Media Advisory

Comptroller of the Currency
Administrator of National Banks

Washington, DC 20218

September 23, 1998

Attention: Banking Reporters/Business Editors

The attached letter from acting Comptroller of the Currency Julie L. Williams and Office of Thrift Supervision Director Ellen Seidman was sent to Senate Banking Committee Chairman Alfonse M. D'Amato. An identical letter was sent to Sen. Paul Sarbanes, the Banking Committee's ranking Democrat.

In the letter, the two regulators express grave concern with a provision added by the Senate Banking Committee to the financial modernization legislation that limits their agencies' authority to examine and even to obtain information about the operations of securities or insurance units owned by or affiliated with nationally-chartered banks and thrifts.

The OCC charters, regulates and supervises approximately 2,600 national banks and 66 federal branches and agencies of foreign banks in the U.S., accounting for more than 58 percent of the nation's banking assets. Its mission is to ensure a safe, sound and competitive national banking system that supports the citizens, communities and economy of the United States.

OFFICE OF THE COMPTROLLER OF THE CURRENCY
OFFICE OF THRIFT SUPERVISION

September 22, 1998

The Honorable Alfonse M. D'Amato
Chairman
Committee on Banking, Housing, and
Urban Affairs
U.S. Senate
Washington, D.C. 20210

Dear Chairman D'Amato:

We are writing to inform you about grave concerns we have with Section 118 of H.R. 10 as added by the managers' amendment that the Committee adopted during consideration of the bill on September 11. This provision compromises our ability to oversee the safe and sound operation of the institutions we supervise. Despite this erosion of the supervisory authority of the Office of the Comptroller of the Currency ("OCC") and the Office of Thrift Supervision ("OTS"), neither of our agencies was informed about this provision prior to its passage nor provided with any opportunity to comment on its effect on the safe and sound operation of national banks and savings associations. This amendment would undermine the safety and soundness of the insured depository institutions regulated by our two agencies. Further, it would weaken consumer protections and appears to be inconsistent with section 307 of H.R. 10, which requires the federal banking agencies to adopt consumer protection regulations in connection with the sale of insurance products by depository institutions and their subsidiaries.

Specifically, Section 118 of the reported bill would limit our agencies' ability to examine, request reports from, and take enforcement actions against functionally regulated insurance and securities subsidiaries and affiliates of bank holding companies (including nonbank subsidiaries of depository institutions). Under the amendment, our agencies must meet rigid standards to justify an on-site examination or to take an enforcement action against a regulated subsidiary. Our examination staff would have to demonstrate that (i) a subsidiary's activities pose a "material risk" of harm to a related depository institution, or (ii) it has "reasonable cause to believe" a subsidiary is not in compliance with laws relating to transactions with a depository institution and it cannot make the compliance determination through an examination of the depository institution. We would essentially be forced to wait until a danger or violation materializes before we could act. Section 118 thus would take away from regulators one of their most important tools to ensure safety and soundness: the ability to act promptly to prevent or contain risks to the depository institutions that they supervise based on their seasoned judgment.

Currently, we work cooperatively with the functional regulators of our subsidiaries and affiliates under flexible arrangements that permit us to examine subsidiaries as necessary. Neither the OCC nor the OTS seek to be the regulator of securities firms, insurance companies, or mutual funds. We fully recognize and respect the primary role of the securities and insurance regulators over nondepository subsidiaries and affiliates and largely defer to their reports and examinations. However, these regulatory reports and examinations were designed for a fundamentally different supervisory structure. Moreover, these regulators are simply not on site at the subsidiaries on a regular basis. In contrast to the functional regulators, our examiners are on the premises of banks and thrifts on a statutorily mandated, regular basis. Under the current regulatory regime, the bank and thrift examiners have sufficient flexibility and information to assess the risk exposure to a bank or thrift based on activities of the entire entity. Section 118 could seriously undermine this capability.

The new standards would shift our examiners' focus away from substantive supervisory concerns by forcing them to provide legalistic justifications to obtain the information they need. The standards set up needless confrontations between depository institution regulators and nonbank subsidiaries. Additionally, there may be compelling circumstances for our examiners to seek information from, or examine aspects of a subsidiary's operations that do not fall within any of the required justifications. For example, a subsidiary broker-dealer may be operating on the premises of a bank or thrift and failing to make adequate disclosures to consumers about the uninsured nature of its investment products. These activities may pose no material risk to the safe and sound operation of the institution, may not violate this Act, and may not relate to a transaction with the bank or thrift -- the requisite standards for justifying our investigating the circumstances. Yet such a failure is contrary to important and long-standing customer protection policies of our agencies and may impact the reputation risk and market perception of the institution. A different situation that could pose even greater risks arises when the broker-dealer operates off the depository institution's premises and engages in inappropriate activities with the institution's customers. In that case, the regulator of the depository institution would be denied effective tools to even make itself aware of potential problems.

The amendment's differential treatment of federally and state chartered depository institutions in bank holding company structures that own functionally regulated subsidiaries is inexplicable and has no basis in safety and soundness. The amendment would limit the authority of the OCC and OTS, the regulators of federally chartered institutions, but leaves unimpaired the supervisory authority of the states, the Federal Reserve, and the Federal Deposit Insurance Corporation ("FDIC") with respect to state banks that have functionally regulated subsidiaries and affiliates. The disparity is most apparent in a bank holding company structure with a state nonmember bank, a state member bank, a national bank, and a thrift. The states, the FDIC, and the Federal Reserve as well, may be able to use their authority as bank regulators to examine a joint subsidiary of the depository institutions, but the OCC and OTS could not. The amendment could well impede the banking agencies from working jointly on problems affecting their interrelated institutions, as we do now, because we would have different enforcement authorities.

Fewer than 10 years ago, in the face of a savings and loan and subsequent banking crisis, the Congress enacted regulatory reforms to ensure that the thrift and banking agencies had robust supervisory powers to appropriately oversee insured depository institutions and their subsidiaries and affiliates. It is particularly important for regulators of insured depository institutions to have timely information about activities and compliance by nonbank subsidiaries and affiliates so that regulators of the insured depository institution can adequately monitor transactions and enforce compliance with firewalls designed to protect the depository institution and the insurance funds from risks created by nonbank activities. This in no way detracts from the role and responsibilities of functional regulators of securities and insurance firms. It is, however, fundamental to prudent oversight of insured depository institutions.

We note that the FDIC raised similar concerns to the ones we have raised in this letter about an earlier version of this amendment and have enclosed a copy of their letter. We would be happy to discuss these important issues with you or your staff. This same letter is also being sent to Senator Sarbanes.

Sincerely,

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Ellen Seidman Director, Office of Thrift Supervision	Julie L. Williams Acting Comptroller of the Currency

Enclosure