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Statement No. 128

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Statement of Shadow Financial Regulatory Committee

on

Bank Merger Law and Policy

December 11, 1995

By June 1997 entry via interstate branching will have become effective in most states. This can be expected to lower significantly the traditional barriers to entry and to increase competition in banking markets. Concern about preserving competition has long been the justification for subjecting bank mergers to the elaborate, costly and cumbersome administrative process which arose from the Bank Merger Act of 1960.

The 1960 law was passed to provide a means for applying antitrust standards to bank mergers, which were thought at the time to be exempt from challenge by the U.S. Department of Justice (DOJ) under the Clayton Act. Shortly thereafter, the U.S. Supreme Court ruled that combinations among banks were indeed subject to challenges on Clayton Act grounds, just as any other business. In 1966, the Bank Merger Act of 1960 was amended, but retained DOJ authority to challenge a bank merger after it had been approved by the appropriate banking agency.

Under the Act, an applicant bank must file a complex application with the banking agencies and the DOJ. All are required to comment on the competitive aspects of the application. This requires additional staff at all the agencies and a special staff and process at the DOJ not required for other industries.

The Shadow Financial Regulatory Committee in its guidelines for bank regulatory reform has stated that such reform should facilitate and lower the costs of both entry and exit from the banking industry. (Statement 118) As technological change occurs, it is important that the

reallocation of capital within the industry not be impeded. In particular, as regulatory protection and subsidies to the banking industry are reduced, exit from the industry must be made easier.

The Bank Merger Act adds nothing to the process but cost, and should be repealed. Banks should continue to be subject to all antitrust laws, but banking does not need to be treated any differently than other industries.*

* It is the Committee's policy that members abstain from voting on policy statements in which they have a direct personal or professional involvement in the matter that is the subject of the statement. Accordingly, Richard C. Aspinwall abstained from voting on this statement.