

²⁰³ N.J. STAT. ANN. §§ 17:9A-344 to -345 (West Supp. 1987).

²⁰⁴ Telephone interview with Kyra Lindermann, Executive Assistant for Legislative and Public Affairs (Oct. 23, 1987).

²⁰⁵ Calem, *supra* note 57, at 3-4.

²⁰⁶ *Id.* at 4; *Interstate Banking: Hearings Before The Subcomm. on Financial Institutions Supervision, Regulation and Insurance of the Comm. on Banking, Finance and Urban Affairs House of Representatives*, 99th Cong., 1st Sess. 392-93 (1985) [hereinafter House Comm. Hearings].

²⁰⁷ Calem, *supra* note 57, at 4.

tion "from any state in the nation", without a reciprocity requirement.²⁰⁸ Five states which have enacted this type of statute are: Alaska, Arizona, Maine, Oklahoma, and Texas.²⁰⁹

The nationwide reciprocity model is more restrictive than the first category.²¹⁰ Although it permits an out-of-state financial institution to acquire an in-state bank, the acquisition is conditional upon reciprocity.²¹¹ In essence, the out-of-state institution may enter the host state as long as the acquirer's home state has passed legislation which extends the privilege to enter its borders. This system exists in: Kentucky, New York, Washington, and West Virginia.²¹²

Another category, the limited purpose model, prevents the entry of out-of-state financial institutions.²¹³ However, the purpose of such a measure is to allow out-of-state institutions to organize a special purpose facility, such as²¹⁴ the establishment of a credit card operation.²¹⁵ The seven states which have enacted this type of statute are Delaware, Maryland, Nebraska, Nevada, South Dakota, Virginia, and West Virginia.²¹⁶ In addition, several of these states have also passed either a regional or a nationwide banking statute.²¹⁷

The emergency acquisition model which allows an out-of-state institution to acquire financially troubled institutions within the state²¹⁸ has been passed by several legislatures such as Illinois, New Mexico, Ohio, Oklahoma, Oregon, Utah, and Washington.²¹⁹ However, these states have not confined themselves to this model alone, but have also passed a regional or a nationwide reciprocal statute.²²⁰

The final and most common interstate banking law is the re-

²⁰⁸ *Id.*

²⁰⁹ *Id.*; House Comm. Hearings, *supra* note 206, at 393, 429.

²¹⁰ *Calem*, *supra* note 57, at 4.

²¹¹ *Id.*

²¹² *Id.*; House Comm. Hearings, *supra* note 206, at 393.

²¹³ *Calem*, *supra* note 57, at 4.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.* at 4, n.2; House Comm. Hearings, *supra* note 206, at 247-49.

²¹⁷ *Calem*, *supra* note 57, at 4 n.2.

²¹⁸ *Id.* at 4. Note that *Calem* refers to this model as "troubled institution laws."

²¹⁹ *Id.* at 4, n.2; House Comm. Hearings, *supra* note 206, at 249-50.

²²⁰ *Calem*, *supra* note 57, at 4 n.2.

gional interstate model.²²¹ This type of law allows only those financial institutions that are headquartered in a state, within a defined region, to acquire a bank or bank holding company located in the host state.²²² With the passage of such a statute, the state continues to determine the guidelines for interstate banking in the absence of Congressional action.

Table I presents the forty-four states and the District of Columbia²²³ which have enacted one of the forms of interstate banking statutes.

TABLE I
STATE LEGISLATION ON INTERSTATE BANKING

<u>States</u>	<u>Statute</u>	<u>Regional States</u>	<u>Current Status</u>	<u>Nationwide Trigger</u>
Alabama	ALA. CODE §§ 5-13A-1 to -10 (1986).	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia.	Regional	None
Alaska ¹	ALASKA STAT. § 06.05.235 (1985).	Open to all states	Nationwide	—
Arizona ¹	ARIZ. REV. STAT. ANN. §§ 6-321 to -327 (West Supp. 1986).	Open to all states	Nationwide	—
Arkansas			None	
California	CAL. FIN. CODE §§ 3770 to 3778 (West Supp. 1988).	Alaska, Arizona, Colorado, Hawaii, Idaho, New Mexico, Nevada, Oregon, Texas, Utah, and Washington.	Regional	1/1/91
Colorado			None	
Connecticut	CONN. GEN. STAT. ANN. §§ 36-552 to -563 (West 1987).	Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.	Regional	None
Delaware ³	DEL. CODE ANN. tit. 5, §§ 801 to 826 (1985).	Maryland, New Jersey, Ohio, Pennsylvania, Virginia, and the District of Columbia.	Regional	7/1/90

²²¹ *Id.* at 4.

²²² *Id.* at 4-5; see Simonson, *supra* note 63, at 71-72.

²²³ The District of Columbia permits regional reciprocal acquisitions of local banks and bank holding companies by out-of-state bank holding companies. Moreover, the District of Columbia also permits acquisitions on a nationwide basis which is contingent on the agreement by the bank holding companies to open offices and employ people who reside in certain economically underdeveloped zones. D.C. CODE ANN. § 26-801 to -809.1 (1987).

Florida	FLA. STAT. ANN. § 658-295 (West 1984).	Alabama, Arkansas, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia.	Regional	None
Georgia	GA. CODE ANN. §§ 7-1-620 to -623 (1987).	Alabama, Florida, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and the District of Columbia.	Regional	None
Hawaii			None	
Idaho	IDAHO CODE §§ 26-2601 to -2612 (Supp. 1987).	Montana, Nevada, Oregon, Utah, Washington, and Wyoming.	Regional	None
Illinois	ILL. ANN. STAT. ch.17, para. 2510 (Smith-Hurd 1987).	Indiana, Iowa, Kentucky, Michigan, Missouri, and Wisconsin.	Regional	None
Indiana	IND. CODE ANN. §§ 28-2-15 to -16 (West Supp. 1987).	Kentucky, Illinois, Indiana, Iowa, Michigan, Missouri, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin.	Regional	None
Iowa	IOWA CODE ANN. §§ 524.1801 to .1807 (West Supp. 1987).	Illinois, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin.	Regional	None
Kansas			None	
Kentucky ²	KY. REV. STAT. ANN. §§ 287.900 to .910 (Michie Bobbs-Merrill Supp. 1986).	Illinois, Indiana, Missouri, Ohio, Tennessee, West Virginia, and Virginia.	Nationwide	—
Louisiana	LA. REV. STAT. ANN. § 6:531-40 (West Supp. 1988).	Alabama, Arkansas, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, and the District of Columbia.	Regional	1/1/89
Maine ¹	ME. REV. STAT. ANN. tit. 9B, §§ 1011 to 1019 (Supp. 1987).	Open to all states	Nationwide	—
Maryland ³	MD. [FIN. INST.] CODE ANN. §§ 5-901 to -903 (1986 & Supp. 1987).	Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia.	Regional	6/30/88

Massachusetts	MASS. GEN. LAWS ANN. ch. 167A, §§ 1 to 4A (West 1984).	Connecticut, Maine, New Hampshire, Rhode Island, and Vermont.	Regional	None
Michigan	MICH. COMP. LAWS ANN. § 23.710 (West 1987).	Illinois, Indiana, Minnesota, Ohio, and Wisconsin.	Regional	10/10/88
Minnesota	MINN. STAT. ANN. §§ 48.90 to -.99 (West 1984).	Iowa, North Dakota, South Dakota, and Wisconsin.	Regional	None
Mississippi	MISS. CODE ANN. §§ 81-8-1 to -7 (West 1988).	Florida, Georgia, Kentucky, Missouri, North Carolina, South Carolina, Texas, Virginia, and West Virginia.	Effective 7/1/90	None
Missouri	MO. ANN. STAT. §§ 362.910 to .925 (1987).	Arkansas, Illinois, Iowa, Kansas, Kentucky, Nebraska, Oklahoma, and Tennessee.	Regional	None
Montana			None	
Nebraska ³	NEB. REV. STAT. ANN. § 8-901 to -907 (Vernon Supp. 1988).	Open to all states	Limited purpose	None
Nevada ³	NEV. REV. STAT. §§ 666 070 to .132 (Michie 1987).	Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, New Mexico, Oregon, Utah, Washington, and Wyoming.	Regional	1/1/89
New Hampshire	N.H. REV. STAT. ANN § 384:44-54 (1987).	Connecticut, Maryland, Maine, Rhode Island, and Vermont	Regional	None
New Jersey	N.J. STAT. ANN. § 17:9A-370 (West Supp. 1987).	Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, Wisconsin, and the District of Columbia	Nationwide	—
New Mexico ⁴	N.M. STAT. ANN. § 58-5-11 (1978).	Open to all states	Troubled Institution Laws	None
New York ²	N.Y. BANKING LAW §§ 141 to 142(b) (McKinney 1988).	Open to all states	Nationwide	—
North Carolina	N.C. GEN. STAT. § 53-210 to -212 (1987).	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia.	Current	None
North Dakota			None	

Ohio ¹	OHIO REV. CODE ANN. §§ 1101.01 to 1103.14 (Anderson Supp. 1986).	Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, New Jersey, Pennsylvania, Tennessee, Virginia, West Virginia, Wisconsin, and the District of Columbia	Regional	10/16/88
Oklahoma ^{1,4}	OKLA. STAT. ANN. tit. 6, §§ 501 to 506 (West Supp. 1988).	Open to all states	Nationwide	—
Oregon ⁴	OR. REV. STAT. §§ 715.025 to .616 (1985).	Open to all states	Nationwide	—
Pennsylvania	PA. STAT. ANN. tit. 7, § 116 (Purdon Supp. 1987).	Delaware, Kentucky, Maryland, New Jersey, Ohio, Virginia, West Virginia, and the District of Columbia.	Regional	3/4/90
Rhode Island	R.I. GEN. LAWS §§ 19-30-1 to -13 (Supp. 1987).	Connecticut, Maine, New Hampshire, Rhode Island, and Vermont.	Nationwide	—
South Carolina	S.C. CODE ANN. § 34-24-10 to -90 (Law. Co-op. 1987).	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia.	Regional	None
South Dakota ³	S.D. CODIFIED LAWS ANN. §§ 51-16-40 to -41 (Supp. 1987).	Open to all states	Limited Purpose	None
Tennessee	TENN. CODE ANN. § 45-2-1403 (Supp. 1987).	Alabama, Arkansas, Florida, Georgia, Indiana, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Virginia, and West Virginia.	Regional	None
Texas ¹	TEX. REV. CIV. STAT. ANN. art. 342-912 to -914 (Vernon Supp. 1988).	Open to all states	Nationwide	—
Utah ⁴	UTAH CODE ANN. §§ 7-1-101 to -104 (1988).	Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Washington, and Wyoming	Nationwide	—
Vermont	VT. STAT. ANN. tit. 8, §§ 1051- 1064 (Supp. 1987).	Connecticut, Maine, New Hampshire, Rhode Island, and Vermont	Regional	12/31/90

Virginia ³	VA. CODE ANN. §§ 6.1-398 to -402 (Supp. 1987).	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, West Virginia, and the District of Columbia	Regional	None
Washington ^{2,4}	WASH. REV. CODE ANN. §§ 30.04.230 and -.232 (Supp. 1988).	Open to all states	Nationwide	—
West Virginia ^{2,3}	W. VA. CODE §§ 31A-8A-1 to -7 (Supp. 1987).	Open to all states	Nationwide	—
Wisconsin	WIS. STAT. ANN. §§ 13-9-301 to -305 (West 1987).	Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, and Ohio.	Regional	—
Wyoming	WYO. STAT. §§ 13-9-301 to -305 (Supp. 1987).	Open to all states	Nationwide	—
District of Columbia	D.C. CODE ANN. §§ 26-801 to -809.1 (1987).	Alabama, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.	Regional and Nationwide	—

Sources:

1. Each individual state statute.
2. Calem, *supra* note 57, at 6-7.
3. Decision and Determination, *supra* note 88, at 5-6.
4. House Comm. Hearings, *supra* note 206, at 31-35, 242-62, 392-93.

Notes:

1. These states have passed nationwide non-reciprocal laws.
2. These states have passed nationwide reciprocal laws.
3. These states have passed limited purpose laws, but many of these states have also enacted regional or nationwide reciprocal laws.
4. These states have passed emergency acquisition laws, but many of these states have also enacted regional or nationwide reciprocal laws.

VII. Conclusion

New Jersey's entrance into the interstate banking market will advance the state's interest to remain competitive. In the past several years, the number of mergers and acquisitions has increased dramatically, and will eventually become commonplace. As a result, concentration of control in the banking industry will rise and competition will remain vigorous.

Nevertheless, there exists some concern that deregulation of New Jersey's banking industry will result in a highly concentrated market. This would threaten the safety and soundness of the state's banking system. Such concern is substantiated by the high concentration of capital in a limited number of institutions. The

failure of these large institutions would have a serious financial impact on the state's economy.

Despite this disadvantage, the limitations on interstate banking should not be unduly oppressive since they restrict the competitive market. Ultimately, the consumer will benefit from the greater number of banking services, enhanced by competition.

On the federal level, the question remains: Why has Congress not created uniform legislative guidelines addressing interstate banking? Two important issues that arise are: "Whether state's rights preempt national rights and whether industry deregulation has created separate but equal types of financial institutions."²²⁴ Congress, not the courts, should be determining the structure and responsibilities of the banking system. Although the United States Supreme Court has upheld the states' interpretation of the Douglas Amendment,²²⁵ this does not eliminate the need for Congressional action. The new age of banking has created the need for Congress to clarify national policy. This policy should recognize the economic and competitive pressures which promotes the deregulation, while protecting the banking industry. Thus, the undue concentration of economic resources will be prohibited.

Furthermore, public policy demands a competitive banking industry. To satisfy this demand, geographic markets protecting the interest of an individual state, or the states within the several regions, cannot be sustained.²²⁶ The deregulation of these geographic restrictions, if Congress chooses to act, will allow financial institutions to enter markets as a competitive force. Thus, consumers will attain the best possible service at nominal rates.

Interstate banking is an irreversible phenomena that will inevitably alter the current diversified system. Therefore, Congressional action is desirable because the national interest is served by a stable, strong, and competitive commercial banking industry. In conclusion, legislators and regulators will have to deter-

²²⁴ Ringer, *National Banks in Indiana, Michigan Challenge State Laws on Branching*, Am. Banker, Feb. 10, 1988, at 10.

²²⁵ *Northeast Bancorp, Inc. v. Board of Governors of the Fed. Reserve Sys.*, 472 U.S. 159 (1985); see also *supra* note 74 and accompanying text.

²²⁶ *Calem*, *supra* note 57, at 6.

mine the appropriate direction and structure for the banking system.

*Salvatore A. Giampiccolo**

* B.S., Manhattan College, 1986, Magna Cum Laude; J.D. Candidate, 1989, Seton Hall University Law School. Student Director, Seton Hall Legislative Bureau 1988-1989.