

BB REVIEW

Financial Services and Transactions

DODD-FRANK BILL WOULD ALLOW FULL INTERSTATE BRANCHING

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INTRODUCTION

Taking up just a half-page of the 2,300-page Dodd-Frank Wall Street Reform and Consumer Protection Act is permission for all banks to branch anywhere in the United States, regardless of state laws. This little noticed provision will make it considerably easier for banks of all sizes to cross state lines and begin banking operations.

HISTORY

One of the most bitterly fought issues in the history of federal banking law has been whether banks should be able to branch across state lines. A monumental political compromise was reached in the 1994 Riegle-Neal law, which permitted interstate branching, but only if a host state "opted in." A majority of states did not opt in, or did so with conditions such as requiring a reciprocal opt-in from other states or imposing age requirements on banks acquired.

Since Riegle-Neal, a great many interstate bank acquisitions have taken place. Perhaps prices for these transactions were inflated because of the relative difficulty of operating under the former law. This provision of Dodd-Frank would likely reduce any premium based on such difficulty.

It should also be noted that Riegle-Neal did not affect the greater ability of thrifts to branch on an interstate basis, as compared to national banks and state-chartered banks. Several large thrifts, such as the former Washington Mutual, used this particular power to expand geographically in a way not available to non-thrifts.

STATE LAWS ON INTERSTATE BRANCHING

As noted above, a majority of states place some sort of restriction on the ability of out-of-state banks to open branches or acquire banks inside their state boundaries.

Of Alabama and its contiguous states, only Alabama and Tennessee permit restricted de novo branching. In both states, de novo branching is limited to banks from states that have a reciprocal law permitting de novo branching.

All such laws relating to de novo branching across state lines will become moot and will require revision or repeal because of the elimination of the opt-in requirement. Section 613 of Dodd-Frank provides that de novo interstate banking must be allowed if "the law of the State in which the branch is located, or is to be located, would permit establishment of the branch, if the bank were a State bank chartered by such State." Most states today permit full state-wide branching.

CONSEQUENCES

Possible Reduction in Prices. As noted above, one possible consequence of the elimination of the opt-in requirement will be a reduction in prices paid in interstate banking transactions because of the elimination of the need to acquire an existing bank and the accompanying decreased demand for acquisitions.

More Competition from Largest Banks. As the barrier to entry in new states decreases, out of state banks may consider establishing branches in new states and competition could increase. In particular, larger banks with the capacity to expand

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organically across state lines may, as a result of the law change, begin to open de novo branches in fast-growing states. The ten percent "deposit cap," which restricts any one bank from acquiring more than ten percent of the total amount of deposits of insured depository institutions in the United States, applies only to transactions involving the acquisition of control or of the assets of an existing bank (Dodd-Frank also imposes a new nationwide ten percent concentration limit based total consolidated liabilities).

According to FDIC data from 2009, three banks have at least nine percent nationwide market share: Bank of America (12%), Wells Fargo (10%) and J.P. Morgan Chase (9%).

Less Complex Acquisition Transactions.

Another consequence of the relaxation in interstate branching restrictions will be a simplification of the methods used to acquire banks or bank branches in other states. For example, some states restricted interstate banking by requiring that only banks that had been in existence for a certain period of time (often five or more years) could be acquired in an interstate banking transaction. When two banks agreed to merge in such a state, one bank might preserve its charter (more than five years old), transfer all but one branch to the surviving bank, strip the remaining branch of most of its assets and deposits and then sell that bank to an otherwise uninvolved out-of state bank.

Dodd-Frank would eliminate the need to engage in such transactions.

States Still Have Approval Power. States will still retain considerable ability to review and approve interstate banking transactions. Most states must approve the management and capital of banks desiring to establish banking operations within their borders. For example, Alabama recently amended its banking laws so as to give the State Banking Department the power to approve not only bank acquisitions but also bank holding company acquisitions. Formerly, the state did not have the power to approve transactions between bank holding companies (which were approved by the Federal Reserve Board).

Some states may also add to their approval requirements for interstate banking transactions in an effort not to lose

regulatory control over interstate branching activities.