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MULTIPLE OFFICE BANKING AND MARKET EXTENSION MERGERS

WILLIAM A. LOVETT†
THOMAS A. DEVINS, JR.‡

I. INTRODUCTION

Recent developments in market extension merger law open the way for a substantial increase in concentration within the commercial banking sector. The United States v. Marine Bancorporation, Inc.,¹ and United States v. Citizens & Southern National Bank² decisions by the Supreme Court, together with more liberal encouragement of multibank holding companies by the Federal Reserve Board, make it clear that multiple office banking³ trends could accelerate. This pro-expansion policy represents a significant shift from earlier responses to multibank integration efforts such as horizontal mergers⁴ and bank holding company diversification.⁵ In the face of long term trends toward increased multioffice banking and concentration,⁶ this retreat poses an awkward problem for the Congress and the antimerger authorities.

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² 422 U.S. 86 (1975).
³ The term “multiple office banking” includes branch banking, chain ownership linkages, and multibank holding companies. Branching exists when one corporate bank establishes multiple offices or branch banks; multibank holding companies own two or more banks (each of which may own, in turn, a network of branch offices); and chain ownership linkages involve common groups of stockholders in a series of bank corporations.
⁵ See Bank Holding Company Act, 12 U.S.C. §§ 1841-1850 (1976); notes 82-92 and accompanying text infra.
⁶ See, e.g., Gilbert & Longbrake, The Effects of Branching by Financial Institutions on Competition, Productive Efficiency and Stability: An Examination of the Evidence, in SUBCOMM. ON FINANCIAL INSTITUTIONS, SENATE COMM. ON BANKING, HOUSING AND URBAN AFFAIRS, 94TH CONG., 2D SESS., COMPENDIUM OF ISSUES RELATING TO BRANCHING BY FINANCIAL INSTITUTIONS 475, 475-88 (Comm. Print 1976) [hereinafter cited as COMPENDIUM].
This article reviews these developments, evaluates alternative responses, and recommends an overhaul of the legal guidelines for regulating the various forms of multibank integration, including branch banking, chain ownership linkages, and multibank holding companies.

A. Commercial Banking Market Structure

Commercial banking in the United States has experienced a slow, but significant structural transformation.\(^7\) (See Table 1 below.) In the year 1900, virtually all banking (98%) was conducted in single office (unit bank) enterprises.\(^8\) A moderate branching and chain movement began after World War I; 90% of the banks, however, were still unit bank operations in 1925.\(^9\) This early surge toward multioffice banking was halted by restrictive branching laws enacted by the states, similar restrictions for national banks under the McFadden Act of 1927\(^10\) and the Banking Act of 1933,\(^11\) and the Great Depression.\(^12\) In retrospect, the most significant factor affecting the development of banking during this period may have been the elimination of half the nation's banks and almost half of its banking offices in the 1930's.\(^13\) This structural realignment set the stage for a gradual post-war transformation.

Table 1

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Commercial Banks</th>
<th>No. of Bank Offices</th>
</tr>
</thead>
<tbody>
<tr>
<td>1900</td>
<td>12,427</td>
<td>12,546</td>
</tr>
<tr>
<td>1925</td>
<td>28,442</td>
<td>30,967</td>
</tr>
<tr>
<td>1940</td>
<td>14,534</td>
<td>18,065</td>
</tr>
<tr>
<td>1945</td>
<td>14,126</td>
<td>17,849</td>
</tr>
<tr>
<td>1955</td>
<td>13,780</td>
<td>20,490</td>
</tr>
<tr>
<td>1975</td>
<td>14,632</td>
<td>44,427</td>
</tr>
</tbody>
</table>

7. See, e.g., W. LAMB, GROUP BANKING (1961); White, The Evolution of State Policies on Multioffice Banking From the 1930's to the Present, in COMPENDIUM, supra note 6, at 43.

8. Fischer & Golembe, The Branch Banking Provisions of the McFadden Act as Amended: Their Rationale and Rationality, in COMPENDIUM, supra note 6, at 1, 40-41 (especially tables 1 & 2).

9. Id.


12. See Fischer & Golembe, supra note 8; White, supra note 7.

13. Fischer & Golembe, supra note 8.

14. Id.
Three major integration movements have characterized the last twenty-five years in American banking. In the first integration movement horizontal mergers were emphasized during the late 1950's and mid-1960's, and this ultimately brought successful, hard-line enforcement under the Bank Merger Act of 1966 and section 7 of the Clayton Act. In the second integration movement one-bank holding companies were stressed as a vehicle to achieve conglomerate diversification. This activity flourished during the "Bull Market" euphoria of the late 1960's, but was contained within relatively narrow limits by the Bank Holding Company Act Amendments of 1970. The third integration movement began in the early 1970's and consists chiefly of market extension mergers, expansion of multibank holding companies and relaxed branching laws in some states. Unlike the previous phases of integration, however, no legislation has been enacted to curb this latest trend toward concentration. On the contrary, our policy now seems permissive and encouraging, and unit banking is now much less significant. By 1975 only 20% of the bank offices in this country (or 9,111 out of 44,427) were unit banks, while 5,521 banks with branches had 35,316 offices for an average of nearly seven branches apiece.

B. Trend Toward Concentration

Even more interesting than this transition from a policy that favors and protects unit banking is the presence of a fundamental shift in the political balance among the states. For most of this century a majority of the states employed more or less restrictive branching laws: branching was allowed only within the home county and in some instances within a contiguous county. This perpetuated a policy of accommodation by the Congress and tended to ensure a conservative momentum in favor of decentralized, restricted branching in the country. Recent developments, however, have tipped the balance decisively toward multioffice banking. Now at least thirty-seven of the fifty states,
with nearly 85% of the national population, endorse multioffice banking in one form or another.\(^{22}\)

We may be crossing the threshold of a new and dramatic era in banking market integration with the possible adoption of a number of changes that seem revolutionary to many observers, such as electronic funds transfers, interest on demand deposits and the elimination of Regulation Q,\(^{23}\) which allows higher interest rates for savings and loans.\(^{24}\) Hence, the stakes for wise public policy are considerable at this juncture.\(^{25}\) A failure to act responsibly in the coming years could lead to excessive and irreversible concentration in the banking industry.

If not limited skillfully, increased banking concentration could bring significant adverse consequences for the American economy. From an economic standpoint, high concentration in regional and local banking markets tends to be associated with increased costs of credit for the less sophisticated, less affluent, and less powerful borrowers (consumers and small business enterprises). High concentration normally brings somewhat less favorable credit terms, greater service charges and reduced interest earnings to depositors. Insufficient bank market competition and restricted choice explain these results. From a broader perspective that takes into account the political and social effects, we would suffer disturbing costs as well. Industrial and commercial growth may be restricted by a more closely knit banking establishment in many states, and disproportionate political influence could well develop. Diversity of sources for financing could be reduced materially, especially if inflation continues to weaken the role of independent equity investments as a source of business capital. Eventually, the only hope for increased competitive vigor in banking might be interstate branching (or holding company) networks, but over the long run this would lead to a much greater concentration of finance capital in the United States and even more troubling political and social consequences.\(^{26}\)

Unfortunately, the course of legal and regulatory development in

\(^{22}\) See note 120 and accompanying text infra.

\(^{23}\) 12 C.F.R. §§ 217.0-.7 (1978).


\(^{26}\) See authorities cited note 38 infra, especially D. Alhadeff, Edwards, Heggestad, and S. Rhoades.
the field of multioffice banking has been parochial. The result has been an inferior compromise between two opposing policy-making tendencies: (1) excessive protectionism for small, rural banking interests, with inadequate competitive rivalry in many areas; or (2) excessive concentration with unrestricted branching or multibank holding company activities. We suffer an apparent Hobson's choice between the frustration of desirable scale economies with competitive vitality, and dangerous and unwarranted increases in banking concentration. A way out of this dilemma will not be easy, but the need for a rational answer seems readily demonstrable. This article will develop an alternative structural solution recommending that more branching and intrastate rivalry be allowed, but that restrictions be placed on the merger activity allowed the larger banking organizations in a given state or metropolitan area.

II. GROWTH TRENDS IN BANKING

A. Concentration

Banking in the United States is characterized by a highly lopsided distribution of firms.27 (See Table 2 below.) The top fifty firms had $341 billion or 36.3% of commercial bank deposits at the close of 1977.28 At the head of this list were the ten leading "megabanks," which held $171 billion in deposits, or nearly one-fifth of all commercial bank deposits in the United States.29 If foreign deposits are included, the ten largest banks held $311 billion in deposits, or nearly 28% of the total.

27. Concentration estimates for the 200 largest (or the top 1.3%) United States banks in 1977 based on printout of Federal Reserve call data, December 31, 1977. For figures on concentration for the 200 largest (or the top 1.3%) United States banks in 1947, see D. ALHADEFL, MONOPOLY AND COMPETITION IN BANKING 20 (1954). See also Bus. WEEK, Sept. 15, 1973, at 88, which shows an increase in the share of assets for the 50 largest banks from 39% to 46% between 1945 and 1972.

28. Federal Reserve call data, December 31, 1977 (compilation by the authors).

29. The 10 leading banks in deposits were (1) BankAmerica (San Francisco) with $37 billion in deposits; (2) Chase Manhattan (New York) $21 billion; (3) Manufacturers Hanover (New York) $20 billion; (4) Citicorp (New York) $19 billion; (5) Western Bancorporation (Los Angeles) $16 billion; (6) Chemical (New York) $13 billion; (7) Security Pacific (Los Angeles) $12 billion; (8) Morgan (New York) $11 billion; (9) Wells Fargo (San Francisco) $11 billion; and (10) Continental Illinois (Chicago) $10 billion. Furthermore, 94 of the largest 200 banks in eight leading financial states held 41.8% of commercial bank deposits; the remaining 106 large banks held 14.8%, and the 14,411 (approximate) smaller banks held 43.4%. Federal Reserve call data, December 31, 1977 (compilation by the authors). Compare these figures with those in Bus. WEEK, Apr. 17, 1978, at 74-84.

If Business Week's most recent tabulation of United States commercial bank assets and deposits based upon Form 10-K reports to the Securities Exchange Commission (SEC) were employed, the share of large banks is increased substantially. Assets of the top 10 increase from $171 billion to $311 billion for the end of December, 1977. For example, BankAmerica leads with
Table 2

<table>
<thead>
<tr>
<th>Size Range</th>
<th>Assets (billions)</th>
<th>Percent</th>
<th>Deposits (billions)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-20</td>
<td>$ 332</td>
<td>28.4</td>
<td>$ 246</td>
<td>26.1</td>
</tr>
<tr>
<td>1-50</td>
<td>456</td>
<td>39.1</td>
<td>341</td>
<td>36.3</td>
</tr>
<tr>
<td>51-200</td>
<td>226</td>
<td>20.2</td>
<td>191</td>
<td>20.3</td>
</tr>
<tr>
<td>Top 200</td>
<td></td>
<td></td>
<td>$ 682</td>
<td>59.3</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$ 532</td>
<td>56.6</td>
</tr>
<tr>
<td>Total for U.S. Commercial Banks</td>
<td>$1,166</td>
<td>100.0</td>
<td>$939</td>
<td>100.0</td>
</tr>
</tbody>
</table>

$66.4 billion, followed by Citicorp with $55.6 billion, Chase Manhattan with $43.5 billion, Manufacturers Hanover with $29.8 billion, Morgan with $23.8 billion, Chemical with $23.3 billion, Continental Illinois with $18.75 billion, Western Bancorporation with $18.65 billion, Banker's Trust (New York) with $17.4 billion, and First Chicago with $17.05 billion. Foreign deposits account for the additional deposits. As one would expect, a detailed comparison of the Federal Reserve call data and the Business Week data from SEC Form 10-K reports reveals that foreign deposits bunch more heavily among the largest United States commercial banks. Most of these increased deposits occurred among the top 10 banks ($140 billion), and to a lesser extent within the 11-50 range ($36 billion).

Debts, United States Banks
December 31, 1977

<table>
<thead>
<tr>
<th>Federal Reserve Board</th>
<th>Business Week</th>
</tr>
</thead>
<tbody>
<tr>
<td>Size Range</td>
<td>Data (billions)</td>
</tr>
<tr>
<td>1-10</td>
<td>$171</td>
</tr>
<tr>
<td>11-20</td>
<td>75</td>
</tr>
<tr>
<td>21-50</td>
<td>95</td>
</tr>
<tr>
<td>51-200</td>
<td>191</td>
</tr>
<tr>
<td>top 200</td>
<td>532</td>
</tr>
<tr>
<td>Total for United States banks</td>
<td>$939</td>
</tr>
</tbody>
</table>

If we assume, not unreasonably, that no significant increase results for banks smaller than the 200 largest due to foreign deposits, then considerably higher aggregate concentration follows. Thus, the top 10 would have 27.9%, the top 50, 46.3%, and the 200 largest, 63.5% of United States commercial bank deposits.

30. Federal Reserve call data, December 31, 1977 (compilation by the authors).
Over the last thirty years, the largest 200 banks have increased their share of deposits from roughly 52% in 1947 to 56.5% at the close of 1977, with $532 billion in bank deposits. This change reflected the rapid growth among the strong regional banks around the country, and a gradual decline in the predominance of New York City banking. Nonetheless, Wall Street's leadership is still evident: fifteen New York City banks are in the top 200 banks (five of the top ten), and these fifteen banks hold 12.3% of all commercial bank deposits or a total of $116 billion. Seven banks in other sections of New York hold $16 billion in deposits or 1.7%. California's eleven "large" banks in the top 200 have on deposit $99 billion or almost 10.4% of all commercial bank deposits. Other states trailed downward in the holdings of those "large" banks (defined as the top 200 commercial banks). A skewed size distribution is evident within every state in the country, with leading banks in the larger urban areas collecting a larger share of commercial bank deposits. Well-established laws, however, prevent banks from establishing interstate branch banks or multibank holding companies. For this reason, banking in the United States (from a national standpoint) is far less centralized than in the major European countries and Canada, where banks are allowed to branch freely throughout their entire territories. In addition, before 1933

31. See text accompanying note 30 supra; authorities cited note 27 supra.
32. Pennsylvania has 15 large banks in this category, with 3% of United States bank deposits; 10 large banks in Texas have 2.9%; 5 large banks in Illinois have 2.8%; Ohio's 13 large banks have 2.3%; Michigan's 7 large banks, 2%; and Florida's 11 large banks, 1.7%. Federal Reserve call data, December 31, 1977 (compilation by the authors). See generally Baker, Bank Expansion: Geographic Barriers, 91 Banking L.J. 707, 721-24 (1974). During the last generation, the larger regional banks have grown faster than the traditionally leading Wall Street banks. This explains the overall increase in share of deposits for the 200 largest banks and the relative decline in the New York share of bank deposits among the top 200. Commercial bank deposit capital has become more concentrated among the larger institutions, but its geographic distribution has spread more widely from New York City to other financial centers such as Chicago, Los Angeles, San Francisco and Texas. Bus. Week, Apr. 17, 1978, at 74-84.
Americans enjoyed the benefit of a long history of relatively easy market entry for newly chartered banks, despite heavy casualties from the Depression and earlier panics.\textsuperscript{35} Although entry by new banks has been less important since 1945 (roughly 85% of the new bank offices were merely branches of established banks),\textsuperscript{36} the dispersion of banking capital is greater in the United States than in any other country.

\section*{B. Competition}

Patterns of bank competition should be viewed on the national, regional and local levels. One market for larger loans is national in scope, perhaps even international, and encompasses the larger corporations and many foreign governments as borrowers. “Megabanks” are well fitted for this rivalry, although the larger regional banks must be included, too. This market is highly competitive, with ample participants in supply and demand. The second level of markets is regional; it comprises the stronger participants in both lending and borrowing within major urban and rural areas. These markets are often less competitive, depending on their degree of concentration, growth rates and new entry potential. The third level of markets is localized and by far the most numerous. It consists of metropolitan areas, smaller cities, and rural districts. Generally, these markets are highly concentrated except in some of the larger, more rapidly growing urban areas.\textsuperscript{37} Competitive rivalry within these latter markets does vary somewhat according to the number of banking firms (or “looseness” of the oligopoly) and the encouragement of new entry from local and regulatory

\begin{footnotesize}
\begin{enumerate}
\item Convenient sources for banking history are J. Galbraith, \textit{Money: Whence It Came, Where It Went} (1975); G. Fischer, \textit{American Banking Structure} (1968); M. Friedman \& A. Schwartz, \textit{A Monetary History of the United States, 1867-1960} (1963); H. Rockoff, \textit{The Free Banking Era: A Re-examination} (1975); Brown, \textit{The Dual Banking System}, in \textit{Compendium}, supra note 6, at 239.
\item Between 1945 and 1975, the number of banking offices increased from 17,849 to 44,427, and the number of branches increased from 4,721 to 29,795. In the same period, net growth in the number of banks was from 14,126 to 14,632. Fischer \& Golembe, supra note 8, table 1. New entrants into banking totaled 4,406 between 1945 and 1974, but this increase was largely offset by the loss of 3,044 banks that were acquired and converted into branches, together with 584 other departures through merger or consolidation. (Tabulation by the authors based on Federal Reserve bulletins from 1945 to 1975.) Only 167 banks failed in the period from 1945 to 1975. Gilbert, \textit{Branch Banking and Safety and Soundness in Commercial Banks}, in \textit{Compendium}, supra note 6, at 83, 85.
\end{enumerate}
\end{footnotesize}
MULTIPLE OFFICE BANKING

authorities. The presence of active competition, therefore, at the regional and local levels of banking markets will depend upon new charters, authority for additional branches and the degree of looseness in oligopoly structures.38

The potential for expansion in banking depends on the growth of population, income and business expansion in a market area, together with allowed multiple office banking. Scale economies can be significant in this rivalry for growth.39 The existence of many smaller, thriving banks indicates that good management and imaginative marketing are not dependent on size, although up to a certain volume of deposits, larger size does bring advantages in recruiting and sustaining a good banking organization. On the other hand, many smaller, unprogressive rural banks survive only with limited competition. And yet, part of the inherent advantage of rural banks is their specialized knowledge of local business opportunities and credit risks.

The sad, though not surprising, fact of state bank legislation is that choice of regulation for branching seems to be dominated by a struggle


39. Scale economies in banking and related financial markets are generally considered to be significant, although the decline in average costs seems to be much more modest in the larger size range of banking organizations. See, e.g., D. ALHADEF, supra note 27; G. FISCHER, supra note 35; L. GRAMLEY, A STUDY OF SCALE ECONOMIES IN BANKING (1962); Ali & Greenbaum, A Spatial Model of the Banking Industry, 32 J. FINANCE 1283 (1977); Daniel, Longbrake & Murphy, The Effect of Technology on Bank Economies of Scale for Demand Deposits, 28 J. FINANCE 131 (1973); Ryan & Donaker, How Good Is Branch Bank Performance?, BANKER'S MAGAZINE, Autumn 1975, at 102. Some analysts have found that average costs level off at a certain plateau of bank organization size (for example, $100-500 million in assets or deposits). See generally L. GRAMLEY, supra, at 18.
between two special interests. The big city banks want maximum growth potential; the rural banks want to be protected and enjoy local dominance. Lost in the shuffle is the public interest. If either group wins, competition is likely to suffer. The largest banks seek maximum statewide expansion and market shares, and ultimately would limit rivalry among themselves. The smaller, rural banks naturally wish to confine the larger banks in their state to the big cities and exploit the advantages of extremely high concentration in rural banking markets without serious interference.

From an ideal viewpoint, the best regulatory regime for banking would be one in which the existing loose oligopolies are challenged by new rivalry or by penetration of markets by nearby banking organizations.\(^{40}\) This requires freedom from special interest dominance, which unfortunately seems rare in state capitals.\(^{41}\) State authorities acting under pressure from opposing factions of bankers are likely to endorse either (1) excessive local protectionism and highly restrictive branching and holding company laws, or (2) excessive freedom for the larger banks to dominate their respective state markets. Neglected is the "ideal" market structure that is needed to serve the public interest; competitive or loose oligopolies must be refreshed by penetration of markets through new charters, branching, and toe-hold merger activity.

Entry barriers into local markets should be reduced. This would allow more newly chartered banks and de novo branches from banks outside each area to enter the market, and greater competitive rivalry would follow. Modest market extension or toe-hold mergers can also strengthen this process. But there should be a limitation upon sizable market extension mergers for the larger statewide multibank networks.\(^{42}\) Larger market extension mergers significantly increase state-

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\(^{40}\) But see Brodley, Potential Competition Mergers: A Structural Synthesis, 87 Yale L.J. 1 (1977).

\(^{41}\) The regulation of financial institutions at the state level is determined by constituency politics, with little influence from the general public. Key elements in the equation are the distribution of banks among the districts of state legislators and the relative strength of rural and big city banks in these districts.

\(^{42}\) S.72, 95th Cong., 1st Sess. (1977) ("A Bill to amend the Bank Holding Company Act and the Bank Merger Act to restrict the activities in which registered bank holding companies may engage and to control the acquisitions of banks by bank holding companies and other banks.") would amend the Federal Deposit Insurance Act to prevent approval of a proposed merger when upon consummation of the transaction the bank would "hold more than 20 per centum of the total assets held by all banks located in the State in which such bank is located." Id. § 101; see Baker, Does Antitrust Law Preclude the Need for Geographic Constraints on Banking?, 93 Banking L.J. 1005, 1016-17 (1976) (arguing that Bank Merger Act and Bank Holding Company Act be amended along lines proposed in S.72).
wide concentration and ultimately could end the prospect of inter-penetrating by linking most of the sizable banks into a relatively few, comprehensive banking networks. Three goals consistent with scale economies and efficiency should animate this policy: (1) maximum decentralization; (2) maximum competitive rivalry; and (3) healthy stability for banking operations to protect against externalities such as excessive new entry and insolvencies. This blend of goals is feasible from an administrative standpoint, but involves controversy. The problems in implementation are mainly political and reflect the absence of a clear mandate by the general public, as well as economists and lawyers.

C. Regulatory Developments: Opportunities For Bank Expansion

Until the Great Depression, American law encouraged new charters and entry into banking.43 This encouragement was a result of rivalry between state regulators, who tended to be more liberal in granting charters, and national regulators.44 The massive failures of the 1930's, however, ended this era of encouragement for new entry. The Banking Act of 1933 was a product of widespread bank failures during the Depression.45 The Act, among other things, prohibited the payment of interest on demand deposits and sought to separate the functions of commercial banking and investment banking.46 Senator Glass and others attempted to correct the bank failure problem by providing for greater branching opportunities, which in turn would lead to the placement of stronger, more diversified banks in local areas.47 After extended debate, an alternative proposal for the insurance of banks was approved.48 The Federal Deposit Insurance Corporation (FDIC) was the result of that debate, and its presence in the Banking Act of 1933 guaranteed the interrelationship of federal and state regulatory agencies.49 Solvency regulations were strengthened greatly, and FDIC insurance requirements brought a more protective attitude toward

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43. As a result of bank failures during the Depression, structural reform was undertaken in a number of states to change from unit to branch banking. White, supra note 7, at 52-53.
44. See, e.g., G. FISCHER, supra note 35, at 174-237. See also authorities cited note 35 supra.
47. Fischer & Golembe, supra note 8, at 33.
48. Id. at 29-34.
banking activities.\textsuperscript{50}

After World War II, interest in bank expansion resumed with the overall expansion of the economy.\textsuperscript{51} Branching activity, however, was regulated by the McFadden Act principle: national banks must conform to the restrictions of state law.\textsuperscript{52} Within these state law limits, more banks tended to be established in the suburbs and other districts with significant population or business growth.

Because it took many years for bankers to recover from the trauma of the Great Depression, development of new multiple office banking programs was slow in coming.\textsuperscript{53} So, for a period, bank holding companies were not used as a device for expansion of banking networks.\textsuperscript{54} Nonetheless, the Roosevelt administration sought controls over this loophole for multibank integration.\textsuperscript{55} It was not until after the Celler-Kefauver Act of 1950\textsuperscript{56} raised public consciousness about concentration, however, that Congress enacted the Bank Holding Company Act of 1956.\textsuperscript{57} This 1956 legislation was directed against the dangers of excessive concentration and merger activity in the banking industry. The Act required Federal Reserve Board approval for bank holding companies owning more than a single bank.\textsuperscript{58} The standard for review gave broad discretion to the Board, with emphasis on the following traditional banking factors: (1) financial history and conditions of the bank; (2) earning prospects; (3) management characteristics; (4) convenience, needs and welfare of the area concerned; and (5) competitive aspects of the acquisition.\textsuperscript{59} Diversification into nonbank activities was severely restricted. The Act did not apply to one-bank holding companies.\textsuperscript{60}

\textsuperscript{50} See, e.g., G. Fischer, supra note 35, at 208-09; J. Galbraith, supra note 35, at 197.
\textsuperscript{51} See Chase, supra note 17, at 1231-33.
\textsuperscript{52} White, supra note 7, at 50. See also Gup, A Review of State Laws on Branch Banking, 88 Banking L.J. 675 (1971); Mortimer, Techniques of Statewide Expansion, 93 Banking L.J. 5 (1976); Vestner, Trends and Developments in State Regulation of Banks, 90 Banking L.J. 464 (1973).
\textsuperscript{53} See generally White, supra note 7, at 49 table 1.
\textsuperscript{54} In fact, bank holding companies decreased in number and size during the 1930's. Id. at 55.
\textsuperscript{55} Id. at 56.
\textsuperscript{56} Ch. 1184, 64 Stat. 1125 (codified at 15 U.S.C. §§ 18, 21 (1976)).
\textsuperscript{58} Ch. 240, § 3(a), 70 Stat. 133 (codified as amended at 12 U.S.C. § 1842(a) (1976)).
\textsuperscript{59} See id. § 13(c).
\textsuperscript{60} Id. § 2(a).
1. Horizontal Mergers

Meanwhile, bank mergers were becoming popular. The most common form of merger was horizontal, that is, a merger between two competitors within a given metropolitan or urban area. The Bank Holding Company Act of 1956 was inspired by alarm at the increasing bank industry concentration. A more significant regulation, however, was section 7 of the Clayton Act, which proscribes any mergers "where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition . . . ." The banking industry sought to alleviate this constraint in the Bank Merger Act of 1960. Initially, it was believed that the Bank Merger Act standards of "public convenience" and "interests of the community" could be used to offset competitive factors and thereby justify more bank merger activity.

In 1963, however, the Supreme Court in United States v. Philadelphia National Bank held for the first time that Clayton Act standards applied to commercial banks. The Court struck down a merger of the second and third largest banks in the Philadelphia metropolitan area, with a combined total of 36% of that community's banking assets and deposits, holding that such a combination would tend to substantially lessen competition in that section of the country. The Court rejected the argument that the Bank Merger Act would immunize bank mergers from antitrust challenge. The Court held that repeal of the antitrust laws by implication is strongly disfavored, and that because banking is a highly regulated industry, the play of competition is made not less,

61. See generally Bok, Section 7 of the Clayton Act and the Merging of Law and Economics, 74 Harv. L. Rev. 226, 228-33 (1960).
64. J. WHITE, supra note 49, at 566-68.
68. Id. at 331.
69. Id. at 365.
70. Id. at 350.
71. Id. at 350-51.
but more, important. The majority rejected Justice Harlan's interpretation of the legislative history and made it clear that horizontal mergers would generally be unlawful, except possibly when a bank failure was threatened.

It appears that Congress disagreed in part with the Court. As a result of the Philadelphia National Bank decision, the Bank Merger Act and the Bank Holding Company Act were amended in 1966 by including a "convenience and needs" defense uniquely applicable to commercial banks. Congress accepted antitrust jurisdiction over bank mergers, but insisted upon the application of a special standard for evaluating bank mergers that would take into account prospective benefits as well as possible anticompetitive consequences. The new law required collaboration by the Comptroller General, the Federal Reserve Board, and the Antitrust Division of the Justice Department in reviewing bank mergers, and allowed the Justice Department to challenge those bank mergers it determined to be in violation of the Bank Merger Act. In subsequent horizontal bank merger cases, the Court has held that (1) the burden of pleading the "convenience and needs" defense is on the banks, (2) the "failing company" doctrine is to be strictly applied, and (3) the percentage determination of market share will continue to be the primary analytical tool even in a proposed merger of two small banks.

72. Id. at 372.
73. Compare id. at 375-85 (Harlan, J., dissenting), with id. at 352.
74. The Court noted that a bank failure defense might have a greater impact on the legality of a merger than a business failure would have, but did not decide what defenses in § 7 actions would be allowed to avert unsound banking conditions. Id. at 371-72 & 371 n.46. But cf: United States v. Third Nat'l Bank, 390 U.S. 171, 187-88 & 187 n.21 (1968) ("business necessity" not enough to qualify for "failing company" defense; possibility of eventual failure required).
78. See id. at 566.
81. Even mergers of banks in small urban areas were prevented under this policy. See, e.g., United States v. Phillipsburg Nat'l Bank & Trust Co., 399 U.S. 350 (1970). Justice Harlan, dissenting, pointed out that if these two banks merged, the resulting bank (measured by trust assets) would have ranked 1323 out of approximately 3100 banks with trust powers in the United States, only 23 places ahead of the Phillipsburg National Bank alone. Id. at 374 (dissenting opinion). For commentary, see Shull & Horvitz, The Bank Merger Act of 1960: A Decade After, 16 ANTITRUST BULL. 859 (1971); Reid, "The Bank Merger Act of 1960: A Decade After": Comment, 18 ANTITRUST BULL. 449 (1973); Horvitz & Shull, The Bank Merger Act a Decade After: Reply to Reid, 19 ANTITRUST BULL. 321 (1974); Velk, An Estimate of the Federal Reserve Board of Governor's Policy Rule in Merger and Holding Company Cases, 1966-1970, 21 ANTITRUST BULL. 537
2. Bank Holding Companies

The presumptive rule of illegality in horizontal bank merger cases limited bank expansion to other alternatives such as conglomerate diversification into nonbanking markets.\(^{82}\) Not surprisingly, more large banks soon decided to exploit this opportunity.\(^{83}\) They transformed themselves into one-bank holding companies. The presence of rising costs and tight money, a pro-expansion attitude by the Comptroller, the desire for expansion, continued prohibitions on branching, and antitrust developments in banking set the stage for the proliferation of one-bank holding companies under the one-bank loophole in the Bank Holding Company Act of 1956.\(^{84}\)

Furthermore, the 1966 amendments to the Bank Holding Company Act apparently created so much uncertainty about the future of the bank holding company format that major conglomerates desirous of acquiring a bank decided to take swift action before any Congressional change.\(^{85}\) There had been slow growth in the number of bank holding companies between 1957 and the end of 1968,\(^{86}\) but in the period from 1969 to 1971 the number of bank holding companies increased greatly. At least 1470 bank holding companies were created in this latter period, and most of them were one-bank holding companies incorporated for diversification purposes.\(^{87}\)

Congress soon became alarmed by the prospect that major banks and industrial corporations might integrate,\(^{88}\) and in 1970 the Bank

\(^{82}\) Expansion by bank holding companies into nonbank activities through the Bank Holding Company Act of 1956, 12 U.S.C. § 1843 (1976), will only be raised briefly in this article. The jury is still out on the wisdom of bank expansion into nonbank activities. See, e.g., Baker, supra note 24; Blaine, Opportunities and Limitations for Expanding into Bank Holding Companies, 90 BANCING L.J. 290 (1973); Darnell, The Bank Holding Company Movement: Panacea, Placebo, or Problem Child, 2 OHIO N.U.L. REV. 466 (1975); Greenspan, Bank Holding Companies: Competition, Capital, and Nonbanking Acquisitions, 90 BANCING L.J. 560 (1973); Keeffe & Head, What Is Wrong with the American Banking System and What to Do About It, 36 MD. L. REV. 788 (1977); Kreider, supra note 34; Rose & Fraser, Bank Holding Company Diversification into Mortgage Banking and Finance Companies, 91 BANCING and Finance Companies, 91 BANCING L.J. 976 (1974).

\(^{83}\) Chase, supra note 17, at 1233-36.

\(^{84}\) Id.

\(^{85}\) Id. at 1234.

\(^{86}\) From 1957 to 1968 the number of bank holding companies increased from 50 to 80. (Compilation by the authors based on Federal Reserve bulletins from 1957 to 1968.)

\(^{87}\) Id.

\(^{88}\) In 1956 Congress considered the potential problem posed by the one-bank holding company, but "came to the conclusion that there was no substantial evidence of abuses in this type of organization." Chase, supra note 17, at 1232. "As long as any given enterprise owned only one bank, it could not expand its banking activities structurally beyond the boundaries of any state."
Holding Company Act was amended to close the one-bank holding company loophole.\textsuperscript{89} Instead, Congress allowed one bank and multibank holding companies greater flexibility to diversify into nonbanking markets "closely related to banking."\textsuperscript{90} Although the majority of large banks had organized themselves into the holding company format, the gains expected from conglomerate diversification into related financial markets proved much less attractive than they had seemed in the late 1960's.\textsuperscript{91} Many of these related markets are more competitive than commercial banking, and the rates of return for such investments have not been particularly impressive. Bank holding company diversification is now considerably more selective.\textsuperscript{92}

3. Market Extension Mergers

One remaining outlet for significant merger activity and related expansion by larger banks was the acquisition of banks in other sections of their respective states, the so-called geographic market extension merger.\textsuperscript{93} In \textit{Marine Bancorporation}, and subsequently in \textit{Citizens & Southern National Bank}, the Supreme Court made it clear that the geographic market extension merger would not be subject to the presumptive rule of illegality applied in horizontal merger cases.\textsuperscript{94} In the


\textsuperscript{92} This is evident from review of recent Federal Reserve Board rulings on bank holding company diversification, which, despite continued growth in the overall number of bank holding companies, are now sought less frequently than in the early 1970's. (Compilation by the authors based on Federal Reserve Board press releases from the relevant period.)

\textsuperscript{93} A geographic market extension merger involves a merger between two firms with the same product lines in separate geographic markets. \textit{See generally} Baker, \textit{supra} note 42, at 1011-13 (discussing failure of Justice Department efforts to apply potential competition doctrine successfully against market extension mergers); Brodley, \textit{supra} note 40, at 19-25 (discussing other defeats for potential competition doctrine); Williams, \textit{New Dimensions to Bank Merger Law, the Supreme Court in the Mid-Seventies}, 20 ANTITRUST BULL. 699 (1975).

\textsuperscript{94} \textit{See} notes 65-81 and accompanying text \textit{supra}. Extensive commentary has been devoted
former case, one of the two leading banks in Washington, Seattle's National Bank of Commerce (NBC), sought to extend its network of 107 branch offices by merging with Washington Trust Bank (WTB). WTB, with its office headquarters in the extreme eastern part of the state, had seven branch offices and was a major factor in the Spokane market. NBC, which was owned by Marine Bancorporation, had its principal office in the Northwest corner of the state and operated fifty-nine branches in the greater Seattle area together with forty-eight branches elsewhere in the state. NBC was the second largest banking organization headquartered in Washington in terms of assets, deposits and loans; it had assets of $1.8 billion, deposits of $1.6 billion, and 20% of the commercial bank deposits statewide. The target bank, WTB, was the eighth largest banking organization with headquarters in Washington and the ninth largest in the state; it had assets of $112 million and $95.6 million in deposits. WTB was the third largest bank in Spokane, with 18.6% of local bank deposits and 1.5% of all commercial bank deposits in the state.

The challenge to this merger was based upon the potential competition doctrine of section 7 of the Clayton Act. The Government argued that there would be a reduction in potential competition in banking because NBC would otherwise be forced to enter the Spokane market through de novo branch banking or foothold acquisitions. The Supreme Court refused, however, to find a sufficient loss of potential competition in Spokane from this merger. The Court found that these banks were not direct competitors to any significant extent. Thus, the majority reasoned that the Government had failed to give full weight to the extensive federal and state regulatory barriers that made it unlikely that NBC could enter the commercial banking market in Spokane through a de novo branch bank or a foothold acquisition. A foothold acquisition was considered impractical in Spokane because the smaller,
independent banks available for acquisition were too small to be attractive for future growth. Finally, the majority refused to consider the Government's contention that the entire state was the appropriate "section of the country" for purposes of measuring the effect on competition under section 7. The Court held that statewide bank concentration was not a relevant factor.

The majority apparently was not concerned about concentration in banking markets. The Court stated:

[I]t is hardly surprising that the Spokane commercial banking market is structurally concentrated. As the Government's expert witness conceded, all banking markets in the country are likely to be concentrated. This is so because as a country we have made the policy judgment to restrict entry into commercial banking in order to promote bank safety.

Thus, government regulation was seen as the main reason for bank market concentration. Finally, the majority gave notice to merger partners that they could offer evidence of conduct and performance to justify similar bank consolidations.

In his dissent, Justice White emphasized the watershed character of this decision. Justice White contended that the majority was redefining the potential competition doctrine and dramatically increasing the government's burden of proof under section 7. Justice White argued that the reduction in potential competition by this merger was sufficient to violate section 7. He also noted that concentration in the banking industry poses a danger to virtually all costs in our credit economy.

In United States v. Citizens & Southern National Bank, the Supreme Court held that Citizens & Southern National Bank (C&S) did not violate section 1 of the Sherman Act by founding new de facto branches through a program of sponsorship and that the proposed acquisition by C&S of the stock in these banks did not violate section 7 of the Clayton Act. C&S was the largest of three leading
banks in the Atlanta metropolitan area. To evade stringent restrictions against branching into the suburbs, C&S worked out a program of de facto branch arrangements with six "correspondent" banks. This de facto program included ownership of stock by friendly parties (with 5% owned directly by a C&S holding company), use of C&S advertising and services and close oversight by C&S management. When Georgia changed its law to allow branching of this type, C&S sought to merge the de facto branch offices directly into its operations. The Antitrust Division brought suit to enjoin the mergers under section 7 of the Clayton Act and to challenge the existing de facto branch arrangements under section 1 of the Sherman Act. The Supreme Court affirmed the district court's rejection of both challenges.

The Court appears to have gone out of its way to endorse multioffice banking measures of this type by approving the use of de facto branching by other banks throughout the country. Justice Brennan, in his dissent, emphasized the danger of allowing expansion by a large bank into a new market via merger when it already has a substantial share of the highly concentrated Atlanta market.

Two areas of dispute between the Court's new antitrust majority and the dissenters are (1) whether market extension via branching and mergers by large banks can be procompetitive, and (2) under what circumstances antitrust limitations would be desirable. The new majority grants broad leeway for the larger banks to expand by means of market extension mergers or branching. The minority urges that antitrust enforcement should be allowed to limit this expansion by larger banks. In other words, the minority maintains that de facto branching or market extension mergers should be scrutinized more carefully and that the use of these devices by larger banks to obtain foothold acquisitions in new markets should be restricted.

Consideration of factors such as entry barriers in determining the legality of market extension mergers, as in Marine Bancorporation, has been criticized, and the presumptive rule applied in horizontal mergers, as in Philadelphia National Bank, has been applauded. Certainly

(Brennan, J., dissenting) (Court did not resolve issue of sponsorship raised in Marine Bancorporation).

108. 422 U.S. at 90-91.
109. Id. at 118-19.
110. Id. at 130-31 (dissenting opinion).
111. E.g., Brodley, supra note 40, at 26-30.
the extent of entry barriers helps resolve the impact of mergers upon potential competition and is therefore relevant to section 7 proceedings in any industry. But using local entry barriers as a justification for large market extensions seems to be contrary to the spirit of Philadelphia National Bank.

The Marine Bancorporation and Citizen's & Southern National Bank cases raise serious questions about the effectiveness of the Clayton Act and the Bank Merger Act to curb bank expansion in market extension mergers. This presents an awkward problem for the Federal Reserve Board staff in screening bank holding company mergers.

4. Multibank Holding Company Growth

The impact of the Marine Bancorporation and Citizen's & Southern National Bank decisions upon efforts to regulate excessive bank expansion can be understood by an examination of subsequent Federal Reserve Board approvals for multibank holding company mergers. A larger range of holding company expansion is now encouraged for the banking industry. At least 253 mergers involving established bank organizations have been approved since the Marine Bancorporation decision on June 26, 1974. These transactions have occurred mainly in states with restrictive branching laws, where the need to circumvent branching limitations naturally required use of the holding company format. This increase in mergers reinforces a trend already reported in a 1974 study conducted by Professor Talley. In his study, Talley showed the impact of multibank holding companies in a considerable number of states where significant increases in statewide concentration were observed from 1968 to 1973. A comprehensive tabulation of Federal Reserve Board approvals from January 1, 1974 to July 30, 1978, indicates that this trend is continuing.

Talley calculated concentration ratios for the five largest banking

Posner declares that Philadelphia National Bank "represents the high point of rationality in the Court's merger decisions." Id. at 307. His conclusion is based upon the requirement that judicial rules meet two conditions: (1) the rule must have a coherent theoretical basis, and (2) it must be reasonably precise and objective in the sense of limiting discretion. Professor Posner believes that the rule of illegality set forth in Philadelphia National Bank meets both conditions. Id. Contra, Wu & Connell, supra note 81.


114. Tabulation of Federal Reserve Board approvals between June 26, 1974 and July 31, 1978. (Tabulation by the authors based on Federal Reserve Board press releases from the relevant period.)

organizations in every state for the years 1968-1973. Thirteen states experienced a significant increase in the share of their five largest banks traceable to growth of multibank holding companies.\textsuperscript{116} For the period, January 1974 to July 1978, these thirteen states saw continued bank holding company expansion.\textsuperscript{117} These additional mergers led to further increases in concentration in all thirteen states. In addition, significant numbers of multibank holding company acquisitions were approved in other states during the last four and one-half years.\textsuperscript{118} In fact, almost every state with restrictive branching laws that allows multibank holding companies has experienced significant bank merger activity leading toward increased concentration.

In most of the seventeen states where statewide branching has been allowed for many years, bank industry concentration is already established at relatively high levels.\textsuperscript{119} Therefore, it appears that a sustained opportunity for statewide branching tends to be strongly correlated with high concentration in a state's banking industry. The new encouragement for multibank holding companies and their growth by market extension mergers adds substantially to the roster of states where relatively high concentration in banking may be expected over a number of years.

Thirty-seven states and the District of Columbia presently allow multiple office expansion on a statewide basis. Eighteen of these states allow statewide branching directly, and nineteen allow multiple office expansion through multibank holding companies.\textsuperscript{120} A minority of

\begin{itemize}
\item \textsuperscript{116} Id. at 393-94. They were Florida, 14.8%; Alabama, 14.6%; New Mexico, 11.9%; Wyoming, 10.5%; Missouri, 10.5%; New Jersey, 8.8%; Colorado, 7.7%; Texas, 4.5%; Ohio, 4.6%; Michigan, 4.3%; Wisconsin, 3.7%; Tennessee, 3.6%; and Iowa, 3.1%. All of these states allowed multibank holding companies, but restricted branching.
\item \textsuperscript{117} From January 1974 to July 31, 1978, the Federal Reserve Board approved the following numbers of merger transactions by multibank holding companies in these states: Florida, 46; Alabama, 18; New Mexico, 1; Wyoming, 4; Missouri, 45; Colorado, 7; Ohio, 20; Texas, 65; Michigan, 22; Wisconsin, 6; Tennessee, 12; and Iowa, 14. (Tabulation by the authors based on Federal Reserve Board press releases from the relevant period.)
\item \textsuperscript{118} Ten such transactions were approved for Georgia, 3 for Minnesota, 8 for Massachusetts, 3 for Connecticut, 2 for New Hampshire, 1 for Montana, and 4 for Utah. (Tabulation by the authors based on Federal Reserve Board press releases from the relevant period.)
\item \textsuperscript{119} Talley, supra note 115, at 398-99.
thirteen states have restrictive branching laws that constrain multioffice expansion.\textsuperscript{121}

Therefore, the great majority of United States Senators (72) and Congressmen (322) represent states where multiple office expansion is legal. This fact, coupled with strong pressure for multibank integration from the larger banks, explains the fundamental change in our banking structure. Unit banking interests, with their efforts for restrictive branching laws, have lost their struggle for protection from competition. Thus, resistance by the small country or unit banks can no longer be relied upon to promote effectively decentralization in banking or to contain the trend toward concentration. In any calculus of special interest politics, the big bank forces would seem to enjoy a comfortable margin of support in the Congress for their programs of expansion.

### III. RECOMMENDATIONS

A fundamental issue in banking policy is the extent to which multioffice bank expansion should be permitted. Generally speaking, antitrust scholars have considered three possible standards for judging bank expansion—structural analysis, performance and conduct.\textsuperscript{122} A

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122. Brodley, supra note 40. Professor Brodley reviews the previous literature, which includes proposals by the following antitrust scholars: (1) Turner (prohibit substantial acquisitions in highly concentrated markets by most likely potential entrants), id. at 58; (2) Pitofsky (refinement of Turner approach, which focuses on incentives to enter market), id. at 60; (3) Neal Report (White House Task Force) (bar acquisitions of leading firms in concentrated markets by any "large firms"), id. at 64 & n.252; (4) Steiner (use market proximity in proposing rebuttable presumption
A structural approach to antitrust analysis, along the lines set forth in the *Philadelphia National Bank* decision, offers the most viable policy to restrict excessive bank expansion. In terms of achieving the relevant goals of (1) optimal decentralization of banking, (2) strong competitive rivalry, and (3) healthy stability, the preferable market structure would be comprised of loose oligopolies enlivened by new entrants or interpenetration of markets from nearby banking organizations.

A policy of selective limitations on multioffice bank expansion is most likely to encourage competition and a decentralized banking industry, while still affording an opportunity for scale economies. By preventing the larger multibank networks within each state from achieving excessive size, we tend to foster looser oligopolies, and this in turn fosters more rivalry and interpenetration. The banking industry will be more diffuse in its ownership patterns, less inclined to oligarchic narrowness and more friendly to diverse economic development. And yet by allowing considerable branching and multibank integration, the

123. Other choices that could be considered are (1) stringent limitations on multioffice bank expansion within states, (2) unlimited multioffice bank expansion within state boundaries, and (3) interstate multioffice bank expansion. Each of these choices can be briefly evaluated in terms of relevant public policy goals and the ideal regulatory scheme.

(1) A policy of stringent limitations on multioffice bank expansion within states is most favorable to unit banks. A parochial unit banking policy would protect concentrated oligopoly and even monopoly markets; furthermore, this policy is no longer politically feasible in view of the large number of states that allow multiple office banking by means of statewide branching or bank holding companies. See note 120 supra.

(2) A policy of unlimited multioffice expansion within state boundaries is most favorable to the larger banks. Although such a policy would permit scale economies, the costs to society from excessive concentration are great. Economic history in modern times offers many illustrations of the dangers of concentrated economic power in financial markets.

(3) A policy of interstate multioffice bank expansion has been suggested by a few commentators, but this proposal does not command the necessary political support for adoption. The idea that we would completely abandon our national tradition of decentralized banking and permit such a drastic structural transformation is unrealistic. For example, the top 50 banks already hold 47% of commercial bank deposits in this country; the potential for such megabanks to branch nationwide would be anathema to our social policy.

124. For example, a maximum limitation on growth (in terms of assets or deposits within a particular state or relevant market) of 20% would allow a maximum of five banks to control the market. Competition might be better assured, however, if this oligopoly market were looser. A 15% limitation on size would require at least six firms to compete within a single market, and, as a practical matter, the lesser ranking firms would have smaller market shares trailing downward.
organizational and other economies associated with large scale bank networks can be accommodated for most purposes.

The most sensible limitations on multibank integration from this perspective are two-fold: (1) an absolute ceiling on the statewide market share achievable by market extension merger transactions, and (2) the prevention of larger market extension mergers by multibank holding companies of considerable size.

In most states there should be a limitation of 15% on the statewide share of commercial bank deposits resulting from any market extension merger. Existing bank organizations with somewhat larger percentages could be allowed to continue. We should not, however, permit expansion as high as the market share of the present leaders, which is often above 25%. Even 20% may be too high.\textsuperscript{125} In twenty-eight states the leading bank organizations already have 15% or more of commercial bank deposits.\textsuperscript{126} In other words, only de novo branching activity

\textsuperscript{125} See, e.g., S.72, 95th Cong., 1st Sess. (1977).

\textsuperscript{126} In appreciating the impact of this guideline, it is helpful to review the statewide market shares of leading banks in the various states and the District of Columbia. The states fall into three categories: (1) high concentration (70% or more of market held by five largest bank organizations); (2) moderate concentration (45%-66% of market held by five largest bank organizations); and (3) low concentration (41% or less of market held by five largest bank organizations).

**Market Shares of Five Leading Banks Within Each State**

<table>
<thead>
<tr>
<th>High Concentration States</th>
<th>% Market Share</th>
<th>% Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>32, 21, 13, 8, 8</td>
<td>82</td>
</tr>
<tr>
<td>Ariz.</td>
<td>42, 28, 15, 5, 3</td>
<td>93</td>
</tr>
<tr>
<td>Cal.</td>
<td>37, 12, 11, 9, 7</td>
<td>77</td>
</tr>
<tr>
<td>Del.</td>
<td>36, 22, 18, 13, 3</td>
<td>92</td>
</tr>
<tr>
<td>D.C.</td>
<td>33, 24, 13, 11, 8</td>
<td>89</td>
</tr>
<tr>
<td>Hawaii</td>
<td>38, 33, 9, 7, 5</td>
<td>92</td>
</tr>
<tr>
<td>Idaho</td>
<td>36, 27, 12, 9, 4</td>
<td>88</td>
</tr>
<tr>
<td>Me.</td>
<td>18, 15, 14, 12, 12</td>
<td>71</td>
</tr>
<tr>
<td>Nev.</td>
<td>50, 20, 12, 9, 5</td>
<td>96</td>
</tr>
<tr>
<td>Ore.</td>
<td>36, 34, 6, 4, 3</td>
<td>83</td>
</tr>
<tr>
<td>R.I.</td>
<td>39, 25, 23, 4, 3</td>
<td>94</td>
</tr>
<tr>
<td>Utah</td>
<td>29, 19, 13, 8, 5</td>
<td>74</td>
</tr>
<tr>
<td>Wash.</td>
<td>33, 19, 8, 8, 7</td>
<td>75</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Moderate Concentration States</th>
<th>% Market Share</th>
<th>% Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ala.</td>
<td>15, 11, 11, 11, 5</td>
<td>53</td>
</tr>
<tr>
<td>Colo.</td>
<td>16, 15, 10, 8, 7</td>
<td>56</td>
</tr>
<tr>
<td>Conn.</td>
<td>20, 18, 9, 9, 6</td>
<td>62</td>
</tr>
<tr>
<td>Md.</td>
<td>19, 14, 11, 9, 8</td>
<td>61</td>
</tr>
<tr>
<td>Mass.</td>
<td>22, 13, 12, 8, 8</td>
<td>63</td>
</tr>
<tr>
<td>Mich.</td>
<td>15, 11, 9, 8, 3</td>
<td>46</td>
</tr>
<tr>
<td>Minn.</td>
<td>26, 22, 3, 2, 2</td>
<td>55</td>
</tr>
</tbody>
</table>
should be allowed for these forty-seven odd leading banks in twenty-eight states. The purpose of establishing ceilings in terms of statewide market share is to prevent high concentration, not authorize it.

The primary effect of this limitation upon market extension mergers would fall upon the leading twenty-six banks in the high concentration states, and upon the twenty-one leading banks in states with moderate concentration. And even these bank organizations could still

| Mont. | 25, 13, 6, 6, 4 | 54 |
| N.H. | 15, 10, 8, 7, 5 | 45 |
| N.M. | 23, 12, 9, 9, 4 | 57 |
| N.Y. | 14, 13, 11, 9, 8 | 55 |
| N.C. | 20, 18, 11, 8, 7 | 66 |
| N.D. | 15, 14, 11, 6, 2 | 48 |
| S.C. | 19, 13, 12, 11, 7 | 63 |
| S.D. | 23, 17, 4, 3, 3 | 51 |
| Vt. | 17, 14, 13, 11, 6 | 61 |
| Va. | 13, 11, 9, 9, 8 | 50 |
| Wyo. | 17, 12, 10, 4, 3 | 46 |

<table>
<thead>
<tr>
<th>Low Concentration States</th>
<th>% Market Share</th>
<th>% Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ark.</td>
<td>7, 4, 3, 3, 2</td>
<td>19</td>
</tr>
<tr>
<td>Fla.</td>
<td>10, 8, 6, 5, 5</td>
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</tr>
<tr>
<td>Ga.</td>
<td>14, 10, 7, 4, 4</td>
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</tr>
<tr>
<td>Ill.</td>
<td>14, 14, 5, 2, 2</td>
<td>22</td>
</tr>
<tr>
<td>Ind.</td>
<td>7, 6, 5, 2, 2</td>
<td>22</td>
</tr>
<tr>
<td>Iowa</td>
<td>7, 6, 4, 3, 2</td>
<td>22</td>
</tr>
<tr>
<td>Kan.</td>
<td>5, 3, 2, 2, 2</td>
<td>14</td>
</tr>
<tr>
<td>Ky.</td>
<td>9, 8, 5, 4, 3</td>
<td>29</td>
</tr>
<tr>
<td>La.</td>
<td>8, 5, 4, 3, 3</td>
<td>23</td>
</tr>
<tr>
<td>Miss.</td>
<td>12, 11, 4, 4, 3</td>
<td>34</td>
</tr>
<tr>
<td>Mo.</td>
<td>11, 10, 8, 6, 5</td>
<td>40</td>
</tr>
<tr>
<td>Neb.</td>
<td>8, 7, 5, 5, 4</td>
<td>29</td>
</tr>
<tr>
<td>N.J.</td>
<td>8, 8, 7, 6, 4</td>
<td>33</td>
</tr>
<tr>
<td>Ohio</td>
<td>10, 9, 7, 5, 5</td>
<td>36</td>
</tr>
<tr>
<td>Okla.</td>
<td>7, 7, 6, 5, 3</td>
<td>28</td>
</tr>
<tr>
<td>Pa.</td>
<td>11, 7, 5, 5, 4</td>
<td>32</td>
</tr>
<tr>
<td>Tenn.</td>
<td>11, 9, 8, 8, 5</td>
<td>41</td>
</tr>
<tr>
<td>Tex.</td>
<td>8, 8, 6, 6, 4</td>
<td>34</td>
</tr>
<tr>
<td>W. Va.</td>
<td>4, 3, 2, 2, 2</td>
<td>13</td>
</tr>
<tr>
<td>Wis.</td>
<td>14, 7, 7, 2, 2</td>
<td>32</td>
</tr>
</tbody>
</table>

Table compiled by authors from Federal Reserve Board call data, December 31, 1977.

In the high concentration states there were 17 banks with market shares of 25% or more, 20 banks with 20% or more, and 26 banks with 15% or more. In the moderate concentration states there were 2 banks with market shares of 25% or more, 8 banks with 20% or more, and 21 banks with 15% or more. And in the low concentration states there were no banks with as much as 15% of the market share.
grow by establishing new branch offices or by chartering new bank subsidiaries for their holding companies. Finally, these leading banks could continue to grow by attracting more commercial, industrial and wealthy depositors in their respective areas. Thus, strictly speaking, the leading bank organizations would not be prevented from expansion—it is only that market extension mergers would be disallowed as an excessively rapid, needless and anticompetitive method of growth in the market place.

The second limitation on multibank integration should also be achieved through merger policy. The larger market extension mergers by multibank holding companies within each state should be prevented. While toe-hold acquisitions or de novo branches are normally healthy, procompetitive and desirable, acquisitions by bank organizations that already enjoy statewide market shares in excess of 20% should be unlawful. What is needed is a limitation on market extension mergers by the larger bank organizations within each state. But, at the same time, more new entrants, additional de novo branching by established banks, and toe-hold market extension mergers should be encouraged. In other words, the Federal Reserve Board and the Justice Department should construe quite narrowly the loophole for larger market extension mergers created by Marine Bancorporation. As an isolated event, the merger of Washington's second largest bank (with 20% of deposits statewide) and Spokane's third largest (with 18% of deposits locally) may not be important, but if seriously exploited as the governing precedent in the coming years, the policy of Marine Bancorporation could seriously limit merger supervision and enforcement with respect to market extension by banks.