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A Brief History of the U.S. Regulatory Perimeter

Nicholas K. Tabor, Katherine E. Di Lucido, and Jeffery Y. Zhang[1]

Abstract: This paper provides a brief history of the U.S. financial regulatory perimeter, a legal cordon comprised of "positive" and "negative" restrictions on the conduct of banking organizations. Today's regulatory perimeter faces a wide range of challenges, from disaggregation, to new commercial entrants, to new varieties of charters (and new uses of legacy charters). We situate these challenges in the longer history of American banking, identifying a pattern in debates about the nature, shape, and position of the perimeter: outside-in pressure, inside-out pressure, and reform and expansion. We also observe a shift in this pattern, beginning roughly three decades ago, which gradually made the perimeter broader, more complex, and arguably more permeable. We show this trend graphically in an animation accompanying this paper.

Banking organizations in the United States have long been subject to two broad categories of regulatory requirements. The first is permissive: a "positive" grant of rights and privileges, typically via a charter for a corporate entity, to engage in the business of banking.[2] The second is restrictive: a "negative" set of conditions on those rights and privileges, limiting conduct and imposing a program of oversight and enforcement, by which the holder of that charter must abide.[3]

Together, these requirements form a legal cordon, or "regulatory perimeter," around the U.S. banking sector. Inside that perimeter are firms, or other legal persons, that can legally conduct a set of banking activities, subject to various forms of regulation and supervision. Outside that perimeter are firms conducting other financial and non-financial activity, under the broad heading of "commerce"—subject to other laws and restrictions, but not to the specific combination of positive grants and negative restrictions of the perimeter. A range of firms lie close to the boundary, blurring the distinctions between the two.

This perimeter—a changing mix of positive grants and negative restrictions—runs through the history of American financial regulation. It elides the nearly century-old distinction between "prudential" and "functional" oversight, as well as the more recent divide between "entity-based" and "activities-based" supervision.[4] For the last 150 years, federal financial laws have followed the same rough and ready rule: Because you do, you are; and because you are, you do.

Today's regulatory perimeter faces a wide range of challenges, from disaggregation, to new commercial entrants, to new varieties of charters (and new uses of legacy charters). To situate these challenges, this

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[2] Positive requirements in this context also fall under the umbrella of "entry restrictions." *See, e.g.*, Morgan Ricks, *Entry Restriction, Shadow Banking, and the Structure of Monetary Institutions*, 2(2) J. FIN. REG. 291 (2015).

[3] *See* Francesco Parisi, Norbert Schulz, & Jonathan Klick, *Two Dimensions of Regulatory Competition*, 26 INT'L. REV. L. ECON. 56 (2006) (providing a model of regulatory competition in multi-body administrative settings).

[4] *See, e.g.*, Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 84 Fed. Reg. 9028 (proposed Mar. 13, 2019).

paper provides a brief history of the U.S. regulatory perimeter, with a particular focus on changes in federal banking law. Most individual elements of this history are well-known and well-treated, and our examination of them is necessarily incomplete.[5] However, examining them together—and explicitly via the lens of regulatory perimeter—reveals new insights, including an ideal-type pattern to debates about the perimeter's nature, shape, and position[6]:

1) **Outside-in pressure.** Firms outside the regulatory perimeter—sometimes, but not always, with a commercial presence—enter into more direct competition with firms inside it, offering the services of a regulated bank while avoiding most or all of its requirements. Engaging in this regulatory arbitrage permits firms to traverse the perimeter, often increasing the ties between banking and commerce and eroding the value of a bank charter.

   In the early Republic and free banking era, this "outside-in pressure" came from merchant banks, utilities, and other firms with the capacity to engage in "monied transactions or operations." In the early dual banking era, it came from state-chartered banks, which shifted to deposit-taking and check-issuance after the introduction of a federal tax on note issuance. In the late 19th and early 20th century, it came from trust companies, expanding beyond their traditional custody business; before the Depression, from the widespread and explosive growth in securities lending; after the war, from several stripes of holding companies, conglomerates, and "congenerics"; and later, from "non-bank banks," money market funds, industrial loan companies (ILCs), and other forms of "shadow banking."

2) **Inside-out pressure.** Firms inside the regulatory perimeter typically respond to this pressure by advocating regulation of their non-bank competitors and straining at the fetters on their own conduct. Regulated firms form new partnerships, create new products, convert to new charters, or lobby for changes to disadvantageous regulatory requirements. They find allies in commercial firms, as well as in competing regulators and jurisdictions. They argue that restrictions are arbitrary, restraining innovation and unnecessarily marking certain acceptable activities as unsafe; or, if not, that they push conduct beyond the reach of regulation. In either case, they argue these restrictions place regulated firms at a disadvantage, imperiling their safety and soundness, the integrity of the financial system, and overall economic growth.

   These arguments are most familiar from the universal banking debates of the 1990s and shadow banking debates of the 2010s. However, they date to at least the late 19th century, figuring especially prominently into regulatory actions during the late 1920s, late 1960s, and early 1980s. Accounts of changing technology have figured in much of this discourse.

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[5] The authors are deeply indebted to a number of scholars cited herein, especially Saule Omarova and Margaret Tahyar, *infra* note 79, for their meticulous and thoughtful work on 20th century debates over the scope of holding company legislation. In particular, however, we have omitted a thorough discussion of informal and other alternative forms of finance, which may be important elements of the perimeter's history at several junctures, including the early Republic. *See, e.g.*, Justin Simard, *The Birth of a Legal Economy: Lawyers and the Development of American Commerce*, 64 BUFFALO L. REV. 1059 (2016) (examining attorney promissory notes as source of early U.S. monetary policy).

[6] Importantly, we do not view this pattern as systemic, deterministic, or necessary, nor as a rigid account of the instances of perimeter change we describe; instead, we intend it as a *gedankenbild*, a "unified analytical concept" derived from "concrete individual phenomena." *See* Max Weber, *Objectivity in Social Science and Social Policy*, *in* THE METHODOLOGY OF THE SOCIAL SCIENCES 90 (E.A. Shils & H.A. Finch, eds. and trans., 2011); Jon Hendricks & C. Breckinridge Peters, *The Ideal Type and Sociological Theory*, 16(1) ACTA SOCIOLOGICA 31, 32 (1973).

3) **Reform and expansion—by devil or disaster.** Pressure on the perimeter can culminate in action, either by crisis, scandal, or both. In response to this pressure, regulators, legislators, and industry act to patch or expand the perimeter—often while letting existing institutions operate under legacy treatment—or increase permissible activities in exchange for increased regulation. In turn, this can lead to political action to redefine the perimeter, move it, or patch up its holes. The actors involved can vary, and often include Congress, banks, and regulators themselves. With few exceptions, the effect is to push the perimeter outward, extending it to at least some set of firms and activities not previously within regulators' jurisdiction.

   A consistent set of arguments often recur during a perimeter expansion: that unregulated or under-regulated activities create moral hazard, posing a threat to the core banking sector, financial stability, and the public purse; that uneven regulation is inequitable, capricious, or even corrupt; or that a flimsy perimeter fosters monopoly, giving large commercial firms an unfair economic advantage. They figured in the Pujo Committee's "money trust" investigation, the Pecora Commission hearings, the mid-century Bank Holding Company Act debates, and the recent ILC discussions. Where a crisis is absent, a salient case often suffices—J.P. Morgan in the 1910s, Transamerica in the late 1940s and early 1950s, DuPont in the 1960s, Travelers/Citibank in the 1990s, and Walmart in the early 2000s.

While this overarching pattern has endured for more than 150 years, a subtle but important shift occurred 30 years ago—to a "categorization" approach, reflecting different principles of both perimeter design and a different allocation of responsibilities between Congress and the executive branch.

- Before the 1980s, perimeter debates focused primarily on the meaning and scope of the term "banking"—on what activities should define the "business of banking," and which entities should qualify as "banks." Those terms, and similar ones, set the outer bounds of regulators' jurisdictions. Within those bounds, agencies had substantial discretion to oversee the conduct of supervised institutions. During the 1980s, however, Congress created new, often overlapping sets of narrowly-tailored regulatory categories, which extended federal oversight not just to new institutions, but also to new categories of institutions, charters, and activities.

- At the same time, Congress reduced agencies' discretion in exercising such oversight.[7] Reform legislation described the restrictions each type of institution should and should not face, in extensive and unprecedented statutory detail. This trend reached its peak with the Gramm-Leach-Bliley Act, but it persisted in both the Dodd-Frank Act (which incorporated more than 50 categories of regulatory entity without amendment, and introduced over 80 new ones) and the Economic Growth, Regulatory Relief and Consumer Protection Act (which introduced 18 more categories, repealing none).

The short history that follows is a sketch of this gradual transition to a regulatory perimeter that is broader, more complex, and arguably more permeable than at any point in its history. It also includes graphical representations of the perimeter after various reforms, capturing regulatory categories introduced in legislation and placing them along a spectrum from prudential regulation to selective regulation of

[7] This point echoes work on the shifting role of the banking charter, banking supervision, and their relationship to monetary policy. *See* Lev Menand, *Why Supervise Banks? The Foundations of American Monetary Settlement*, 74 VAND. L. REV. 951 (2021); David Zaring, *Modernizing the Bank Charter*, 61(5) WM. & MARY L. REV. 1397 (2020).

commercial activity. (An animation of the perimeter from 1791 to 2021 accompanies this paper in a separate attachment, available online.) These representations are interpretations, and other valid ones also exist; we intend them as a visual reflection of the broader trends we describe.[8] Together, the goal of these materials is to provide a tractable account of the perimeter, past and present, to inform discussions about its future.

A. Creating the Perimeter: The Early Separation of Banks and Corporates

In the beginning, no perimeter separated banking from other kinds of corporate activity. During the late colonial era and the early American Republic, almost all corporate entities were subject to positive and negative regulatory requirements, regardless of their business or activities. Incorporation was largely an exercise of state control over local civic institutions; the Crown, and then colonies and states, issued corporate charters that conferred limited liability and perpetual personality, but which also came with a host of restrictive conditions.[9]

For most corporations, these conditions began to ease in the mid-19th century. State governments began issuing charters without the specific approval of the legislature, and courts began to distinguish the (narrower) rights of public corporations from the (broader) protections of private ones.[10] However, for banks—which remained the lynchpin of state public finance—the conditions not only remained but tightened.[11] States began charging fees for issuing bank charters; they taxed banks' capital, dividends, deposits, and profits; acquired shares in the banks themselves; and required banks to purchase shares in (or issue "bonuses" to) state entities.[12]

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[8] All diagrams reflect categorizations of financial institutions by year of introduction in statute, subject to some form of finance-specific federal oversight (*i.e.*, not merely antitrust or general criminal liability). They exclude definitions of financial products or customers, except to the extent such products or customers define the scope of a regulated entity; include functional categories in securities and consumer protection laws, but exclude Farm Credit Administration-, Federal Land Bank-, and Small Business Administration-related entities; and exclude Internal Revenue Code items unless explicitly incorporated by reference within a financial regulatory statute. *See* Appendix for further detail.

[9] This power derived from the English law concept of visitation, which endures today in the law of national banks. *See* Judge Glock, *The Forgotten Visitorial Power: The Origins of Administrative Subpoenas and Modern Regulation*, 37(1) REV. BANKING & FIN. L. 205 (2017); 12 C.F.R. § 7.4000 ("Visitorial powers with respect to national banks . . ."); Jason Kaufman, *Corporate Law and the Sovereignty of States*, 73(3) AM. SOC. REV. 402 (2008). In fact, private banking—and specifically, the establishment of a private land bank in Massachusetts, using real estate to collateralize circulating notes—was the site of a heated debate over British colonial control, spurring the British government to extend the 1720 "Bubble Act" (and its regulation of unincorporated joint-stock companies) to the Americas in 1841. *See* F. Ward McCarthy, *The Evolution of the Bank Regulatory Struggle: A Reappraisal*, FRB RICHMOND ECON. REV. (Mar./Apr. 1984).

[10] *See, e.g.*, *Tr. of Dartmouth C. v. Woodward*, 17 U.S. 518 (1819); Kaufman, *supra* note 8, at 419; Ronald E. Seavoy, *The Public Service Origins of the American Business Corporation*, 52(1) BUS. HIST. REV. 30 (1978); Ronald E. Seavoy, *Laws to Encourage Manufacturing: New York Policy and the 1811 General Incorporation Statute*, 46(1) BUS. HIST. REV. 85 (1972).

[11] The extent of this fiscal dependency is hard to overstate. From 1836 to 1840, for example, Massachusetts received more than 82 percent of its tax revenues from the banking sector. *See* Richard Sylla, John B. Legler, & John J. Wallis, *Banks and State Public Finance in the New Republic: The United States, 1790-1860*, 47(2) J. ECON. HIST. 391 (1987); *see also* Bernard Shull, *Separation of Banking and Commerce in the United States*, 18 J. BANKING & FIN. 255, 259 (1994) (noting that while general laws of incorporation "altered the character of the charter granted by the state from 'a right to a defined enterprise' to 'any lawful business' . . . for banking . . . the charter retained the older form that defined and limited the business, and retained a governmental body to regulate and supervise.").

[12] "The most famous example occurred in 1835, when a chastened Nicholas Biddle desperately sought a Pennsylvania charter for the Bank of the United States, whose federal charter was about to expire. The bank's lobbyist spent $128,000 on legislative pressure, and in the end the bank, by the terms of the state charter, had to pay Pennsylvania a bonus of $2 million and grant the state a 'temporary' loan of $1 million annually as well as a 'permanent' loan of $6 million." *The Regulated Economy: A Historical Approach to Political Economy* 136 (Claudia Goldin & Gary D. Libecap eds., 1994).

These early charters also reflected a distinction older than the corporate form itself: between permissible "banking" activities and impermissible "commercial" ones.[13] Initially, U.S. charter restrictions on banking activity were general, often limiting the bank only to its "usual banking powers."[14] However, as banks began to exercise the discretion these charters allowed, states imposed narrower, more tailored conditions. In New York, banks were generally prohibited from transacting in goods or commodities, except those received as collateral on a defaulted loan (*e.g.*, in connection with debt previously contracted); in Massachusetts, banks were limited to real estate holdings worth 12 percent of capital; and in Maine, limits existed on holdings of property in fee simple, but not on any other form of ownership.[15] At least in part, these restrictions reflected concerns that banks with unconstrained powers would favor the merchant class.[16]

These restrictions became more uniform with the spread of "restraining acts," clarifying that only those with the affirmative permission of the state could engage in the "business of banking."[17] However, consistency came at the cost of specificity: Restraining acts rarely said what the "business of banking"

[13] Restrictions on commercial activity date to at least the 13th century, during which banks in Italian city-states were barred from participating in import-export or commodity activities. *See* John Krainer, *The Separation of Banking and Commerce*, FRBSF ECON. REV. (2000). As in the early Republic, however, the reality was more complicated. Genoese, Venetian, and Florentine banks were originally established to facilitate compulsory lending to the state and, later, to manage more complicated forms of public debt. *See* Michele Frantianni & Franco Spinelli, *Italian City-States and Financial Evolution*, 10 EUR. REV. ECON. HIST. 257 (2006). Once involved in trade finance, these institutions could often secure dominant positions in the markets they were financing. The rents associated with such activity were substantial. *See, e.g.*, Richard A. Goldthwaite, *The Medici Bank and the World of Florentine Capitalism*, 114 PAST & PRESENT 3 (1987).

[14] In 1839, for example, only 66 of 97 New York State bank charters had specified limits on permissible business, or a specific definition of the business of banking. Davis Dewey, *State Banking Before the Civil War*, National Monetary Commission Report, 61 Cong. 2d Sess. 43 (1907). Commercial actors also remained deeply involved in early banking activities; more than two thirds of the directors and officers of the banks of New York, Philadelphia, and Baltimore in 1840, 1850, and 1860 were or had been merchants. Harold C. Livesay & Glenn Porter, *The Financial Role of Merchants in the Development of U.S. Manufacturing, 1815-1860*, 9 EXPLORATIONS IN ECON. HIST. 67 (1971-72).

[15] *Id.* at 44 (citing 87 Sen. Doc. NY (Apr. 11, 1839)). These motley restrictions were not limited to the United States and were sometimes visible within a single institution. For example, the 1694 charter of the Bank of England prohibited the Bank from trading in "goods, wares, or merchandise"—while simultaneously requiring the bank to lend its capital stock only and exclusively to the government. *See* Halley Goodman, *The Formation of the Bank of England: A Response to Changing Political and Economic Climate, 1694*, 17(1) PENN. HIST. REV. 10 (2009).

[16] The Bank of North America is an instructive example. In 1781, the bank was chartered principally to help finance the expenses of the Army of the Potomac. Three years later, its Pennsylvania charter was repealed after sustained protests by agrarian interests, who claimed that the bank unduly benefited merchants; the charter had not restricted the bank's commercial activities. Shortly after, in 1787, Pennsylvania granted the bank another charter, with several new limitations: the bank's corporate existence was limited to fourteen years, the bank was forbidden to hold real estate not necessary for its existence, and the bank was prohibited from "trading in any merchandise, save bullions and bills of exchange." Laurence Lewis Jr., A HISTORY OF THE BANK OF NORTH AMERICA: THE FIRST BANK CHARTERED IN THE UNITED STATES 73 (1882) (citing Act of March 17, 1787, 2 Dallas' Laws, 499). *See also* Bray Hammond, BANKS AND POLITICS IN AMERICA: FROM THE REVOLUTION TO THE CIVIL WAR (1957). The First and Second Banks of the United States had similar restrictions in their charters, limiting land ownership and "deal[ing] or trad[ing] in any thing, except bills of exchange, gold or silver bullion, or in the sale of goods really and truly pledged for money lent and not redeemed in due time." An Act to Incorporate the Subscribers to the Bank of the United States, ch. 10, 1 Stat. 191 (1791); An Act to Incorporate the Subscribers to the Bank of the United States, ch. 44, 3 Stat. 266 (1816).

[17] This affirmative permission also increased the rents that states could demand for charters, corruptly or otherwise. *See* McCarthy, *supra* note 8, at 7; Bray Hammond, *Free Banks and Corporations: The New York Free Banking Act of 1838*, 44(2) J. POL. ECON. 184-209, 187 (1936) (citing *New York Fireman Insurance Co. v. Ely*, 2 Cowen 678-712 (the object of [New York's 1804] restraining act was to guarantee to these banks "a monopoly of the rights and privileges granted to them, which had been encroached upon or infringed by private associations . . .").

actually was.[18] The boundaries of these acts were quickly tested and often surmounted.[19] A notable example involved the Manhattan Company, a corporation chartered in 1798 to lay water pipes for the City of New York.[20] The company's charter included a provision that let it invest surplus capital in any legal "monied transactions or operations."[21] Then-New York Assemblyman Aaron Burr drafted the charter, voted to approve it, and then joined the board of the new company, which moved aggressively into financing activity and became the forerunner of Chase Manhattan Bank. Its infrastructure activity remained meager, and New York lacked an adequate supply of clean drinking water for the next 40 years.[22]

B. The Federal Perimeter and the Early Dual Banking System

Before the Civil War, federally chartered banks (*i.e.*, mainly, the First and Second Banks of the United States) generally faced more explicit restrictions on commercial activity.[23] Subsequent federal restrictions evolved from state "free banking" laws, which replaced the restraining acts and removed artificial caps on the number of bank charters.[24] However, the new laws often contained their own lists of specific activities that a bank could pursue.[25] Under New York's Free Banking Act of 1838, for example, anyone with sufficient capital could establish a bank—subject to the nation's first-ever requirement of "safety and soundness."[26] Once established, the Act held, that bank would "carry on the business of banking" by

[18] *See* Roger S. White, *Evolution of the Legal Framework for Government Regulation of Commercial Banking*, 1 PROC. BUS. HIST. CONF. 83 (2d series, 1973) (detailing 35 restraining statutes in 26 states).

[19] Shull, *supra* note 11, at 258 ("Banking powers were obtained by 'internal improvement' companies to build canals, railroads, and turnpikes . . . . When the Second Bank of the U.S. was rechartered [sic] by Pennsylvania . . . [it] invested heavily in securities, attempted to support the market for cotton, and failed in 1841.").

[20] Edwin G. Burroughs & Mike Wallace, GOTHAM: A HISTORY OF NEW YORK CITY TO 1898 361 (1998).

[21] *Id.*

[22] *Id.* The company would also play a substantial role in financing the Democratic-Republican candidates in the contested election of 1800. *See* Brian Phillips Murphy, *'A very convenient instrument': The Manhattan Company, Aaron Burr, and the Election of 1800*, 65(2) WM. & MARY Q. 233 (2008).

[23] Even these restrictions were often illusory. For example, despite charter limitations on dealing in commodities, the Second Bank of the United States (and its then president, Nicholas Biddle) orchestrated a plan to support cotton prices by cornering the market in London. To evade the restrictions, Biddle and other officers of the bank contracted with agents in the South to purchase cotton, ship it to other agents in Liverpool, and hold the purchases back to inflate the price. The contracts were financed by the sale of securities, including those of the bank, in London to British financiers. The directors retained first recourse to the bank's facilities, as was customary at the time—meaning they enjoyed the support of the bank's resources, without bearing unlimited liability for its actions. *See* Hammond, *supra* note 16, at 466-70.

[24] U.S. DEPT. OF THE TREASURY, *Report of the Secretary of the Treasury on the State of the Finances for the Year Ending June 30, 1861* 19 (1861) (cited in McCarthy, *supra* note 8, at 11) (justifying currency plan "[t]o enable the government to obtain the necessary means for prosecuting the war to a successful issue, without unnecessary cost").

[25] Edward L. Symons Jr., *Business of Banking in Historical Perspective*, 51 GEO. WASH. L. REV. 676, 690 (1982). *See also* Hammond, *supra* note 16, at 186-90.

[26] Hammond, *supra* note 16, at 597. The Act was eventually challenged on the basis that the New York legislature could not pass such an Act without a two-thirds vote of all legislators, which the Act had not received, and that a law authorizing "an indefinite number of corporations would be unconstitutional." *Id.* at 194. After a decades-long controversy over whether a bank was a "corporation" for purposes of state law, New York's Court for the Correction of Errors—then the highest court of New York, composed of state senators, the president of the New York Senate, the chancellor of the Court of Chancery, and three justices of the (lower) Supreme Court—ruled that banks were not corporations and upheld the Act. *Id.*; *see also* Menand, *supra* note 7.

discounting debt, receiving deposits, buying and selling bullion, making loans "on real and personal security," and "by exercising such incidental powers as shall be necessary to carry on such business."[27]

The National Bank Act of 1863 embraced language similar to the New York law, authorizing holders of national banking charters to engage only in the "business of banking" and exercise powers "incidental" thereto.[28] Early case law showed that this limitation was far-reaching but porous.[29] National banks could not originate mortgages (since Congress specified their power to lend "on personal security," not real property) but could host apartments and unrelated businesses alongside its headquarters.[30] National banks could acquire, own, or dispose of stock in satisfaction of a debt (an "incidental" power) but not "deal in" stock or own stock in a "speculative" enterprise (not an "incidental" power).[31] National banks could not engage directly in a manufacturing or business enterprise under any circumstances" but could buy seed, hire plowmen, and operate a farm, if the goal was to preserve its value as collateral.[32]

Figure 1 presents the first of several snapshots of the U.S. regulatory perimeter, here circa 1864. Along the vertical axis, we map regulated entities roughly to their respective regulators. Along the horizontal axis, we allocate regulated activities into various zones of regulation, on a spectrum from "banking" to "commerce." In 1864, both the new Office of the Comptroller of the Currency (OCC) and a new federal definition of the "business of banking" have emerged. The relevant regulations at that time were focused on the safety and soundness of banks (in the far corner of the "prudential zone"); the rights and responsibilities envisioned in the new federal banking law applied specifically to banks, voluntarily chartered as such.

Even with these patchwork exceptions, national banking rules were more stringent than state-level regulation, and state banks maintained significant market share until 1865, when Congress levied a 10 percent tax on all state bank notes.[33] The tax caused a sharp and severe decline among state banks, but they experienced a steady resurgence over the next 40 years. States eased chartering requirements and enforcement of existing banking laws, and state banks avoided the note tax by abandoning note issuance

[27] Ch. 260, § 18, 1838 N.Y. Laws 245, 249; Symons, *supra* note 25, at 690.

[28] Symons, *supra* note 25, at 699. The Act also provides what appears to be the first federal statutory definition of banking. Associations formed thereunder had "the power to carry on the business of banking by obtaining and issuing circulating notes in accordance with the provisions of this act; by discounting bills, notes, and other evidences of debt; by receiving deposits; by buying and selling gold and silver bullion, foreign coins, and bills of exchange; by loaning money on real and personal security, in the manner specified in their articles of association, for the purposes authorized by this act, and by exercising such incidental powers as shall be necessary to carry on such business . . ." National Bank Act of 1863, ch. 58, 12 Stat. 665 (1863). The activities permissible for national banks have evolved over time by both statutory amendment and interpretation. *See* 12 U.S.C. § 24; Shull, *supra* note 11, at 16-17.

[29] At the same time, this jurisprudence suggests that contemporary ideas about the contents of "banking" had been elaborated at the state level, and went far beyond mere deposit-taking. *See* *Oulton v. Savings Inst.*, 84 U.S. 109, 118-19 (1873) (noting, in dicta, that "banks in the commercial sense are of three kinds, to-wit: 1, of deposit; 2, of discount; 3, of circulation," and "an institution prohibited from exercising any more than one of those functions is a bank in the strictest commercial sense . . . ."); *cf. Hinckley v. Belleville*, 43 Ill. 183, 184 (1867) (holding "the business of a money-changer," defined as "a broker who deals in money or exchanges," to "constitute . . . the greater part" of "the business of a banker").

[30] *Powers of National Banks to Acquire Various Kinds of Property*, 33 HARV. L. REV. 718, 719 (1920) (citing U.S.R.S. § 5137; *Brown v. Schleier*, 194 U.S. 18 (1901)).

[31] *Id.* (citing U.S.R.S. § 5201; *First Nat'l. Bank of Ottawa v. Converse*, 200 U.S. 425 (1906)).

[32] *Id.* (citing *Cockrill v. Abeles*, 86 Fed. 505 (1898), *Nat'l. Bank v. Bannister*, 7 Kan. App. 78 (1898)).

[33] McCarthy, *supra* note 8, at 12.

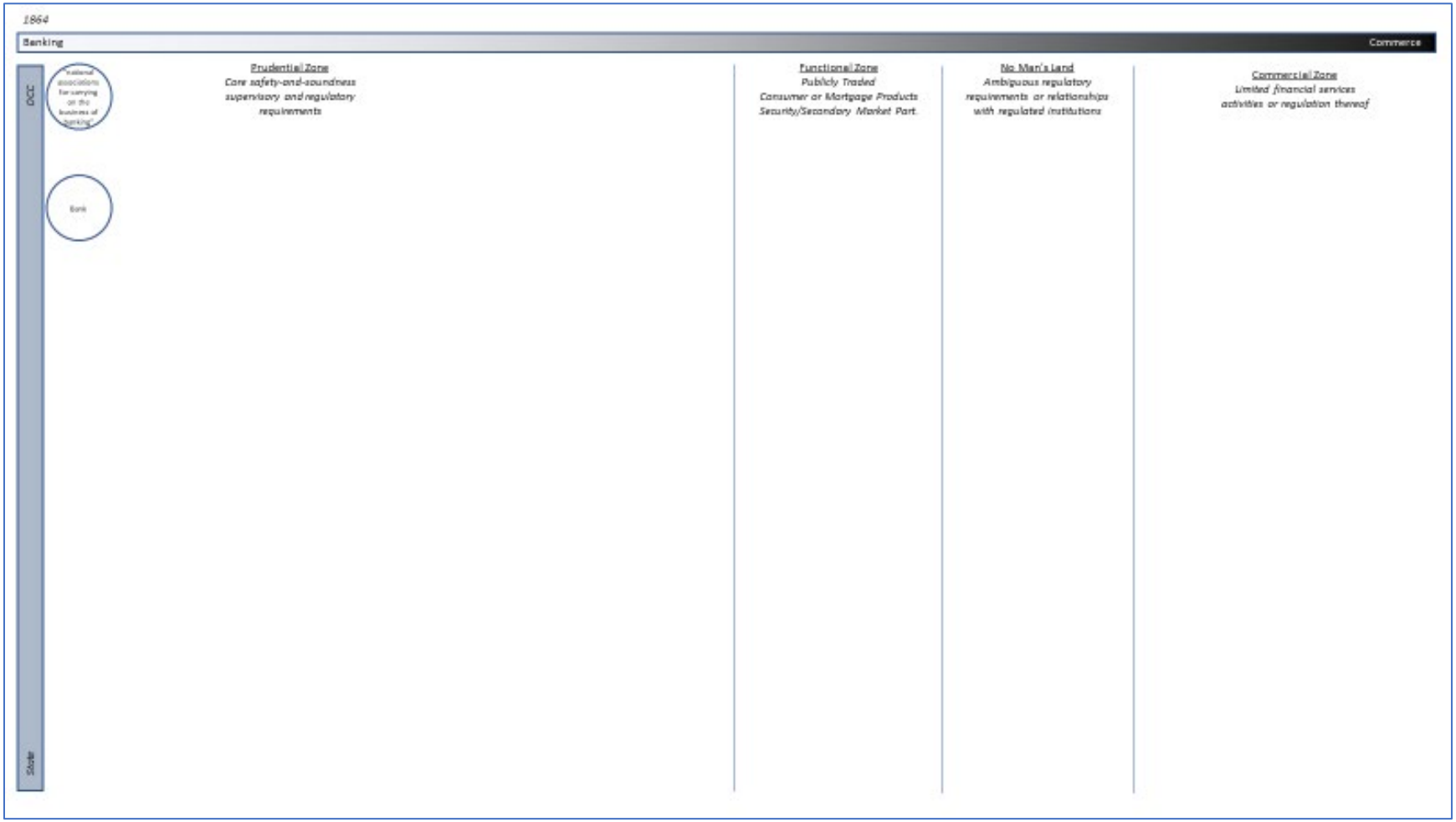
altogether, letting customers instead use checks to transfer money on deposit.[34] State trust companies also emerged as competitors; as their state-law monopoly over land-title guarantee and trust insurance began to erode, trusts pivoted to their long-standing ancillary authority to "receive deposits of money in trust."[35] The combination of deposit-taking, custody, and relatively lax regulation gave the trusts a potent competitive advantage over both state and federal banks.[36]

[34] *Id.*; U.S. DEPARTMENT OF THE TREASURY, OFFICE OF THE COMPTROLLER OF THE CURRENCY, *1936-1966: Stabilization and Challenge*.

[35] George Ernest Barrett, *State Banks and Trust Companies Since the Passage of the National-Bank Act*, U.S. Nat'l. Monetary Comm., Sen. Doc. 659, 61 Cong. (1911). At the turn of the 20th century, trust companies were paying 2-5 percent interest on their deposits while banks were paying none, at least to individual depositors. Alexander D. Noyes, *The Trust Companies: Is There Danger in the System?*, 16(2) POL. SCI. Q. 248, 255 (1901). Under the contemporary New York law, a trust company could "receive deposits of trust moneys . . . from any person or corporation", *id.* at 250; although this authorization appears narrower than that applying to banks ("receiving deposits"), a catch-all provision was read to allow general deposit-taking (a trust company may accept "any and all such trusts and powers . . . as may be conferred upon . . . it by any person"), *id.* at 252.

[36] Barrett, *supra* note 35, at 18 ("[A]t the present time the trust company, as it appears in the corporation laws of most of the States, may be fairly well defined as a bank which has power to act in the capacity of trustee, administrator, guardian, or executor . . . .").

Figure 1: The Federal Financial Regulatory Perimeter, Circa 1864



A familiar cycle followed.[37] Some states resisted the trusts' expansion into providing virtually all banking services, but most states came to endorse it, via a mix of favorable court decisions and new laws.[38] Banks responded by seeking the right to offer trust services, and in many cases, they succeeded.[39] Gradually, the two sets of institutions (banks and trusts) began to resemble one another, and regulators began to express alarm about the lighter regulation the trusts received.[40] A mix of half-measures followed—including holding company-like structures in California, New Hampshire, and Michigan, which let trusts take deposits, but required those deposits to remain separate from other sources of funding.[41] By 1907, trust companies were active money-market participants, essential to both overnight securities lending and short-term cross-border (sterling) trade finance.[42] The trusts controlled roughly as many assets as all national banks combined, without the national banks' reserve requirements, investment restrictions, or (in many cases) clearinghouse membership costs.[43]

On October 16, 1907, a failed takeover of a large copper firm spread insolvency rumors through the New York markets. When those rumors hit the sizable Knickerbocker Trust Company, a run ensued; bank deposits and loans remained steady, but those at the largely unregulated trusts collapsed.[44] Call-money interest rates spiked, and stocks plummeted, until a backstop for the other failing trusts emerged.[45] The

[37] A somewhat similar cycle emerged during the 1880s and 1890s around building and loan associations, cooperative entities that at their peak served over 11 million customers. Larger-scale national associations emerged from the more than 5,000 local associations, avoiding the interstate banking restrictions that applied to banks. These new entrants charged higher fees and lacked robust local loan diligence, but they promised dividend yields "several times those available from banks, local associations, or government bonds." Downturns in 1893 and 1897 would shutter most national associations, though building and loan associations arose again in the 1920s, before ebbing again in the 1930s. David A. Price and John R. Walter, *It's a Wonderful Loan: A Short History of Building and Loan Associations*, Federal Reserve Bank of Richmond, Economic Brief EB19-01 (Jan. 2019), at 3-5.

[38] Stutter steps on this issue were common. In Pennsylvania, for example, an 1874 general incorporation statute allowed for title-insurance companies, but not trust companies; an 1881 act gave certain title-insurance companies trust powers, but prohibited them from offering banking services; an 1885 act gave such companies the right to accept deposits; an 1895 act gave them the right to issue notes and loans; and a 1900 federal court decision gave them the right to take both demand and time deposits. *Id.* at 17. *Compare* State v. Lincoln Trust Co., 144 Mo. 562 (1898) (holding that trusts cannot accept interest-free demand deposits, but can accept time deposits with nominal interest payable on demand by check).

[39] Barrett, *supra* note 35, at 19. Banks were not the only institutions to do so; see Sup't. of Banks of N.Y., *Annual Report* xxiii (1907) ("A like evil exists in the case of certain business corporations such as department stores, which, through a merely technical compliance with the law, receive deposits and pay therefor [sic] high rates of interest.").

[40] Barrett, *supra* note 35, at 20 ("An injustice would be done were we to deal with all financial institutions in accordance with the names under which they operate rather than with reference to the character of business in which they are actually engaged.").

[41] *Id.* at 22-23. New Jersey passed the nation's first holding company law in 1889, and while its scope was broader than financial services, its development was intimately connected to trust-related issues. *See* Charles M. Yablon, *The Historical Race: Competition for Corporate Charters and the Rise and Decline of New Jersey*, 32 J. CORP. L. 323, 340 (2006-07).

[42] Jon Moen & Ellis W. Tallman, *The Bank Panic of 1907: The Role of Trust Companies*, 52(3) J. ECON. HIST. 611, 615-16 (1992); Jon Moen & Ellis W. Tallman, *The Panic of 1907*, FEDERAL RESERVE HISTORY (Dec. 4, 2015).

[43] Moen & Tallman (1992), *supra* note 42, at 612, 617 (estimating that pre-crisis capital levels were approximately 4.8 percent at New York trusts, versus 5.8 percent at state banks and 7.5 percent at national banks).

[44] *Id.* at 611. The run occurred after the Knickerbocker Trust announced that its clearing agent, National Bank of Commerce—a member of the New York Clearing House—would no longer act on behalf of the Knickerbocker Trust. Without a clearing agent, the Knickerbocker Trust lacked even indirect access to clearinghouse funding. Carola Frydman, Eric Hilt & Lily Y. Zhou, *Economic Effects of Runs on Early "Shadow Banks": Trust Companies and the Panic of 1907*, 123(4) J. POL. ECON. 902, 909 (2015). Rumors involving interlocking directorates helped propagate the spread; *see* Lowenstein, *infra* note 47.

[45] This backstop was, famously, the personal intervention of J. P. Morgan. *See* Moen & Tallman (2015), *supra* note 42.

consequences of the panic were dire, sparking a recession that reached far beyond the financial sector into the real economy.[46]

C. Uniting the Perimeter: Pre-1907 Pressures, Post-1907 Reforms, and the Inter-Crisis Period

The Congressional and industry debate that followed the Panic of 1907 focused on reserves, not regulation—on the inability of banks to marshal liquid resources, and on the decreasing probability that J.P. Morgan would live to stem the next crisis, as he did the last.[47] For the first time, however, the public debate was dominated by questions of monopoly power in both banking and commerce, in keeping with broader reform efforts in the Progressive Era.[48] Hearings in the U.S. House Banking and Currency Committee focused on the near-collusive relationship between large banks in the issuance of railroad securities.[49] These hearings documented interlocking directorates between banks and their clients, and proposed a (failed) measure to prohibit such interlocks.[50] Discussions of a potential new reserve system centered on where power could or should be concentrated—in the East or the West, in large banks or small ones, in government or the banking industry.[51]

The Federal Reserve Act that stemmed from this debate narrowed the regulatory gap between national banks, state banks, and trusts. The Act made Federal Reserve membership—and the requirements that went with it—mandatory only for national banks.[52] All other banks and trust companies could apply for membership, if they met the same capital, reserve, reporting, liability, and other regulatory requirements as a national bank (including, after the Act's passage, potential supervision by the Board of Governors of the Federal Reserve System (Board)).[53] This offer of Federal Reserve services (and access to emergency lending) as a conditional benefit preserved the dual banking system, while applying federal bank regulation to consenting state banks. It also gave the banking industry leverage in the legislative debate.[54] Money-center banks used this leverage to extract concessions on perimeter issues—for example, earning national

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[46] *Id.*

[47] For a review of this debate, *see* Roger Lowenstein, AMERICA'S BANK: THE EPIC STRUGGLE TO CREATE THE FEDERAL RESERVE (2015).

[48] *See, e.g.*, *id.* at 137 (quoting Robert La Follette, describing the Aldrich plan as "a plot to siphon 'the people's money' to monopolies and trusts"); *id.* at 143 (quoting Woodrow Wilson, "the greatest monopoly in this country is the money monopoly"); *id.* at 149 (quoting Alfred Owen Crozier, decrying the Aldrich plan as "a huge private money trust to monopolize and forever control the entire public currency . . . of the United States"). Significant concern also existed about the extent to which this money monopoly determined which enterprises received capital. Vincent P. Carosso, *The Wall Street Money Trust from Pujo through Medina*, 47(4) BUS. HIST. REV. 421, 426 (1973).

[49] Lowenstein, *supra* note 47, at 175-76.

[50] *Id.* at 192, 222, 228.

[51] *See, e.g.*, *id.* at 228.

[52] V. Gilmore Iden, THE FEDERAL RESERVE ACT OF 1913 48 (1914).

[53] *Id.* at 49-51

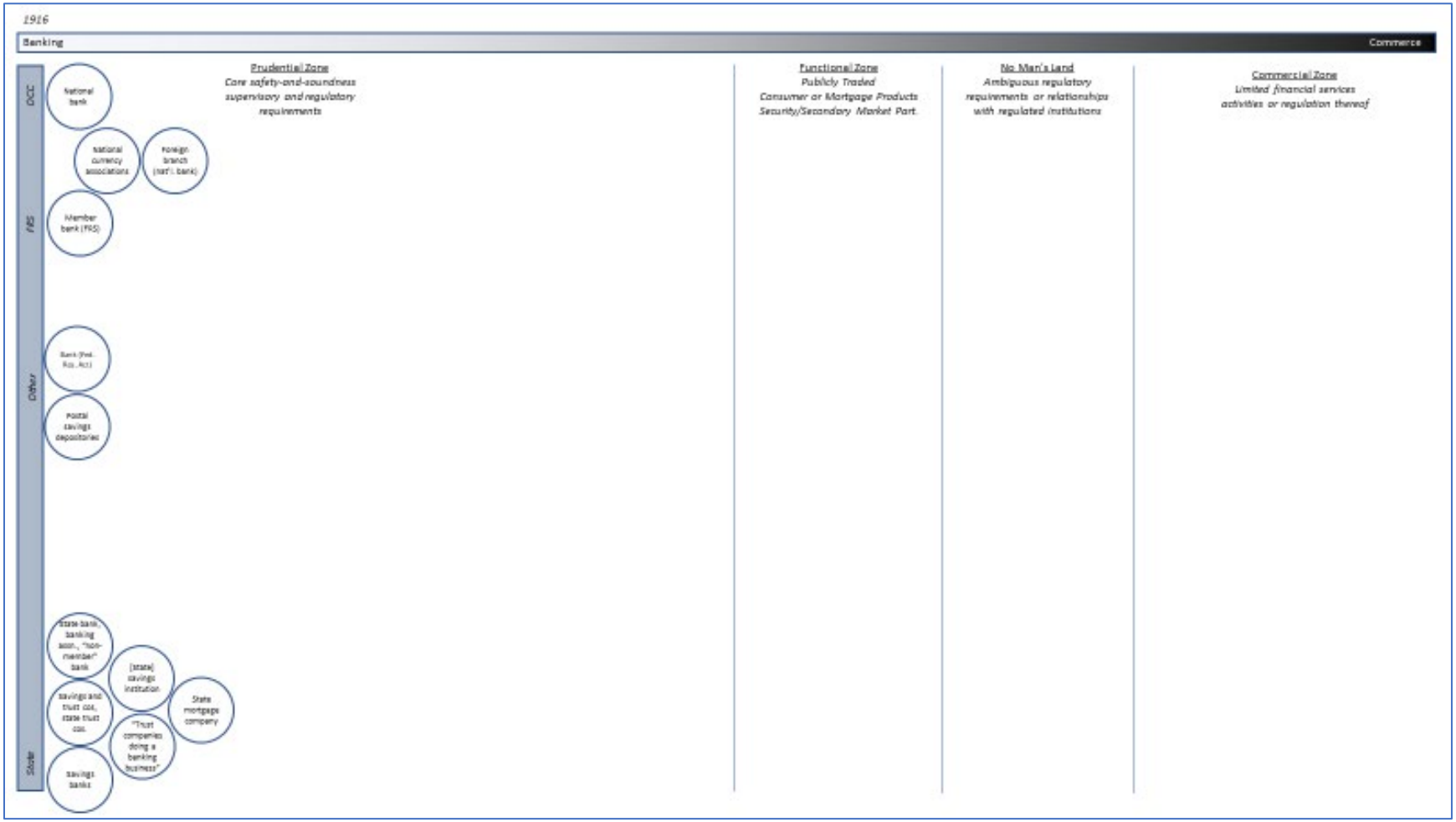
[54] At one point, the head of City National Bank publicly threatened that, if the Federal Reserve remained under federal (instead of private) control, banks would abandon both the new institution and their old national charters. The threat did not materialize. Lowenstein, *supra* note 47, at 219-20.

banks the right to make farm mortgages and open foreign branches, and narrowly avoiding a deposit insurance requirement.[55]

Figure 2 depicts the regulatory perimeter shortly after the Federal Reserve Act was passed. Although regulated categories in this diagram are still limited to the "prudential zone," more prudential regulators and more categories have emerged. The OCC has jurisdiction over "national banks," "national currency associations," and "foreign branches" of national banks. The Federal Reserve has jurisdiction over its "member banks." State regulators have jurisdiction over, among other entities defined in federal law, "state banks," "non-member banks," "state banking associations," and "state trust companies."

[55] *Id.* at 248-49; Iden, *supra* note 52, at 91-92. The Federal Reserve Act also eliminated the competitive advantage relied upon by trust companies by permitting national banks to engage in trust activities. Federal Reserve Act, Pub. L. No. 063-43, § 11(k), 38 Stat. 262 (1913) (Board has discretion to permit national banks to engage in trust activities). *See also* Act of Sept. 28, 1962, Pub. L. No. 87-722, 76 Stat. 668 (1962) (transferring authority to grant permission to the OCC); 12 U.S.C. § 92a. Attempts by the trust companies to overturn this provision failed, *First Nat'l Bank of Bay City v. Grant Fellows*, 244 U.S. 416 (1917), and in 1918, Congress authorized national banks to act "in any other fiduciary capacity that state banks or trust companies did in the state where the national bank was located." Eugene N. White, *Innovation in the 1920s: The Growth of National Banks' Financial Services*, 13 BUS. & ECON. HIST. 92, 96 (1984).

Figure 2: The Federal Financial Regulatory Perimeter, Circa 1916



The state/federal regulatory gap narrowed after the Act's passage, but it did not close.[56] Federal war and agricultural finance efforts sparked a dramatic expansion of U.S. capital markets.[57] By the end of World War I, New York sat at the center of a global system of private, cross-border, and increasingly short-term credit.[58] Over the 1920s, this system also came to dominate domestic financing activity, and as more companies tapped capital markets for financing needs, commercial bank loans shrank to a fraction of total business credit.[59] State banks, trust organizations, and commercial finance companies could respond to this shift by underwriting or dealing in securities, a practice that remained largely unregulated; national banks (with some exceptions) could not.[60] To remain competitive—and to avoid other measures, like higher reserve requirements and real estate restrictions[61]—national banks began shedding their charters by merging with state banks, acquiring trust companies, or launching securities affiliates under "holding company" structures.[62] Banks also pushed to loosen activity constraints, finding a receptive audience in both Congress and other regulators.[63] Finally, in 1927, the McFadden Act (mostly known for easing restrictions on intrastate branching) removed the bar on national banks' dealing in "investment securities" altogether.[64]

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[56] New gaps also emerged. *See* Elizabeth F. Brown, *Prior Proposals to Consolidate Federal Financial Regulators*, THE VOLCKER ALLIANCE (Apr. 20, 2015), at 14-19; *see also* McCarthy, *supra* note 8, at 17.

[57] *See* Parintha Sastry, *The Political Origins of Section 13(3) of the Federal Reserve Act*, FRBNY ECON. POL'Y REV. (2018), at 7-13 (describing eligibility of Treasury, Treasury-secured member, Farm Loan Bank, War Finance Corporation, Federal Intermediate Credit Bank, and Reconstruction Finance Corporation Debt for Federal Reserve Bank discount).

[58] *See* Tobias Straumann, 1931: DEBT, CRISIS, AND THE RISE OF HITLER (2019); Adam Tooze, THE DELUGE: THE GREAT WAR AND THE REMAKING OF GLOBAL ORDER (2014); Liaquat Ahmad, LORDS OF FINANCE: THE BANKERS WHO BROKE THE WORLD (2009).

[59] *See* Lauchlin Currie, *The Decline of the Commercial Loan*, 45(4) Q. J. ECON. 698 (1931).

[60] Notably, the Federal Reserve did not treat national banks and state member banks equally in this regard. Legislation passed in 1917 provided that a state member bank or trust company "shall retain its full charter and statutory rights as a State bank or trust company, and may continue to exercise all corporate powers granted it by the State in which it was created, and shall be entitled to all privileges of member banks." Raymond Kent, *Dual Banking Between the Two World Wars*, *in* BANKING AND MONETARY STUDIES 47 (Deane Carson ed., 1963) (cited in McCarthy, *supra* note 8, at 17).

[61] These restrictions included a measure barring national banks (but not state member banks) from "lending to any individual, partnership, or corporation in excess of 10 percent of their capital stock and surplus." The McFadden Act later raised this limit to 25 percent with respect to securities transactions and 15 percent with respect to safe-deposit-box subsidiaries. *Id.* at 50.

[62] *Id.* at 46 ("According to the 1924 report of the Comptroller, 206 national banks having capital stock of $100,000 or more had been converted to or been absorbed by state institutions in the period since January 1, 1918; these banks had taken $2,234 million of assets out of the national banking system."). It is worth noting, however, that many large national banks were more than competitive with their state counterparts during this period and, in fact, remained dominant in international finance. *See* Ahmad, *supra* note 58 at 210.

[63] As with Citigroup in the 1990s, the Comptroller's rulings on securities dealing reflected practices that national banks had already adopted. *See, e.g.*, U.S. DEPARTMENT OF THE TREASURY, OFFICE OF THE COMPTROLLER OF THE CURRENCY, *Annual Report of the Comptroller of the Currency* 12 (1924) ("Section 24 of the Federal reserve act [sic] should be further amended to enable a national bank to buy and sell investment securities," but such measure "would make very little change in existing practices, since a great number of national banks now buy and sell investment securities, and the office of the comptroller has raised no objection because this has become a recognized service which a bank must render . . . .").

[64] The McFadden Act was only the second amendment to the statutory powers of national banks since the National Bank Act itself. 12 U.S.C. § 24; R.S. § 5136 (1864). The first was a 1922 change giving national bank charters succession of 99 years, in lieu of 20, thus removing an impediment to avenues of participation in trust activities. *See* 44 Stat. 1226 (1927); 42 Stat. 767 (July 1, 1922); Gary Richardson, Daniel Park, Alejandro Komai, & Michael Gou, *McFadden Act of 1927*, FED. RES. HIST. (Nov. 22, 2013). The Act also enumerated a number of "incidental powers . . . necessary to carry on the business of banking," including "discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes" subject to certain limits. Pub. L. No. 69-639, § 2(a), 42 Stat. 1224 (1927).

For a time, these reforms served their intended purpose; regulatory differences shrank, the exodus from the national system slowed, and some large state member banks converted back to the national charter.[65] By the start of 1929, however, a half-dozen of the largest national banks had again returned to the state system.[66] The following three years revealed the shortcomings of this arrangement.

In November 1930, the banking subsidiary of Caldwell and Company—a Nashville, Tennessee holding company—marked significant losses from "depreciation in the value of securities" and shut its doors.[67] Caldwell's announcement triggered a cascade of bank runs—not through the Federal Reserve's clearing systems, but through parallel correspondent-banking networks, which still connected state-chartered institutions.[68] The result was an inability to access reserves, very similar to what banks experienced in 1907, and the first domestic banking crisis of the Great Depression. When paired with higher leverage, years of accommodative reserve policy, and restrictive discounting policies at Federal Reserve Banks, stress that began outside the regulatory perimeter was fatal to thousands of U.S. banking organizations within it.[69]

D. Fortifying and Expanding the Perimeter: Separation, the New Deal, and the Holding Company Debate

The Great Depression prompted efforts to address the perimeter gaps that made the banking crisis possible. Congress's ultimate approach was to make the federal financial regulatory perimeter both broader and stronger—adding positive rights, particularly in the securities space, while imposing new negative restrictions.

To broaden the perimeter, Congress first took steps to expand non-member banks' access to Federal Reserve emergency credit—for one year.[70] Later, the Banking Acts of 1933 and 1935 clarified which firms

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[65] Kent, *supra* note 60, at 54.

[66] *Id.*

[67] *See* Gary Richardson, *The Check Is in the Mail: Correspondent Clearing and the Collapse of the Banking System, 1930-1933*, 67(3) J. ECON. HIST. 643, 659 (2007).

[68] *Id.* at 660-65. The Federal Reserve served as an alternative to the private interbank clearing system before the Depression, making the private system more resilient to solvency shocks, but less resilient to liquidity shocks. After the onset of the Depression, the private interbank network became more concentrated in cities with Federal Reserve Offices. *See* Matthew Jaremski & David C. Wheelock, *The Founding of the Federal Reserve, the Great Depression, and the Evolution of the U.S. Interbank Network*, 80(1) J. ECON. HIST. 69 (2019); Mark Carlson & David C. Wheelock, *Did the Founding of the Federal Reserve Affect the Vulnerability of the Interbank System to Contagion Risk?* 50(8) J. OF MONEY, BANKING, & CREDIT 1711 (2018); *see also* Erik Heitfield, Gary Richardson, & Shirley Wang, *Contagion During the Initial Banking Panic of the Great Depression*, NBER Working Paper 23629 (July 2017) (demonstrating spatial and interbank contagion in initial banking crisis of Depression, with fewer bank suspensions among more liquid, less highly leveraged banks, and in Federal Reserve districts that pursued more accommodative liquidity policy).

[69] *See* FEDERAL DEPOSIT INSURANCE CORPORATION, *Background and Creation* (enumerating more than 9,000 banking failures between 1930 and 1933); Ben S. Bernanke, *Non-Monetary Effects of the Financial Crisis in the Propagation of the Great Depression*, 73(3) AM. ECON. REV. 257 (1983).

[70] This expansion proceeded in several halting stages. Congress first established the Reconstruction Finance Corporation (RFC), on the express condition that RFC debt would not be eligible for rediscount by Federal Reserve Banks, but allowed Federal Reserve Banks to rediscount member bank loans collateralized by RFC funds. (The RFC, however, shared its senior leadership and office space with the Board of Governors.) Under the new section 13(3) of the Federal Reserve Act, Congress expanded access to "any individual, partnership, or corporation," but only for "real bills," *i.e.*, short-term "self-liquidating" instruments tied to the conversion of raw materials to finished goods. In its implementing regulations, the Board explicitly excluded non-member banks from the definition of an eligible "corporation." Only after the passage of section 13(13) in the Emergency Banking Act of March 9, 1933—and over the objection of the Board—did non-member banks and trusts gain access to Federal Reserve Bank "advances," at the discretion of the lending Federal Reserve Bank, and subject to a sunset date. *See* Sastry, *supra* note 57.

qualified as holding companies or affiliates of state or national banks, and subjected them to a limited set of disclosure, examination, and even some quantitative prudential requirements.[71] The Acts took a similar approach to the new Federal Deposit Insurance Corporation (FDIC)—a significant step that Congress contemplated but rejected in 1914—extending eligibility for deposit insurance to virtually all banks, trusts, and "mutual savings banks" (and requiring it of all national banks and member banks), but ensuring that either the FDIC, OCC, or Federal Reserve would supervise every subscriber to the insurance fund.[72] Congress also required the largest state banks to become Federal Reserve members by 1941, and it eased restrictions on intrastate branching and real estate loans to align them more closely with state rules.[73]

To strengthen the perimeter, the New Deal laws (particularly the Glass-Steagall Act) created broad new federal statutory definitions of "banking" and "securities" activities, making it unlawful for new categories of legal entities to engage in one to also engage in the other.[74] It imposed new restrictions on board composition and inter-affiliate transactions to prevent firms from circumventing these new definitions, and it required prior written consent from regulators for certain bank acquisitions. It created a mandatory deposit-insurance backstop, with governance that included all the federal regulatory agencies and supervisory requirements that applied to all its subscribers.[75] Finally, it gave the President near-plenary authority to exercise emergency powers over banking and other financial institutions—state, federal, or unincorporated—if the new prudential safeguards failed.[76]

Figure 3 shows the full effect of these transformative changes to the regulatory perimeter, occurring from 1916 to 1940. The previous two diagrams above show a perimeter limited to the first column—the

[71] *See* Banking Act of 1933, Pub. L. No. 73-66, § 2(c), 48 Stat. 162 (1933) (defining "holding company affiliate" by control over majority of shares or directors); *id.* § 5(c) (describing, among other matters, examination and disclosure requirements for affiliates); *id.* § 19 (describing conditions for approval of holding company affiliate application for bank voting share, including holdings and early liquidity requirement). *But see* Banking Act of 1935, Pub. L. No. 74-305, § 301, 49 Stat. 684 (1935) and 21 Fed. Res. Bull. 857 (1935) (generally exempting one-bank holding companies from voting permit requirements). *See also* Mark B. Greenlee, *Historical Review of 'Umbrella Supervision' by the Board of Governors of the Federal Reserve System*, 27 REV. BANKING & FIN. L. 407, 410-11 (2008).

[72] Pub. L. No. 73-66, *supra* note 69, § 8; Pub. L. No. 74-305, *supra* note 69, § 101. In addition, and over time, most states also required FDIC insurance for state commercial banks, "as a condition of receiving a charter, either by statute, regulation, or as a matter of administrative policy or practice." John C. Dugan et al., *FDIC Insurance and Regulation of U.S. Branches of Foreign Banks*, *in* REGULATION OF FOREIGN BANKS AND AFFILIATES IN THE UNITED STATES 606 n.2 (Randall D. Guynn ed., 8th ed. 2014).

[73] Pub. L. No. 74-305, *supra* note 69, § 101.

[74] Part of this statutory definition was circular—defining, in essence, a bank as an organization that was legally a bank. The Banking Act of 1933 (including the Glass-Steagall Act) defined "banks" by reference to section 1 of the Federal Reserve Act, which itself defined "bank" as "to include State bank, banking association, and trust company, except where national banks or Federal reserve banks are specifically referred to." Pub. L. No. 73-66, *supra* note 69; Pub. L. No. 063-43, *supra* note 53, § 1. The Banking Act of 1935 defined national banks and national banking associations by reference to their charter (and the National Bank Act of 1863 defined such associations by their purpose for "carrying on the business of banking," *see supra* note 28).

Other contemporary statutes offered a more functional definition. However, the Banking Act of 1935 defined a state bank as "any bank, banking association, trust company, savings bank, or other banking institution which is engaged in the business of receiving deposits," and it also defined deposits in detail. Pub. L. No. 74-305, *supra* note 72. The Securities Exchange Act of 1934 adopted a slightly different definition, also anchored in charter status, but including firms "a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers . . . ." Pub. L. No. 73-291, § 3(a)(6), 48 Stat. 881 (1934); *see also* Securities Act of 1933, Pub. L. No. 73-22, § 2(a)(1), 3(a)(2) 48 Stat. 74 (1933).

[75] Specifically, the Banking Act of 1935 seated the Comptroller on the board of the FDIC, required OCC- and Federal Reserve-regulated banks to subscribe to FDIC insurance, required the OCC and the Federal Reserve to share reports of examination with the FDIC, and allowed the FDIC to examine national and member banks only with those other agencies' permission. Pub. L. No. 74-305, *supra* note 69, § 101.

[76] Emergency Banking Relief Act, Pub. L. No. 73-1, § 2, 48 Stat. 1 (1933).

"prudential zone"—indicating a focus on the safety and soundness of individual institutions. By the start of World War II, the perimeter had expanded into new areas. In the "functional zone," it now reaches firms engaged in a panoply of securities activities, including issuance and brokerage. However, it also reaches a new set of institutions less clearly defined by their charter status or activities, like the affiliates of banks and holding companies. On the vertical axis, the perimeter also reflects the arrival of two new regulatory agencies, the Federal Deposit Insurance Corporation (FDIC) and the Federal Home Loan Bank Board (FHLBB).

Together, these measures effectively divided the perimeter into two parts: an inner part of insured banking organizations, with access to emergency lending, and an outer part, dividing securities-based financial activity from commercial endeavors. Compared to 1913, the reforms focused less on the dangers of monopoly than on avarice and the possibility of national ruin.[77] They were also incomplete—for example, extending visibility into banks' non-bank affiliates as a condition of voting permits and other benefits, but without creating formal regulatory authority over them.[78] Both points changed in the early postwar period with the increasing popularity of holding companies—new firms (or converted banks) that acquired and controlled banking organizations in multiple states.[79] The principal effect of these large holding company structures was to evade interstate bank-branching restrictions.[80]

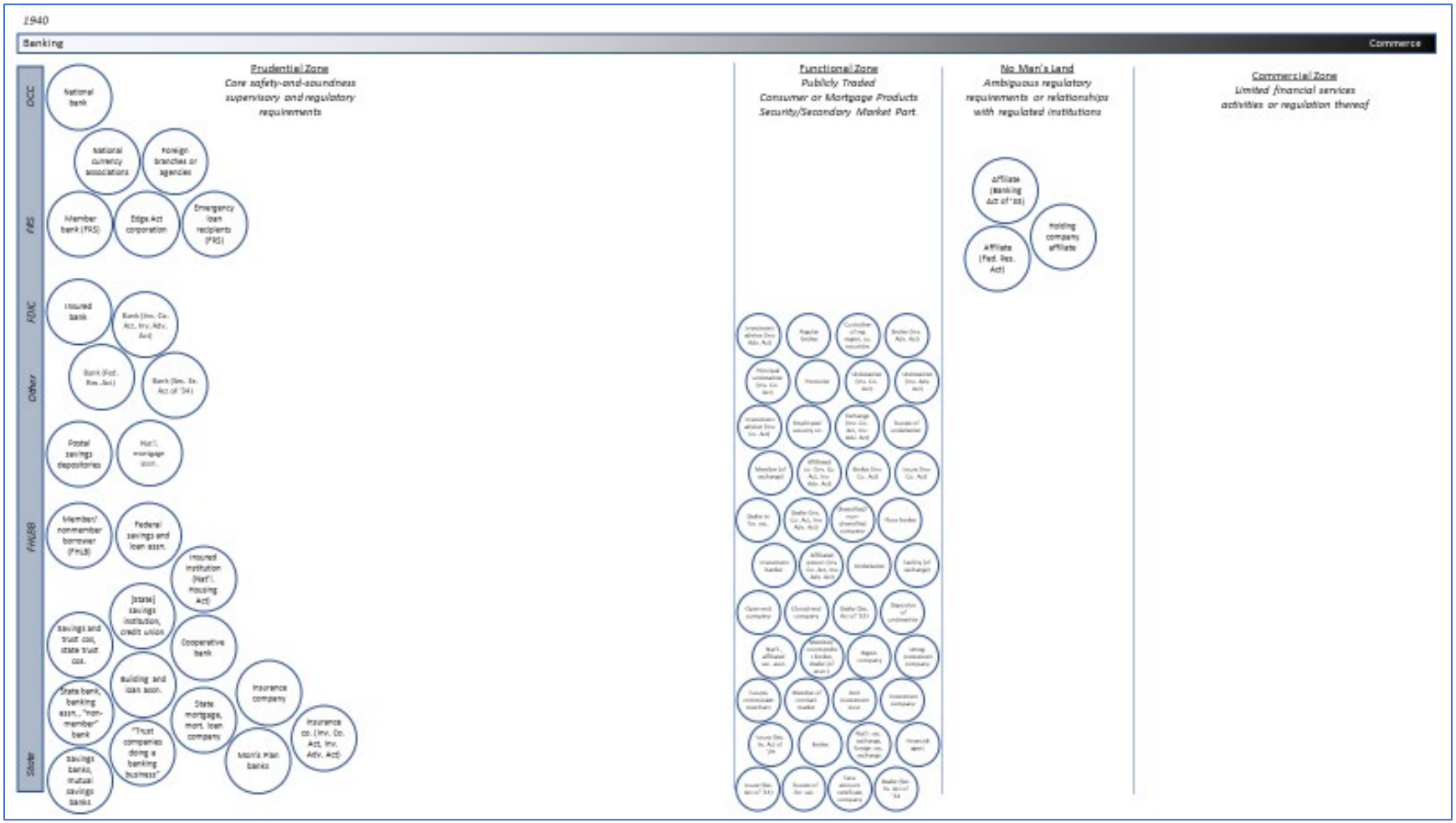
[77] *See, e.g.*, President Franklin D. Roosevelt, First Inaugural Address (Mar. 4, 1933) ("[T]here must be an end to a conduct in banking and in business which too often has given to a sacred trust the likeness of callous and selfish wrongdoing . . . ."). However, even early discussions of monopoly issues around bank holding companies focused on the power of banks in credit markets, not on the power of financial firms in commercial markets. More modern debates, like the dominance of conglomerates over commercial activity or the risk of commercial activity to insured banks, did not figure prominently in the early holding company discourse. *See Hearings Before the House Committee on Banking and Currency*, 71st Cong., 2d Sess., p. 1.

[78] Note, *The Bank Holding Company Act of 1956*, 7 DUKE L. J. 1, 8 (1957).

[79] Despite the increasing prominence of non-bank/bank relationships, both total deposits and the number of branches controlled by non-bank holding companies declined from 1933 to 1954. *Id.* However, many of these relationships emerged through loopholes the New Deal legislation created, like exempting non-banks that did not hold a majority stake or vote its shares in a member bank. Saule T. Omarova & Margaret E. Tahyar, *That Which We Call a Bank: Revisiting the History of Bank Holding Company Regulations in the United States*, 31 REV. BANKING & FIN. L. 130, 121-22 (2011-12).

[80] In addition, as the Board of Governors pointed out in its 1943 report to Congress, firms were using holding-company structures to avoid falling within the scope of the Investment Company Act of 1940. *See* 1943 *Fed. Res. Bd. Ann. Rep.* 34-37. *Compare Board of Governors v. Agnew*, 329 U.S. 441 (1947) (finding that national bank petitioners were engaged "substantially" and thus "primarily" in the business of securities underwriting, and thus within Federal Reserve jurisdiction under Banking Act of 1933).

Figure 3: The Federal Financial Regulatory Perimeter, Circa 1940



The Board began to voice concerns over this trend in the early 1940s—arguing publicly that the laws of holding-company relationships were rigid, formalistic, incomplete, and impotent, as well as a danger to sound banking, fair competition, and the principles of fair play.[81] Soon, however, the focus of the holding-company debate narrowed to the Transamerica Corporation, a conglomerate with minority interests in four of the country's largest banks, majority interests in 47 others, and other holdings in oil, insurance, real estate, heavy manufacturing, lumber, and frozen vegetable companies.[82] Starting in 1948, the Board pursued a bitter and ultimately unsuccessful five-year antitrust action against Transamerica, claiming the firm's actions substantially lessened competition between the banks it acquired and tended to create a monopoly in the banking business.[83]

However, the Board's loss (and substantial lobbying from small and independent banks) sparked Congressional involvement, culminating in the Bank Holding Company Act of 1956.[84] This legislation created a broader, more flexible standard for finding non-bank control of a bank, and it gave the Federal Reserve regulatory and supervisory authority over the new category of "bank holding companies" (BHCs) that met that standard.[85] It gave the Board control over BHC acquisitions and approvals, created a blanket prohibition on BHC acquisition of voting shares in "any company which is not a bank," and established a two-year sunset period for BHC ownership or control of firms engaged in "any business other than that of banking."[86]

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[81] Only two lines in the Federal Reserve's three-page argument refer to concerns about broader commercial concentration. *See* 1943 *Fed. Res. Bd. Ann. Rep.* 36 ("It is axiomatic that the lender and borrower or potential borrower should not be dominated or controlled by the same management . . . ."); *id.* at 37 ("Moreover, the [holding company] lends itself readily to the amassing of vast resources obtained largely from the public which can be controlled and used by a few people and which give to them . . . an unfair and overwhelming advantage in . . . carrying out an unlimited program of expansion . . . .").

[82] The four banks in question were Bank of America N.T. and S.A, National City Bank of New York, and Citizens National Trust & Savings Bank of Los Angeles. Together, these financial holdings were worth more than $93 million and represented more than 60 percent of Transamerica's assets. Transamerica Corp., 1948 Ann. Rep. 6, 14 (1948).

[83] Broader discussion of the Transamerica case included three separate arguments: the claim that large interstate banks would tend toward monopoly within banking; the claim that banks would favor their commercial affiliates over other firms in the same industry; and the claim that effective consolidated supervision of a financial conglomerate is impossible. *See, e.g.*, Note, *Transamerica—The Bank Holding Company Problem*, 1 STAN. L. REV. 658, 660-67 (1949). The general focus on monopoly concerns is also visible in the Bank Merger Act, Pub. L. No. 86-463, 74 Stat. 129 (1960), which required approval from the federal financial regulatory agencies for any merger of insured depositories, and which harmonized the review standards of those agencies with the Department of Justice.

The contentious Transamerica proceedings also included an unsuccessful motion to disqualify Marriner Eccles for using "his position of public trust and power to promote further his selfish personal interests" and advance a personal "grudge" against the firms' executives. Aff. Husbands ¶ 3, Motion to Disqualify Marriner S. Eccles and Lawrence Clayton, U.S. before Board of Governors of Fed. Res. Sys., *In re: Transamerica Corp.* (Nov. 30, 1948). In those proceedings, the circuit court also grappled with banking separation—claiming that "more than 100 years ago the Supreme Court has held that banking was not commerce"—but did so via an apparent misreading of dicta in an 1850 case to which no bank was party. *Transamerica Corp. v. Board of Governors*, 206 F.2d 163, 166 (3d. Cir, 1953) (citing *Nathan v. Louisiana*, 49 U.S. 73 (1850)).

[84] Omarova & Tahyar, *supra* note 79, at 121-22.

[85] Specifically, a bank holding company under the Act "(1) directly or indirectly owns, controls, or holds power to vote" at least 25 percent of the voting shares to two or more banks (or bank holding companies), (2) controls "in any manner" the election of directors of such banks, or (3) has at least 25 percent of the shares of such banks voted for its shareholders' benefit by a trustee. Bank Holding Company Act of 1956, Pub. L. No. 84-511, § 2(a), 70 Stat. 133 (1956).

[86] Specifically, the Act required prior Board approval for a company to become a bank holding company, for a company to own or control more than 5 percent of a bank's voting shares, or for two or more bank holding companies to merge. The factors for gaining that approval were broad, including the companies' "prospects," the "character of their management," and the "convenience, needs, and welfare of the community concerned." *Id.* § 3(a)-(c), 4(a).

The BHC Act expanded the regulatory perimeter but introduced significant gaps to it. One, an exemption for non-bank trust companies, was closed by amendment a decade later.[87] Two other gaps proved more durable and consequential. First, the Act excluded companies that owned or controlled just one bank from the definition of a BHC.[88] Second, the Act defined a "bank" only by its charter status, including national and state banks, uncapitalized savings banks, and trust companies.[89] Congress narrowed this scope further in 1966 by shifting to a functional approach—defining a bank as a firm that accepts demand deposits—while allowing single-bank holding companies to vote their shares in a subsidiary bank without prior approval from the Board.[90]

Put together, these loopholes created a powerful incentive to form a specific type of holding company: one with a single bank and a number of other non-bank affiliates—which could range from industrial and savings banks, to insurance firms, to non-depository trust companies, to real estate firms, to farms and grocery stores.[91] Banks and commentators attributed the resulting growth in such BHCs to increased competition from non-banks, which used new technology to offer higher-yield products and a wider range of financial services.[92] Whatever the reason, the rush into these "congeneric" structures was swift. One-bank holding companies multiplied from 117 in 1955, to 550 in 1965, to 800 in 1968.[93] 34 of the 100 largest U.S. banks formed or announced plans to form one-bank holding companies in the two years after the 1966 BHC Amendments passed, including Bank of America, Chase Manhattan, First National City, Continental Illinois, Wells Fargo, and Morgan Guaranty Trust.[94] From 1965 to 1968, bank deposits under one-bank holding-company control increased from $15.1 billion to $108.2 billion, accounting for a quarter of all U.S. deposits.[95]

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[87] Bank Holding Company Act of 1956, amendments, Pub. L. No. 89-485, 80 Stat. 236 (1966). This exemption was targeted mainly at the DuPont Trust, which owned more than 30 Florida banks and non-bank businesses. The elimination of the exemption, during a contentious strike at one of its railways, was targeted at DuPont as well. *See* Omarova & Tahyar, *supra* note 79, at 139-40.

[88] *Id.* § 2(a).

[89] Pub. L. No. 89-485, *supra* note 85, § 2(c). The same was true of the Act's definition of a BHC "subsidiary," which lacked the expansive "direct or indirect" and "holds power" language of the Act's definition of a BHC. *Id.* § 2(d).

[90] *Id.* § 3(c) ("'Bank' means any institution that accepts deposits that the depositor has a legal right to withdraw on demand . . . .").

[91] Avoiding registration as a BHC required a company to derive at least 40 percent of adjusted gross income from sources other than bank dividends, a bar most commonly met by insurance holdings. *See* Omarova & Tahyar, *supra* note 79, at 146 (citing *One-Bank Holding Company Legislation of 1970: Hearing on S. 1052, S. 1211, S. 1664, S. 3823, and H.R. 6778 Before the S. Comm. on Banking and Currency*, 91st Cong. 140 (1970)); *see also* Franklin R. Edwards, *The One-Bank Holding Company Conglomerate*, 6 VAND. L. REV. 1275, 1278 (1969).

[92] Omarova & Tahyar, *supra* note 79, at 141 (citing Carl A. Sax & Marcus H. Sloan III, *The Bank Holding Company Amendments of 1970*, 39 GEO. WASH. L. REV. 1200 (1970)); *see also* Edwards, *supra* note 91, at 1282 (describing the role of credit cards, higher-yield savings deposits, and the regulatory bar on paying interest on demand accounts, as well as other factors); *Recent Changes in the Structure of Commercial Banking*, 56 *Fed. Res. Bull.* 195, 200 (1970) [hereinafter *Recent Changes*] ("One-bank holding companies may legally enter almost any industry in any geographic area. Large banks have thus been motivated to form such companies in order to enter product and geographic markets that they had formerly been barred or discouraged from entering by either law or regulation. Some observers have viewed the recent movement as a response to competitive pressures and to customer demands for a wider variety of services . . . .").

[93] Edwards, *supra* note 89, at 1275 (citing U.S. House Committee on Banking and Currency, *The Growth of Unregistered Bank Holding Companies—Problems and Prospects*, 91st Cong. 1 (1969)).

[94] U.S. House Committee on Banking and Currency, *supra* note 91, at 1. Overall banking concentration remained roughly constant, however. *Recent Changes*, *supra* note 92, at 195.

[95] *Id.* at 6. Branch banking—with "chain banking," an alternative to holding company-driven expansion—also increased in this period, but less sharply, by roughly a fifth from 1961 to 1969. *See id.* at 198.

Independent banks—those unaffiliated with any holding company—sought refuge from this trend in the Comptroller's office.[96] Directly and through subsidiaries, national banks competed with the congenerics by expanding their activities into life insurance, travel services, data processing, armored cars, credit reporting, warehousing, and a range of other pursuits. Then-Comptroller James Saxon sanctioned this expansion under the "incidental powers" clause of the National Bank Act.[97] After the courts declined to endorse Saxon's interpretation of this clause, attention turned to Congress, and to another round of BHC Act amendments.[98]

The 1970 Amendments followed the broad model of the 1966 bill: expanding the scope of BHC designation authority, while narrowing the scope of the term "bank."[99] The Federal Reserve could now designate a firm as a BHC if the Board found direct or indirect exercise of a "controlling influence over the management and policies of a bank," regardless of ownership or control of the bank's voting shares.[100] The Board could also define the non-banking activities that BHCs could undertake, so long as those activities were still "closely related" to banking and would produce a net public benefit.[101] However, to qualify as a bank under the BHC Act, an institution now had to fit an even narrower definition—it needed to both accept demand deposits and make commercial loans.[102]

E. Revising the Perimeter: "Non-Bank Banks," S&Ls, FHCs, ILCs, and the Rise of the Categorization Approach

The consequences of this shift took a decade to become clear, thanks to generous legacy provisions and an accommodative regulatory stance toward BHC activities.[103] In the 1980s, however, rising interest rates

[96] Other legislative efforts came at the state level; New York passed a measure requiring the superintendent of banks to approve the acquisition of any bank by a non-bank, following an attempted purchase of Chemical Bank of New York by Leasco Data Corporation. *See* Edwards, *supra* note 91, at 1286.

[97] Saxon's definition of banking, in Congressional correspondence, was similarly broad: Subject to a restriction on "direct participation in the production of raw material, manufacturing or commerce . . . the business of banking is the furthering by financial and related services of commerce and industry and the convenience of the public. Powers necessary to achieve the fundamental purposes of banking must be regarded as powers incidental to those expressly granted." *See* Edwards, *supra* note 91, at 1279 (citing letter from Saxon to U.S. Representative Edward J. Gurney (Oct. 26, 1964)).

[98] Court losses for the Comptroller's office involved banks' dealing in non-general-obligation state debt, acting as insurance agents, and offering armored car services. Other complaints about banks' operation of travel agencies, data processing firms, and mutual funds were dismissed for lack of standing before the substantive claims were reached. *See id.* at 1280.

[99] *See* Omarova & Tahyar, *supra* note 79, at 148.

[100] Bank Holding Company Act Amendments of 1970, Pub. L. No. 91-607, § 101(a), 84 Stat. 760 (1970). In a further tie to antitrust considerations, the legislation also included an anti-tying provision and created several third-party rights of action to enforce the Act. *Id.* §§ 106(b), (e), (f).

[101] This provision—which the Board supported, and which replaced a "laundry-list" approach in House legislation—was intended to be broader than the "business of banking" language in the BHC Act itself, which the Board had interpreted as limiting a BHC's permissible holdings to affiliates that supported the activities of the bank itself. *See id.* § 104(4); Alfred Hayes, President, FRBNY, The 1970 Amendments to the Bank Holding Company Act: Opportunities to Diversify, Remarks Before the 43rd Annual Mid-Winter Meeting of the New York State Bankers Association (January 25, 1971), *in* FRBNY MONTHLY REV. 23, Feb. 1971, at 24.

[102] Pub. L. No. 91-607, *supra* note 100, § 101(c) (defining a bank as a U.S. institution 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"). Fatefully, the Act introduced a new statutory definition of "thrift institution," covering not just the mutual savings banks and cooperatives (with no capital stock) exempted from earlier iterations of the BHC Act, but also "domestic building and loan or savings and loan associations." *Id.* § 101(e).

[103] The grandfather clause allowed any activities lawfully conducted by a BHC as of June 30, 1968 to continue for a decade. *Id.* § 103(1); Omarova & Tahyar, *supra* note 79, at 151 (citing Arthur E. Wilmarth, Jr., *Wal-Mart and the Separation of Banking and Commerce*, 39 CONN. L. REV. 1539, 1569 (2007)). The lone exception to the relative stability of the 1970s perimeter was the

created sharp pressure on both sides of the regulatory perimeter. Banks and BHCs, still subject to interest rate caps, sought other non-deposit sources of revenue; thrifts and other non-bank financial firms, recently relieved of such restrictions, competed aggressively for both commercial and consumer clients; and commercial firms sought cheaper sources of financing, without triggering federal regulation.[104] The 1970 amendments created a common way to meet all of these goals: the use of so-called "non-bank banks," which either accepted demand deposits or made commercial loans—or (technically, at least) did neither.[105]

The first major attempts to use this loophole came from outside the regulatory perimeter, from commercial firms.[106] In August 1980, the OCC allowed the Gulf and Western Corporation, a Fortune 500 firm with offerings from auto parts and sugar to oil and gas, to acquire Fidelity National Bank, which had recently divested itself from commercial loans and promised to make no others.[107] By March 1981, the Board ruled that Fidelity was not a bank and that Gulf and Western was not a bank holding company; two years later, a similar pattern followed, when the OCC and then Board conditionally allowed a New York BHC to take demand deposits and make commercial loans via its Florida trust company.[108] A wave of applications from both BHCs and other holding companies followed—most focused on card, consumer lending, and money market services—and the ranks and size of non-bank banks increased sharply.[109] Congress also pared back the activity restrictions these institutions faced, by both easing federal regulatory requirements and preempting state ones.[110]

International Banking Act, which brought foreign banking organizations under Federal Reserve supervision and allowed them to secure national charters and deposit insurance. *See* Frank Anthony Misuraca, *Foreign Banking in the United States: An Objective Study of the International Banking Act of 1978*, 4 J. INT'L L. & PRAC. 539, 542–43 (1995).

[104] The Depository Institutions Deregulation and Monetary Control Act, Pub. L. No. 96-221, 94 Stat. 132 (1980), established a six-year process for the phase-out of interest-rate caps (under the auspices of a U.S. Treasury-led "Deregulatory Committee"). It also standardized reserve requirements for both member and non-member banks. Omarova & Tahyar, *supra* note 79, at 151-52. *See also* Kenneth J. Robinson, Savings and Loan Crisis, FED. RES. HIST. (Nov. 22, 2013); Paul R. Allen & William T. Wilhelm, *The Impact of the 1980 Depository Institutions Deregulation and Monetary Control Act on Market Value and Risk: Evidence from the Capital Markets*, 20(3) J. MONEY, CREDIT, & BANKING 364, 366-67 (1988).

[105] U.S. Government Accountability Office, *Financial Services: Information on Nonbank Banks*, GAO/GGD-86-46FS (Mar. 1986) [hereinafter GAO, *Financial Services*].

[106] *But see* Joe Mahon, Financial Services Modernization Act of 1999, commonly called Gramm-Leach-Bliley, FED. RES. HIST. (Nov. 22, 2013) (detailing Board approvals of "Sec. 20 subsidiaries" beginning in 1987).

[107] The approval came shortly after Gulf and Western's then-CEO Charles Bluhdorn settled charges of accounting fraud with the SEC. *Id.*; William G. Blair, *Charles D. Bluhdorn, The Head of Gulf and Western, Dies at 56*, N.Y. TIMES (Feb. 20, 1983).

[108] GAO, *Financial Services*, *supra* note 105, at 4-5.

[109] Before April 1, 1984, only 53 such applications had been filed with the OCC; from April 1, 1984 to May 20, 1985, 388 were filed. *Id.* at 5. By 1987, 200 applications had been granted, and another 200 were pending. The fastest growing of these was Greenwood Trust Company of Delaware, affiliated with Sears, which increased its deposits from $27 million to $1.05 billion in less than a year. Omarova & Tahyar, *supra* note 79, at 152 (citing Robert E. Litan, WHAT SHOULD BANKS DO? 49 (1987)). Among thrifts specifically, assets grew 56 percent from 1982 to 1985. GAO at 5.

[110] These measures allowed the use of checking-like non-demand deposit accounts (such as NOW, Super NOW, and money-market deposit accounts), lifted certain limits on thrift activities, and relaxed bank single-counterparty credit limits. Effective capital requirements at thrift institutions, in particular, fell sharply from 1980 to 1982. Policymakers justified these measures by citing increased competition among banks, changing technology, and high-interest-rate pressures on thrift institutions. *See* F. Jean Wells, Congressional Research Service, *Pub. L. No. 97-320, Garn-St. Germain Depository Institutions Act of 1982: A Brief Explanation*, Report 82-117 E (May 10, 1983); NAT'L. COMM. ON FIN. INST. REFORM, RECOVERY AND ENFORCEMENT, *Origins and Causes of the S&L Debacle: A Blueprint for Reform: A Report to the President and Congress of the United States* 35-36 (1993).

The Board, as well as a growing number of small banks, began working to close these loopholes on competitive, prudential, and economic-development grounds.[111] In January 1984, the Board reinterpreted the relevant terms in the BHC Act, defining a demand deposit as a deposit that "as a matter of practice is payable on demand" and a commercial loan as including a number of common "commercial loan substitutes."[112] As in the 1960s, litigation, public debate,[113] circumvention by the Comptroller's office,[114] and defeat at the Supreme Court followed.[115] Congress responded by passing the Competitive Equality Banking Act (CEBA) of 1987, placing all FDIC-insured institutions under the BHC Act's definition of a "bank," but formally excluding a range of institutions, including every non-bank bank that existed when the Act passed.[116] The result was to sanction the prior financial regulatory regime, rather than fundamentally reform it, just as a wave of thrift institution failures began to crest.[117]

[111] GAO, *supra* note 105, at 5 ("Certain members of Congress, certain regulators, smaller bank representatives, and others believed that nonbank banks were: threatening the regulation of the banking industry; creating an opportunity for large money center banks to enter local markets; leading to the exportation by money center banks of local funds into distant national and international markets, thus handicapping local development; and circumventing the intent if not the letter of banking legislation, damaging the dual federal-state authority system governing banking, and opening the doors to unrestricted interstate banking.").

[112] The Board gave three reasons in support of its rulemaking: (1) "by remaining outside the reach of banking regulations, nonbank banks have a significant competitive advantage over regulated banks, despite the functional equivalence of the services offered"; (2) "the proliferation of nonbank banks threatens the structure established by Congress for limiting the association of banking and commercial enterprises"; and (3) "the interstate acquisition of nonbank banks undermines the statutory proscription on interstate banking without prior state approval." *Board of Governors v. Dimension Financial*, 474 U.S. 361, 367-68 (1986) (citing 49 Fed. Reg. 794, 835-836 (1984)).

[113] *See, e.g.*, E. Gerald Corrigan, *Are Banks Special?* ann. rep., Federal Reserve Bank of Minneapolis (Jan. 1982) (arguing that the definition of "bank" should be "any organization that is *eligible* to issue transaction accounts" [emphasis in original]); *Board of Governors v. Dimension Financial*, Oyez (last visited Jan 4, 2021) (Michael Bradfield, for petitioner, arguing that 1970 amendments' definition of banking included "combination" of commercial lending with production of "instruments that are money"); Litan, *supra* note 109 (arguing for diversified financial holding companies, with segregated "narrow banks" eligible only to hold reserves and government/agency securities).

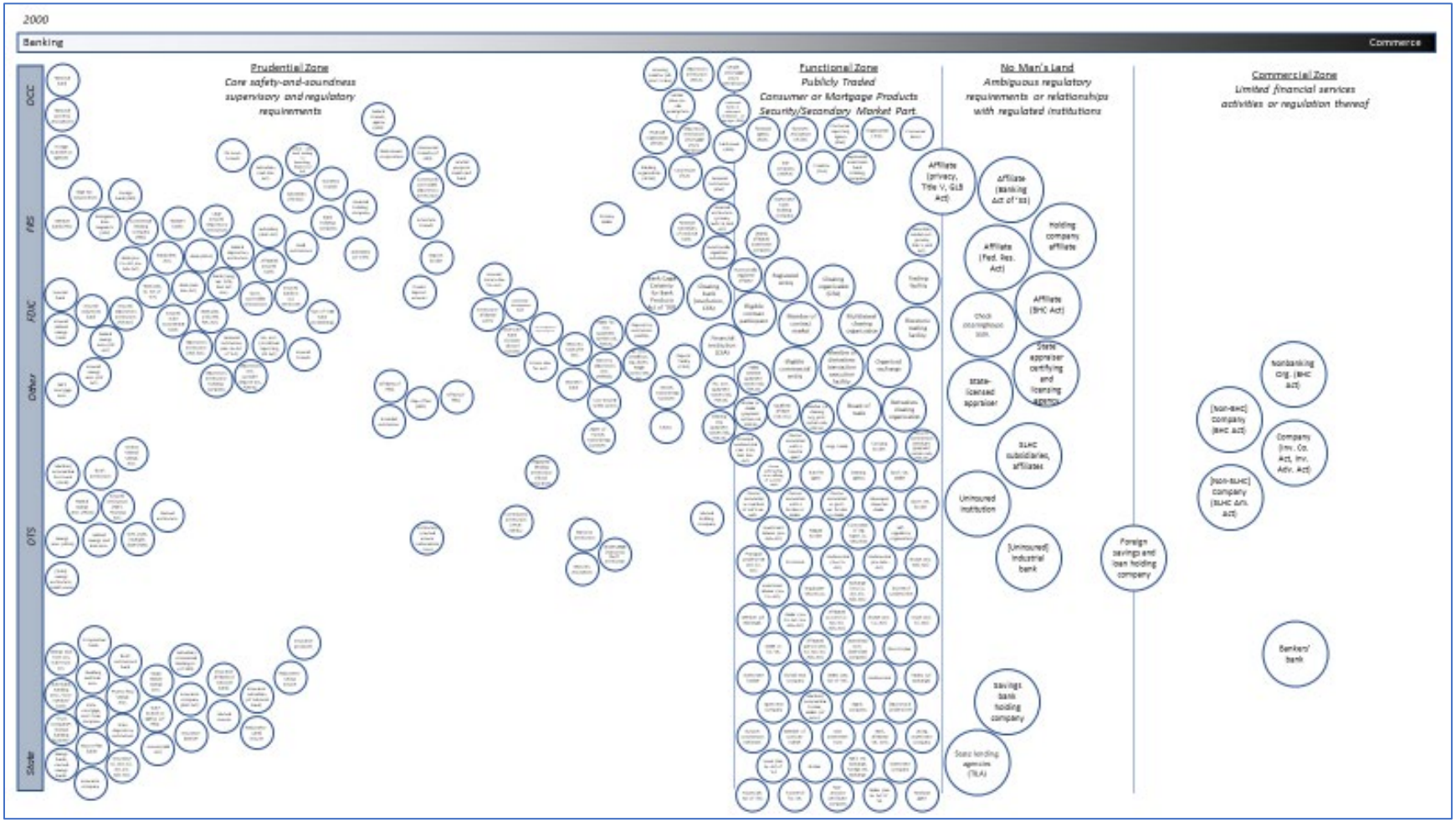
[114] The OCC introduced a limited moratorium on the chartering of *new* non-bank banks in April 1983, four months before approving the Florida application (from U.S. Trust Corporation) referenced above. The Board finalized its revision to Regulation Y in January 1984. In October, the Comptroller said he could wait no longer for Congressional action, and the OCC ended the moratorium. GAO, *supra* note 105, at 7.

[115] The Court struck down the new "demand deposit" definition on "step zero" Chevron grounds. *See* Cass R. Sunstein, *Chevron Step Zero*, 92 VA. L. REV. 187 (2006). In striking down the commercial loan definition, however, it held that a commercial loan must "entail the face-to-face negotiation of credit between borrower and lender"; any "extensions of credit in the open market that do not involve close borrower-lender relationships" are not commercial loans. *Dimension*, 474 U.S. at 368 (holding also that negotiable on withdrawal (NOW) accounts do not qualify as "demand deposits" under the BHC Act as amended).

[116] Omarova & Tahyar, *supra* note 79, at 157; Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, § 101, 101 Stat. 552 (1987).

[117] Robinson, *supra* note 104 (citing Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552 (1987)).

Figure 4: The Federal Financial Regulatory Perimeter, Circa 2000



Unlike in previous crises, reforms passed after the savings and loan (S&L) crisis focused less on the conduct of financial institutions than the conduct of regulators.[118] Nevertheless, the late 1980s and early 1990s saw several perimeter changes beyond those of CEBA. The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) restored thrift activity restrictions, created a consolidated regulator for state and federal thrifts, and moved thrift deposit insurance (and the power to issue enforcement actions) to the FDIC.[119] It created a new enforcement regime for "persons participating in the conduct of the affairs" of a financial institution (*i.e.*, institution-affiliated persons), including consultants, independent contractors, attorneys, and others prescribed by regulation.[120] The FDIC Improvement Act of 1991 guaranteed the deposit insurer a veto over any financial institution seeking insurance, including all national banks and member banks.[121] It also narrowed the gap between insured state and national banks, by limiting the former from engaging in activities and investments not permissible for the latter.[122]

However, many regulatory measures in the 1990s served to push the perimeter outwards—increasing the permissible activities of banks and other regulated financial institutions—while restricting federal oversight of those same activities.[123] In 1994, citing the benefits of diversification after a series of regional economic downturns, Congress lifted most restrictions on interstate branching and bank mergers.[124] At the same time, it eased "operational and managerial" requirements on certain bank holding companies, and it significantly increased banks' ability to acquire non-bank companies, use interlocking managers or directors, engage in new non-bank activities, and outsource bank services to non-bank third parties, even over regulators'

[118] These include the new standards for setting and enforcing thrift accounting and capital requirements, changes to financial institution supervisory ratings, and the Prompt Corrective Action framework. For example, the FDIC Improvement Act, Pub. L. No. 102-242, § 142(b), 105 Stat. 2236 (1991), made the Federal Reserve liable to the FDIC for certain excess losses on discount window lending to critically undercapitalized institutions. This approach also sharply increased the salience of quantitative capital and liquidity requirements in federal prudential regulation. *See* Provident, *infra* note 119, at S326, S330; George J. Benston & George G. Kaufman, FDICIA After Five Years, 11(3) J. ECON. PERSP. 139, 144 (1997) ("Congress instead sought to stiffen the backbone and reduce the discretion of regulators through a policy that become known as 'structured early intervention and resolution,' or SEIR. . . . SEIR appealed to both Congress and the administration in the early 1990s as a politically feasible, quickly implementable and effective solution").

[119] The Act also increased some oversight of foreign bank offices in the United States, and it took steps to increase coverage of state banks under federal deposit insurance, without requiring such coverage. *See* Anthony C. Provident, *Playing with FIRREA, Not Getting Burned: Statutory Overview of the Financial Institutions Reform, Recovery and Enforcement Act of 1989*, 59(6) FORDHAM L. REV. S323 (1991) (citing Pub. L. No. 101-73, 103 Stat. 183, § 151, 202 *et seq.*, 301, 303, 901 (1989)). A predecessor study from the U.S. Treasury recommended more sweeping changes, including a much broader range of permissible affiliate activities for both well-capitalized banks and "financial services holding companies," which Congress declined to pass. *See* Michael P. Malloy, *Financial Services Regulation: A Mid-Decade Review*, 63 FORDHAM L. REV. 2031, 2047-50 (1995).

[120] Pub. L. No. 101-73, *supra* note 117, § 211.

[121] FDIC, *The Banking Crises of the 1980s and Early 1990s: Summary and Implications*, *in* HISTORY OF THE 90S, VOL. 1: AN EXAMINATION OF THE BANKING CRISES OF THE 1980S AND EARLY 1990S 12 (1997).

[122] 63 Fed. Reg. § 362.1; *see also* Federal Deposit Insurance Improvement Act of 1991, Pub. L. No. 102-242, § 303, 105 Stat. 2236, 2349 (1991).

[123] This paragraph does not address significant rollbacks in the scope of consumer protection statutes and derivatives oversight. *See* Fin. Crisis Inquiry Comm., *Securitization and Derivatives* and *Subprime Lending*, *in* THE FINANCIAL CRISIS INQUIRY REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON THE CAUSES OF THE FINANCIAL AND ECONOMIC CRISIS IN THE UNITED STATES 45-48, 76-78.

[124] *See* Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (1994). The Act's main perimeter-relevant change was to foreign bank regulation, allowing the Board and FDIC to condition approval of an FBO branch or agency application on the FBO carrying out all U.S. banking activities in a "domestic banking subsidiary." *Id.* § 104(a).

objections.[125] Meanwhile, the OCC extended banks' ability to offer insurance, annuities, and index-fund like products.[126] It also pushed for the end of structural requirements and activity restrictions that "depriv[ed] individual institutions of the freedom to choose how to provide financial services."[127] In **Figure 4**, for the first time, regulated entities span these zones, reflecting the creation of categories and regimes affecting both prudentially and functionally regulated institutions.

The apex of this trend was the Gramm-Leach-Bliley Act.[128] The legislation repealed the required separation of securities and banking activities that had been in place since the Depression.[129] In part, this action paved the way for a simpler system of broad, segmented, and Board-supervised "financial holding companies" (FHCs)—whose non-bank affiliates could undertake almost any activity "financial in nature," but whose banking subsidiaries were limited to more traditional functions.[130] However, the Act also ratified recent expansions in agency and judicial interpretations of the "business of banking"; gave the OCC and FDIC expanded powers to limit or approve bank activities, while restricting the Board's supervision of BHC and

[125] With regard to outsourcing, the Riegle Community Development and Regulatory Improvement Act of 1994 amended the Bank Service Company (*née* Corporation) Act, Pub. L. No. 87-856, § 5, 76 Stat. 1132 (1962) (as amended by the Garn-St. Germain Depository Institutions Act, of 1982, Pub. L. No. 97-320, § 709, 96 Stat. 1469 (1982)) to require notice to its primary Federal regulator of an insured bank investment in a bank service corporation, rather than prior approval from such regulator. Pub. L. No. 103-325, § 318(c), 323, 108 Stat. 2160 (1994). For other provisions, *see* Economic Growth and Regulatory Paperwork Reduction Act of 1995, Pub. L. No. 104-208, §§ 2208, 2210, 2612, 110 Stat. 3009 (1996). The Board also gained substantial discretion to approve foreign bank branches within the United States. *Id.* § 2214.

[126] Several of these extensions rested on a 1916 provision (originally 12 U.S.C. § 92), thought to have been repealed in 1918, that allowed any national bank located and doing business in a place with a population of 5,000 or less to act as an agent for any insurance company. In a 1993 decision, the Supreme Court held that § 92 remained in effect, and that it did not constrain where such a bank could offer or perform such agency services. *U.S. Nat'l. Bank v. Indep. Ins. Agents of Am.*, 508 U.S. 439 (1993); *see also Barnett Bank v. Nelson*, 517 U.S. 25 (1996) (holding that § 92 preempts Florida insurance law); *Nationsbank of N.C., N.A. v. Variable Annuity Life Ins. Co.*, 512 U.S. 251 (1995) (upholding OCC determination that sale of fixed, variable, and hybrid annuities is incidental necessary power to business of banking authorized under 12 U.S.C. 24); *Investment Co. Inst. v. Ludwig*, 884 F. Supp. 4 (1995) (upholding OCC finding of stock index futures within scope of 12 U.S.C. 24). Other cases also established near-exclusive OCC authority over national bank conduct, even as to state laws. *See, e.g.*, *First Union Nat'l. Bank v. Burke*, 48 F. Supp. 2d 132 (1999). Separately, the court upheld looser restrictions on credit union eligibility. *See Nat'l. Credit Union Admin. v. First Nat'l. Bank & Trust Co.*, 522 U.S. 479 (1998).

[127] Reasons cited include changing consumer preferences in "an age of rapidly changing communications and computer technology," overall efficiency, a lack of evidence of a bank funding advantage over other financial services firms, and "the needs of consumers, poor people, and small businesses." Eugene A. Ludwig, Statement Before the Subcommittee on Capital Markets, Securities and Government Sponsored Enterprises, Committee on Banking and Financial Services, U.S. House of Representatives (Mar. 5, 1997). The OCC also introduced a special-purpose charter program, on which it would later elaborate; *see* OCC, Rules, Policies, and Procedures for Corporate Activities, 61 Fed. Reg. 60342 (Nov. 27, 1996).

[128] Pub. L. No. 106-102, 113 Stat. 1338 (1999). This paragraph omits a concurrent debate over derivatives regulation, beginning with a 1997 SEC proposal to create a new status of "OTC derivatives dealer" subject to a form of limited broker-dealer regulations. The CFTC responded with a "concept release" considering whether OTC derivatives were covered under the Commodity Exchange Act; Congress enjoined and eventually overruled this possibility in the Commodity Futures Modernization Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763 (2000); Over-the-Counter Derivatives, 63 Fed. Reg. 26,114 (May 12, 1998); OTC Derivatives Dealers, Net Capital Rule, 63 Fed. Reg. 59,632 (Jan. 4, 1999).

[129] *Id.* § 101.

[130] The Act permits firms to engage in any activity "financial in nature, or incidental to such activity; or is complementary to a financial activity and does not pose a substantial risk to the safety and soundness of depository institutions or the financial system generally," as defined in regulation. (Merchant banking activities were, for a time, excluded.) The Act also includes a long and expansive list of such activities, including "lending, exchanging, transferring, investing for others, or safeguarding money or securities," providing advisory services, making a market in securities, and generally doing anything "usual" in connection with the activities of BHCs anywhere abroad. *Id.* § 103. The Board had authority to determine the scope of such activities for FHCs, subject to a veto by the Secretary of the Treasury. *Id.* However, in determining the scope of such activities for national banks, *see infra* note 132, the roles were reversed, with Treasury making the determination subject to a Board veto. *Id.* § 121.

FHC subsidiaries; and created new regulatory categories that narrowly prescribed oversight of certain financial products.[131] It also expanded the scope of permissible activities that national banks themselves could undertake via "financial subsidiaries."[132] The resulting legislation not only sanctioned several elements of then-current industry practice, but also deepened the permissible ties between banking, commerce, and other financial services.[133]

This trend continued for the following decade, as firms continued to consolidate and diversify within the larger and more permeable regulatory perimeter.[134] In the meantime, external pressure on the perimeter also mounted.[135] One well-catalogued source was the "shadow banking system," a disaggregated network of market-based financial intermediaries, distanced but not divorced from public-sector support, that accumulated trillions more in liabilities by 2007 than the formal banking system itself.[136] Another source was the ILC, a consumer-lending charter status that dated to the early 20th century, which the original BHC Act and Federal Deposit Insurance (FDI) Act excluded from their definitions of "bank."[137]

Until the late 1980s, ILCs primarily made small loans to industrial workers and were not generally permitted to accept deposits.[138] In 1987, however, CEBA exempted the parent companies of even FDIC-insured ILCs from holding-company supervision.[139] As demand for the ILC charter grew, states also expanded ILC

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[131] *See*, *e.g.*, *id.* §§ 104, 113-15, 121, 201, 205. Other examples abound. Though the authors have not taken a full tally, new categories introduced include FHCs, investment bank holding companies, financial subsidiaries, hybrid products, identified banking products, insurance subsidiaries and affiliates, mutual redomesticated and redomesticating insurers, licensed insurance producers, and ATM fund operators.

[132] *Id.* § 121. While treating said subsidiaries as affiliates for purposes of inter-affiliate transaction limits, the Act nonetheless exempts certain covered transactions between the bank and any financial subsidiary.

[133] Few provisions of the Act addressed commercial activities directly, even in light of the new "incidental" and "complementary" activity provisions, *supra* note 130. *But see id.* § 103 (imposing restrictions on grandfathered commercial activities, and requiring report with "analysis and discussion of the risks posed by commercial activities of financial holding companies to the safety and soundness of affiliate depository institutions"); *id.* § 401 (preventing "creation of new S&L holding companies with commercial affiliates").

[134] Significant exceptions remain in the expansion of public-company-audit and anti-money-laundering/counter-terrorist-financing requirements. *See* Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (2002); USA PATRIOT Act, Pub. L. No. 107-56, 115 Stat. 272 (2001).

[135] *See also* Rules, Policies, and Procedures for Corporate Activities; Bank Activities and Operations; Real Estate Lending and Appraisals, 68 Fed. Reg. 6363 (proposed Feb. 7, 2003) (proposing a "special purpose national bank that limits its activities to fiduciary activities or to any other activities within the business of banking"); Rules, Policies, and Procedures for Corporate Activities; Bank Activities and Operations; Real Estate Lending and Appraisals, 68 Fed. Reg. 70, 122 (Jan. 16, 2004) (narrowing proposal to firms that "conduct at least one of the following core banking functions: "(1) receiving deposits; (2) paying checks; or (3) lending money").

[136] This trend includes significant growth in secondary market activity, largely outside the regulatory perimeter, including growth in the total notional derivatives volume from roughly $70 trillion in 2001 to $445 trillion in 2007. Alan S. Blinder, AFTER THE MUSIC STOPPED (2013), at 64. As this history has been the subject of recent and extensive scholarship, it is not covered in detail here. *See, e.g.*, Zoltan Poszar, Tobias Adrian, Adam Ashcraft, & Hayley Boesky, *Shadow Banking*, FRBNY ECON. POL'Y REV. (Dec. 2013), at 6 (estimating shadow bank liabilities at $22 trillion, versus traditional banking liabilities at $14 trillion).

[137] In 1938, 31 states offered some type of ILC charter; only 16 of these states permitted ILCs to accept deposits. *See* Raymond J. Saulnier, INDUSTRIAL BANKING COMPANIES AND THEIR CREDIT PRACTICES (1940); Omarova & Tahyar, *supra* note 79, at 158.

[138] Testimony of Scott G. Alvarez to the Senate Committee on Banking, Housing, and Urban Affairs, General Counsel, Board of Governors of the Federal Reserve System (Oct. 4, 2007). *See also* Statement of Martin J. Gruenberg to the Committee on Oversight and Government Reform, Chairman, FDIC (July 13, 2016).

[139] Specifically, CEBA exempts an ILC from the definition of a "bank" if: (1) the ILC is chartered by a state eligible to issue industrial bank charters; (2) the charter is from a state that required FDIC insurance on March 5, 1987; and (3) the ILC meets at

powers to be nearly identical to those of a bank.[140] By 2006, ILCs had grown from $4.2 billion in assets to $213 billion; a number of large financial firms had chartered ILCs of their own; and several commercial firms had sought to do the same.[141] When Walmart requested an ILC charter from the FDIC, public opposition emerged from a mix of small banks, grocery stores, labor unions, consumer and community groups, and realtors. The FDIC responded by imposing a moratorium on new ILCs and proposing a number of legislative changes; a legislative moratorium followed, and the FDIC did not approve another ILC application until March 2020.[142]

F. Today's Perimeter: The Legacy of the Categorization Approach and its Implications for Reform

The 2008 financial crisis revealed the consequences of these trends—of diversification and consolidation inside the regulatory perimeter, sharp growth in financial activities outside the perimeter, and deeper ties between the two. Risk that was nominally contained to the non-banking sector, or to the non-banking portions of consolidated financial firms, accrued instead to banking organizations, the public purse, and the broader economy.[143] The U.S. legislative response expanded the regulatory perimeter to cover many sources of this risk, from secondary-market activity, to consumer lending, to certain non-bank financial firms, the last of which regulators now had the authority to designate as "systemically important."[144]

In substance, the Dodd-Frank Act deviated materially from financial reform of the prior 30 years. In method, it was consistent with the categorization approach embodied in most financial reform efforts since the S&L crisis. The Act incorporated the definitions of "bank," "bank holding company," "depository institution," and more than 50 other categories of regulated entity without amendment.[145] It introduced more than 80 others, increasing the number of such categories in federal law by more than a fifth. Separately, it established new standards for prudential oversight and conduct regulation, while limiting the discretion of

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least one of three conditions: (i) the ILC does not accept demand deposits; (2) the ILC has less than $10 million in assets; or (3) the ILC has not been acquired by another company since August 10, 1987. CEBA, *supra* note 114; 12 U.S.C. § 1841(c)(2)(H).

[140] Omarova & Tahyar, *supra* note 79, at 161-62.

[141] Much of the growth was from the transfer of uninsured brokerage customer deposits to corresponding ILCs, and specifically, of American Express's credit card operations to a separate Utah-chartered ILC. Parent Companies of Industrial Banks and Industrial Loan Companies, 86 Fed. Reg. 10,703 (Feb. 23, 2021). Other financial institutions with ILCs included Goldman Sachs, Morgan Stanley, Merrill Lynch, and Lehman Brothers. Large commercial firms that obtained ILC charters included General Electric, General Motors, Sears, Target, and Harley-Davidson. James R. Barth et al., *Industrial Loan Companies: Supporting America's Financial System*, Milken Institute (Apr. 2011), at 4.

[142] Following the failure or severe distress of a number of these financial firms during the 2008 financial crisis, the Dodd-Frank Act established another, temporary moratorium on ILCs. Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Pub. L. No. 111-203, § 603, 124 Stat. 1376 (2010); *see also* GAO, *Characteristics and Regulation of Exempt Institutions and the Implications of Removing the Exemptions*, GAO-12-160 (Jan. 2012) (describing ILC transformation from "a class of small, limited-purpose institutions" to "a diverse group of insured institutions with a variety of business lines").

[143] For a discussion of several examples and the federal response, *see, e.g., First Responders: Inside the U.S. Strategy for Fighting the 2007-2009 Global Financial Crisis* (Ben S. Bernanke, Timothy F. Geithner, and Henry M. Paulson, Jr. with J. Nellie Liang, eds., 2020).

[144] *E.g.*, Dodd-Frank Act, *supra* note 142, Titles I, VII, X, 124 Stat. 1391, 1641, 1955.

[145] *Id.*, § 2 at 1386.

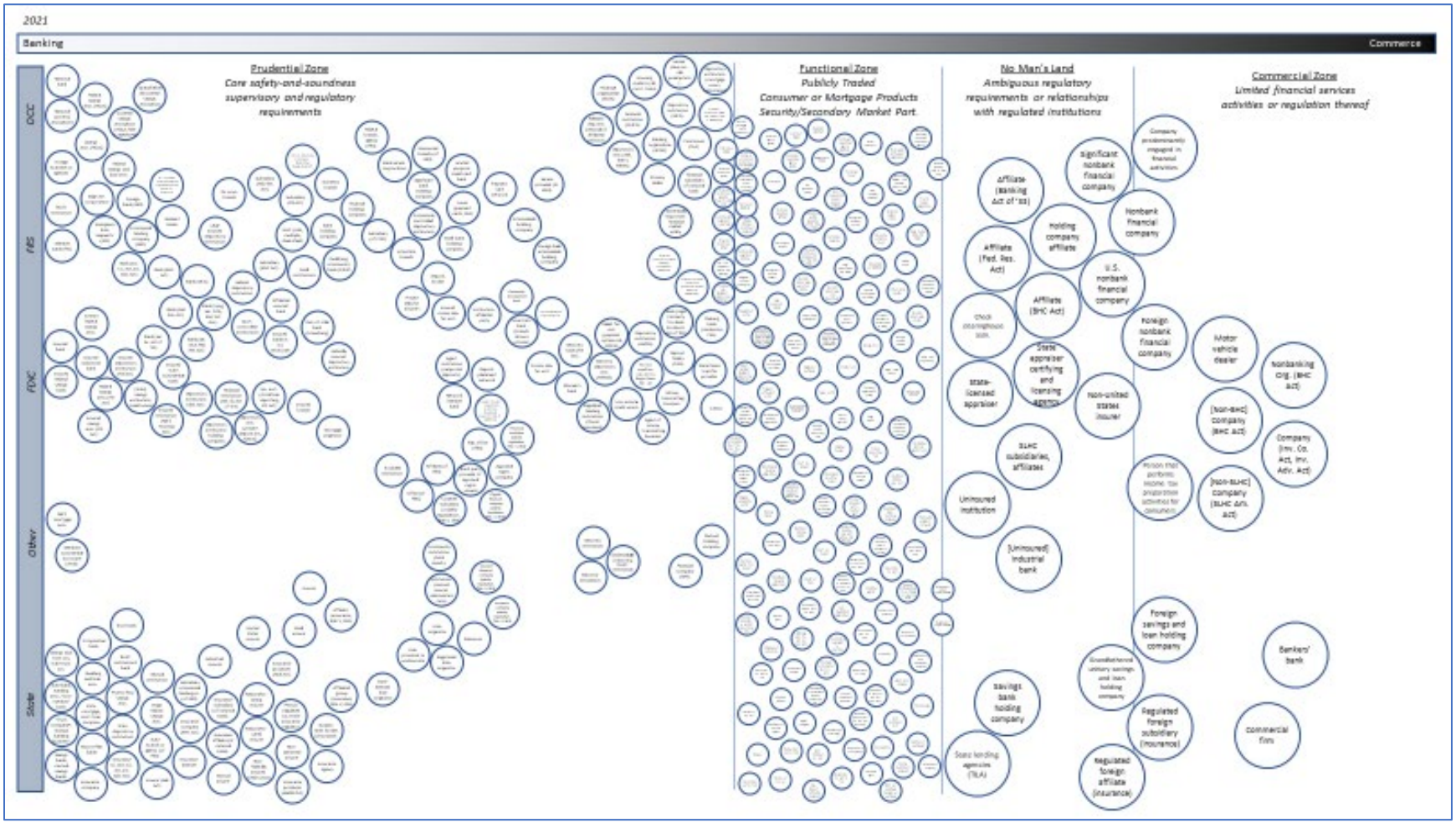
regulators in implementing those standards.[146] The three major pieces of financial regulatory legislation passed since then have followed a similar approach.[147]

The resulting federal financial regulatory perimeter, shown in **Figure 5**, is broader, more complex, and arguably more permeable than at any point in its history. It contains several hundred statutory categories, each conferring its own mix of rights and obligations—some requiring the formation of a specific legal entity, others requiring public registration, disclosure, or supervision, still others requiring some form of chartering with prior government consent. Almost any entity or legal person offering financial services typically falls under one or several of these categories, triggering at least some kind of public oversight. Conversely, however, by tailoring the scope of its activities and its legal form, a careful firm can choose some forms of regulation over others. Critically, regulators have authority to keep firms inside the perimeter from venturing into commercial territory, but much less authority to police "breaches" from the outside in.

[146] This is particularly true of foreign banking organizations (FBOs). The Dodd-Frank Act required certain institutions to form and conduct certain activities via "intermediate holding companies," subject to a broader range of prudential requirements. Many FBOs responded by shifting assets and activity to branches, which were preserved under the new statutory measures. *See* Jeremy C. Kress, *Domesticating Foreign Finance*, 73 FLORIDA L. REV. (forthcoming); *see also* Nicholas K. Tabor, *Trust But Verify: Domestic Politics and International Coordination in U.S. Post-Crisis Financial Regulatory Policy*, 39 U. PA. J. INT'L L. 889 (2018).

[147] *See* Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, 132 Stat. 1296 (2018); Insurance Capital Standards Clarification Act of 2014, Pub. L. No. 113-279, 128 Stat. 3017 (2014); An Act to enhance the ability of community financial institutions to foster economic growth and serve their communities, boost small businesses, increase individual savings, and for other purposes, Pub. L. No. 113-250, 128 Stat. 2886 (2014).

Figure 5: The Federal Financial Regulatory Perimeter, Circa 2021



Appendix: Graphical Sources

List of Statutes Reviewed

1. An Act to incorporate the subscribers to the Bank of the United States, Ch. 1-10 (Feb. 25, 1791).
2. An Act to provide a National Currency, secured by a Pledge of United States Bonds, and to provide for the Circulation and Redemption thereof, Ch. 38-106 (June 3, 1864)
3. An Act authorizing the appointment of receivers of national banks, and for other purposes, Ch. 44-156 (June 30, 1876)
4. Aldrich-Vreeland Act, Pub. L. No. 60-169, 35 Stat. 546 (May 30, 1908)
5. An Act To establish postal savings depositories for depositing savings at interest with the security of the Government for repayment thereof, and for other purposes, Pub. L. No. 61-268, 36 Stat. 814 (June 25, 1910)
6. Federal Reserve Act, Pub. L. No. 63-43, 38 Stat. 251 (Dec. 23, 1913)
7. Federal Farm Loan Act, Pub. L. No. 64-158, 39 Stat. 360 (July 17, 1916)
8. Edge Act, Pub. L. No. 66-106, 41 Stat. 378 (Dec. 24, 1919)
9. McFadden Act, Pub. L. No. 69-639, 44 Stat. 1224 (Feb. 25, 1927)
10. Agricultural Marketing Act, Pub. L. No. 71-10, 46 Stat. 11 (June 15, 1929)
11. Emergency Relief and Construction Act, Pub. L. No. 72-302, 47 Stat. 709 (July 21, 1932)
12. Federal Home Loan Bank Act, Pub. L. No. 72-304, 47 Stat. 725 (July 22, 1932)
13. Securities Act of 1933, Pub. L. No. 73-22, 48 Stat. 74 (May 27, 1933)
14. Home Owners' Loan Act, Pub. L. No. 73-43, 48 Stat. 128 (June 13, 1933)
15. Farm Credit Act, Pub. L. No. 73-75, 48 Stat. 257 (June 16, 1933)
16. Banking Act of 1933, Pub. L. No. 73-66, 48 Stat. 162 (June 16, 1933)
17. Securities Exchange Act of 1934, Pub. L. No. 73-291, 48 Stat. 881 (June 6, 1934)
18. National Housing Act, Pub. L. No. 73-479, 48 Stat. 1246 (June 27, 1934)
19. Federal Credit Union Act, Pub. L. No. 73-467, 48 Stat. 1216 (June 26, 1934)
20. Banking Act of 1935, Pub. L. No. 74-305, 49 Stat. 684 (Aug. 23, 1935)
21. Commodity Exchange Act, Pub. L. No. 74-675, 49 Stat. 1491 (June 15, 1936)
22. Securities Exchange Act Amendments of 1938, Pub. L. No. 75-719, 52 Stat. 1070 (June 25, 1938)
23. Investment Company Act and Investment Advisers Act, Pub. L. No. 76-768, 54 Stat. 789 (Aug. 22, 1940)
24. Federal Deposit Insurance Act, Pub. L. No. 81-797, 64 Stat. 873 (Sep. 21, 1950)
25. Bank Holding Company Act, Pub. L. No. 84-511, 70 Stat. 133 (May 9, 1956)
26. National Bank Amendments, Pub. L. No. 86-251, 73 Stat. 487 (Sep. 9, 1959)
27. An Act to promote and preserve local management of savings and loan associations by protecting them against encroachment by holding companies, Pub. L. No. 86-374, 73 Stat. 691 (Sep. 23, 1959)
28. Bank Service Corporation Act, Pub. L. No. 87-856, 76 Stat. 1132 (Oct. 23, 1962)
29. Securities Act Amendments of 1964, Pub. L. No. 88-467, 78 Stat. 565 (Aug. 20, 1964)
30. Financial Institutions Supervisory Act of 1966, Pub. L. No. 89-695, 80 Stat. 1028 (Oct. 16, 1966)
31. Bank Holding Company Act of 1956 Amendments, Pub. L. No. 89-485, 80 Stat. 236 (July 1, 1966)
32. Consumer Credit Protection Act [TILA], Pub. L. No. 90-321, 82 Stat. 146 (May 29, 1968)
33. Savings and Loan Holding Company Amendments, Pub. L. No. 90-255, 82 Stat. 5 (Feb. 14, 1968)
34. Emergency Home Finance Act of 1970, Pub. L. No. 91-351, 84 Stat. 450 (July 24, 1970)
35. Bank Secrecy Act &c, Pub. L. No. 91-508, 84 Stat. 1114 (Oct. 26, 1970)
36. Securities Investor Protection Act of 1970, Pub. L. No. 91-598, 84 Stat. 1636 (Dec. 30, 1970)
37. Bank Holding Company Amendments Act of 1970, Pub. L. No. 91-607, 84 Stat. 1760 (Dec. 31, 1970)

38. Farm Credit Act of 1971, Pub. L. No. 92-181, 85 Stat. 583 (Dec. 10, 1971)
39. Depository Institutions Amendments of 1974 [ECOA], Pub. L. No. 93-495, 88 Stat. 1500 (Oct. 28, 1974)
40. Real Estate Settlement Practices Act, Pub. L. No. 93-533, 88 Stat. 1724 (Dec. 22, 1974)
41. An Act to extend the authority for the flexible regulation of interest rates on deposits and share accounts in depository institutions, to extend the National Commission on Electronic Fund Transfers, and to provide for home mortgage disclosure [HMDA], Pub. L. No. 94-200, 89 Stat. 1124 (Dec. 31, 1975)
42. Consumer Leasing Act of 1976, Pub. L. No. 94-240, 90 Stat. 257 (Mar. 23, 1976)
43. Community Reinvestment Act, Pub. L. No. 95-128, 91 Stat. 1111 (Oct. 12, 1977)
44. An Act to extend the authority for the flexible regulation of interest rates on deposits and accounts in depository institutions, to promote the accountability of the Federal Reserve System, and for other purposes [incl. Federal Reserve Reform Act of 1977], Pub. L. No. 95-188, 91 Stat. 1387 (Nov. 16, 1977)
45. International Banking Act, Pub. L. No. 95-369, 92 Stat. 607 (Sep. 17, 1978)
46. Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221, 94 Stat. 132 (Mar. 31, 1980)
47. An Act to clarify the jurisdiction of the Securities and Exchange Commission and the definition of security, and for other purposes, Pub. L. No. 97-303, 96 Stat. 1409 (Oct. 13, 1982)
48. Garn-St. Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1469 (Oct. 15, 1982)
49. Government Securities Act of 1986, Pub. L. No. 99-571, 100 Stat. 3208 (Oct. 28, 1986)
50. Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552 (Aug. 10, 1987)
51. Securities Exchange Commission Authorization Act of 1987, Pub. L. No. 100-181,101 Stat. 1249 (Dec. 4, 1987)
52. Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 (Aug. 9, 1989)
53. Penny Stock Reform Act of 1990, Pub. L. No. 101-429, 104 Stat. 931 (Oct. 15, 1990)
54. Securities Markets Reform Act of 1990, Pub. L. No. 101-432, 104 Stat. 963 (Oct. 16, 1990)
55. Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, 105 Stat. 2236 (Dec. 19, 1991)
56. Government Securities Amendments Act of 1993, Pub. L. No. 103-202, 107 Stat. 2344 (Dec. 17, 1993)
57. Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. No. 103-325, 108 Stat. 2160 (Sep. 23, 1994)
58. Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (Sep. 29, 1994)
59. Gramm-Leach-Bliley Act, Pub. L. No. 106-102, 113 Stat. 1338 (Nov. 12, 1999)
60. Commodity Futures Modernization Act, Pub. L. No. 106-554, 114 Stat. 2763A-365 (Dec. 21, 2000)
61. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (July 30, 2002)
62. Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159, 117 Stat. 1952 (Dec. 4, 2003)
63. Financial Services Regulatory Relief Act of 2006, Pub. L. No. 109351, 120 Stat. 1966 (Oct. 16, 2006)
64. Credit Rating Agency Reform Act of 2006, Pub. L. No. 109-291, 120 Stat. 1327 (Sep. 29, 2006)
65. Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (July 30, 2008)
66. Credit CARD Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (May. 22, 2009).
67. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010)

68. An Act to enhance the ability of community financial institutions to foster economic growth and serve their communities, boost small businesses, increase individual savings, and for other purposes, Pub. L. No. 113-250, 128 Stat. 2886 (Dec. 18, 2014)
69. Insurance Capital Standards Clarification Act of 2014, Pub. L. No. 113-279, 128 Stat. 3017 (Dec. 18, 2014)
70. Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, 132 Stat. 1296 (May 24, 2018)

Notes to Specific Years

1791: The term "bank" appears in the organic statute of the Bank of the United States, predating the National Banking Act. *See* An Act to incorporate the subscribers to the Bank of the United States, Ch. 1-10 (Feb. 25, 1791).

1910: After 1909, "national banking associations" also includes those "designated as special depositories of public money." *See* Aldrich-Vreeland Act, Pub. L. No. 60-169, § 15, 35 Stat. 546, 552 (May 30, 1908). Postal savings depositories were not overseen by the OCC, but by a board of trustees consisting of the Postmaster General, Secretary of the Treasury, and Attorney General; however, such deposits could be redeposited at "solvent banks," including "savings banks and trust companies doing a banking business." An Act To establish postal savings depositories for depositing savings at interest with the security of the Government for repayment thereof, and for other purposes, Pub. L. No. 61-268, 36 Stat. 814 (June 25, 1910).

1913: The Federal Reserve Act clarified that "national banking association" and "national bank" were identical terms, a point ambiguous in earlier statutes. "Bank" was defined such as to include both state and federal banks, hence the movement of the category along this axis. *See* Pub. L. No. 63-43, § 1, 38 Stat. 251 (Dec. 23, 1913).

1919: The Edge Act amended the Federal Reserve Act definition of foreign branches or agencies by adding § 25(a), but it maintained the prior language specifically allowing national bank foreign branches. The Edge Act also allowed any "bank or banking institution, principally engaged in foreign business" to convert to an Edge Act corporation. *See* Edge Act, Pub. L. No. 66-106, § 1, 41 Stat. 378, 380, 383 (Dec. 24, 1919) ("branches or agencies in foreign countries," subject to Board approval); Federal Reserve Act, Pub. L. No. 63-43, § 25, 38 Stat. 251, 274 (Dec. 23, 1913).

1932: The McFadden Act also includes mention of "District banks," *i.e.*, those chartered in the District of Columbia, with treatment roughly equivalent to those of state banks; no separate category is included here. Pub. L. No. 69-639, § 1, 44 Stat. 1224 (Feb. 25, 1927). The same Act also adds "branch bank, branch office, branch agency, additional office, or any branch of business…at which deposits are received, or checks paid, or money lent," omitted as an extension of the same legal person as the bank itself. Federal farm credit institutions are omitted from this chart, including cooperative associations, stabilization corporations, and clearing house associations in 1929. *See* Agricultural Marketing Act, Pub. L. No. 71-10, 46 Stat. 11 (June 15, 1929). Homestead associations are also excluded. See Federal Home Loan Bank Act, Pub. L. No. 72-304, § 2, 47 Stat. 725 (July 22, 1932).

1933: Associations created under the Farm Credit Act of 1933, Pub. L. No. 73-75, 48 Stat. 257 (June 16, 1933), are omitted, as are correspondent bank, *see* Banking Act of 1933, Pub. L. No. 73-66, § 32, 48 Stat. 162, 194 (June 16, 1933).

1934: Associations created under the Farm Credit Act of 1933, Pub. L. No. 73-75, 48 Stat. 257 (June 16, 1933), are omitted, *see, e.g.*, § 2 ("Federal credit union"), as are correspondent banks, *see* Banking Act of 1933, Pub. L. No. 73-66, § 32, 48 Stat. 162, 194 (June 16, 1933).

1935: The Banking Act of 1935, Pub. L. No. 73-467, 48 Stat. 1216 (June 26, 1934), specifically mentions several categories of institutions defined by their particular mix of federal prudential oversight: Federal Reserve membership, subscription to Federal deposit insurance, and a national charter. These include "state member bank," "state nonmember bank," "national member bank," "national nonmember bank," and "noninsured bank," all of which are omitted from this chart as duplicative of "national bank," "member bank," and "insured bank." *Id.* at 684-86.

1956: The Federal Deposit Insurance Act of 1950, Pub. L. No. 81-797, 64 Stat. 873 (Sep. 21, 1950), introduced several new definitions of existing terms (*e.g.*, State bank," "State member bank," "District bank," "national member bank," "national nonmember bank," "savings bank") that remained very similar to prior uses of those terms; as such, these new terms are omitted, despite their not technically being redefinitions of existing terms in existing statutes. The Bank Holding Company Act also includes definitions for "successor" organizations of bank holding companies and of "qualified bank holding companies" for revenue purposes, which are also omitted. *See* Pub. L. No. 84-511, § 2, 10, 70 Stat. 133, 139 (May 9, 1956). Subsidiaries of bank holding companies under such Act could not also be "nonbanking organizations," hence the central placement of "Subsidiary (BHC Act") within the Federal portion of the prudential zone. *Id.* § 4, 70 Stat. 135.

1968: Regulatory responsibility for savings and loan holding companies shifted to the Federal Savings and Loan Insurance Corporation. *See* Savings and Loan Holding Company Amendments, Pub. L. No. 90-255, § 408(b), 82 Stat. 5, 7 (Feb. 14, 1968). The SLHC Amendments also cover the acquisition of uninsured institutions, which are omitted here. The FSLIC has power under the same act to conduct investigations and demand information and materials from both affiliates and subsidiaries of SLHCs, and includes obligations that incur to SLHC subsidiaries, but does not clearly expose them to prudential requirements. The Postal Savings Deposit system was abolished in 1966, but deposit claims continued to be accepted until 1985; as such, the designation remains in these charts until that time. *See* Lynn Heidelbaugh, "Postal Savings System," Smithsonian Nat'l. Postal Museum (accessed Feb. 10, 2021).

1970: The Bank Holding Company Act Amendments of 1970 defines "thrift institutions" as including, but not coextensive with, domestic building loan and savings and loan corporations, cooperative banks, and mutual savings banks. *See* Pub. L. No. 91-607, § 101(e), 84 Stat. 1760, 1763 (Dec. 31, 1970). It also excludes "any State chartered bank or trust company which is wholly owned by thrift institutions and which restricts itself to the acceptance of deposits from thrift institutions, deposits arising out of the corporate business of its owners, and public moneys." *Id.* (amending § 2(a)(6)) at 1762. This definition aligns with that of a bankers' bank, and is included above as "thrift institutions' bank," suggesting some combination of state or FHLBB/FSLIC oversight.

1974: The Depository Institutions Amendments of 1974, Pub. L. No. 93-495, 88 Stat. 1500 (Oct. 28, 1974), contains an exemption for "state lending agencies," or those "consumer credit transaction[s] in which an agency of the State is the creditor." It does not specify what entities might be involved in such transactions, whether regulated lending instrumentalities, agencies, or otherwise.

1977: The Community Reinvestment Act, Pub. L. No. 95-128, § 802, 91 Stat. 1111, 1147 (Oct. 12, 1977), also defines "regulated financial institutions" independently, but the definition itself is aligned with § 3 of the Federal Deposit Insurance Act, as then amended.

1978: The International Banking Act, Pub. L. No. 95-369, 92 Stat. 607 (Sep. 17, 1978), imposes separate requirements for Federal branches and Federal agencies, which are combined in this chart; requires Treasury registration of FBO representative offices; and requires Federal deposit insurance for most Federal branches, giving the OCC, FDIC, and Federal Reserve some form of jurisdiction over such entities.

1980: The Depository Institutions Deregulation and Monetary Control Act of 1980, § 103, Pub. L. No. 96-221, 94 Stat. 132, 133 (Mar. 31, 1980), includes specific definitions of "bank" and "depository institution" for reserve requirement and monetary reporting purposes, designated here with "(MCA)." The Act also includes explicit mention of "Federal Reserve bank services to depository institutions" for fee schedule purposes, here captured under the "Depository Institution (MCA)" heading. *Id.* § 107.

1982: The Garn-St. Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1469 (Oct. 15, 1982), includes conforming definitions for "association" and "insured institution," resolution definitions of "insured depository institution," "in-State depository institution" and "in-State holding company," and the incorporation of an internal revenue definition of "domestic building and loan association," all of which are omitted here. *See Id.* §§ 115, 116, 334. The Act also extends eligibility for Federal deposit insurance to any "industrial bank or similar financial institution," subject to certain conditions; as such, this chart distinguishes between uninsured industrial banks (which may be regulated under state law) and insured industrial banks. *Id.* § 703(a). Finally, the Act clarifies that the FDIC may allow conversion of an insured savings bank to a "Federal stock savings bank" or "Federal stock savings and loan association" (together, "Federal stock savings institutions") to prevent or promptly remedy closure; these categories under the National Housing Act are also omitted. *Id.* § 121.

1986: For details on postal savings depositories, see details on 1968.

1987: The Competitive Equality Banking Act of 1987 imposes certain divestment requirements on firms not otherwise designated as "savings bank holding companies," but imposes no direct regulatory or supervisory limitations on the conduct of such firms. Savings bank holding companies, in turn, are defined by their ownership share in certain "qualified savings banks," which are omitted from this chart. Pub. L. No. 100-86, § 101 (amending § 2(c) of the Bank Holding Company Act of 1956), 101 Stat. 552, 557 (Aug. 10, 1987). The Act also excludes "foreign savings and loan holding companies" from certain holding company regulations, but only to the extent of activities "conducted exclusively in a foreign country." *Id.* § 104. It also renders "mutual institutions" eligible for Federal Reserve membership. *Id.* § 107. The designation of "state-chartered, federally insured thrifts" is captured in the "insured institution (Nat'l. Housing Act)" bubble. *Id.* § 406. "Electronic clearinghouse[s]," first mentioned in this Act in the context of a study, are also omitted. *Id.* § 609.

1989: The Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, § 201, 103 Stat. 183, 190-91 (Aug. 9, 1989), includes novel definitions of "savings associations," "Federal savings associations," and "State savings associations" under the Federal Deposit Insurance Act; as the latter two constitute the former, the former is omitted from this chart, largely for space purposes. The same is true of "depository institution," "Federal depository institution," and "State depository institution," but not of "insured depository institution." *Id.* "Uninsured institutions" include any depository institution not insured by the FDIC, which may include "any bank or savings association." *Id.* § 204. As with "District bank," "District association" is omitted, *id.* § 301, as are "specialized savings association[s] serving transient military personnel," *id.* § 303, and "independent auditors" required to be furnished with specific information from the depository institutions that retain them, *id.* § 931.

1991: The Federal Deposit Insurance Corporation Improvement Act, Pub. L. No. 102-242, 105 Stat. 2236 (Dec. 19, 1991), includes separate designations for "Bank Insurance Fund members" (including banking

organizations, but not savings and loan associations) and "representative offices" of foreign banking organizations, formally defining the latter for purposes of the International Banking Act, Pub. L. No. 95-369, 92 Stat. 607 (Sep. 17, 1978). Both are omitted here. The placement of "broker or dealer (payment system risk, FDICIA)" reflects the possibility of determination of affiliation by the Board of Governors of the Federal Reserve System. *Id.* § 402.

1994: The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, § 107, 108 Stat. 2338, 2358 (Sep. 29, 1994), bars foreign bank branches and agencies in the United States from managing certain activity through an office of such foreign bank outside the United States. The heading for this section refers to such offices as "shell branches," but the term is not used in the body text of the statute and is omitted here.

1999: Heading items of "financial agency subsidiary," "limited purpose bank," and "third party brokerage" are omitted as covered by prior categorizations. Gramm-Leach-Bliley Act, Pub. L. No. 106-102, §§ 107, 121, 122, 113 Stat. 1338, 1359, 1378, 1382 (Nov. 12, 1999).

2008: The resolution-specific categories of "bridge depository institution" and "new depository institution" are omitted. Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, § 1603, 122 Stat. 2654, 2829 (July 30, 2008).

2010: The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 603, 124 Stat. 1376, 1597 (July 21, 2010), contains a study of and moratorium on the provision of deposit insurance to "credit card banks," "industrial banks," and "trust banks"; while the former two existed as statutory terms prior to the Dodd-Frank Act, the lattermost did not, and it is included here. By contrast, the Act envisions studies alone of "financial planners" and "exchange facilitators," and so those categories are omitted here. *Id.* §§ 919C, 1079. The Act also excludes any "person regulated by" the SEC or CFTC from its jurisdiction; though those jurisdictional designations are new, they are omitted here as well. *Id.* § 1002 *et seq.* The same is true of certain resolution-related categories, e.g., "bridge financial company." *Id.* § 201. Disclosure requirements to the Federal Insurance Office are depicted here as falling closer to Federal than state regulation. *Id.* § 502 *et seq.*

Citations to Specific Items

1. "bank" (1791): An Act to incorporate the subscribers to the Bank of the United States, Ch. 1-10 (Feb. 25, 1791), § 1.
2. "national associations for carrying on the business of banking" (1864): An Act to provide a National Currency, secured by a Pledge of United States Bonds, and to provide for the Circulation and Redemption thereof, Ch. 38-106 (June 3, 1864), §§ 5, 44.
3. "national banking association" (1876): An Act authorizing the appointment of receivers of national banks, and for other purposes, Ch. 44-156 (June 30, 1876), § 1.
4. "savings banks" (1876): *Id.* § 6.
5. "savings and trust companies" (1876): *Id.*
6. "national currency association" (1908): Aldrich-Vreeland Act, Pub. L. No. 60-169, § 1, 35 Stat. 546 (May 30, 1908).
7. "regular depositories of public money" (1908): *Id.* § 15, 35 Stat. 546, 552.
8. "postal savings depository offices" (1910): An Act To establish postal savings depositories for depositing savings at interest with the security of the Government for repayment thereof, and for other purposes, Pub. L. No. 61-268, § 1, 36 Stat. 814 (June 25, 1910).
9. "trust companies doing a banking business" (1910): *Id.* § 9, 36 Stat. 814, 17.

10. "bank" (1913): Federal Reserve Act, Pub. L. No. 63-43, § 1, 38 Stat. 251 (Dec. 23, 1913).
11. "State bank" (1913): *Id.*; *see also* § 9, 38 Stat. 251, 59.
12. "State banking association" (1913): *Id.*
13. "State trust company" (1913): *Id.*
14. "national bank"/"national banking association" (1913): *Id.*
15. "member bank" (1913): *Id.*
16. "nonmember bank" (1913): *Id.*
17. "foreign branch" of national bank (1913): *Id.* § 25, 38 Stat. 251, 74.
18. "[State] trust company" (1916): Federal Farm Loan Act, Pub. L. No. 64-158, § 15, 39 Stat. 360, 373 (July 17, 1916).
19. "[State] mortgage company" (1916): *Id.*
20. "[State] savings institution" (1916): *Id.*
21. Edge Act corporation (1919): Edge Act, Pub. L. No. 66-106, § 1, 41 Stat. 378 (Dec. 24, 1919).
22. "foreign branches or agencies" (Edge Act) (1919): *Id.* 41 Stat. 378, 380.
23. "bank or banking institution, principally engaged in foreign business" (1919): *Id.* 41 Stat. 378, 383.
24. "District bank" (1927): McFadden Act, Pub. L. No. 69-639, § 1, 44 Stat. 1224 (Feb. 25, 1927).
25. "branch bank, branch office, branch agency, additional office, or any branch place of business…at which deposits are received, or checks paid, or money lent" (1927): *Id.* § 6, 44 Stat. 1224, 28.
26. "cooperative associations" (1929): Agricultural Marketing Act, Pub. L. No. 71-10, § 7, 46 Stat. 11, 14 (June 15, 1929).
27. "stabilization corporations" (1929): *Id.* § 9, 46 Stat. 11, 15.
28. "clearing house associations" (1929): *Id.* § 10, 46 Stat. 11, 15.
29. "regional agricultural credit corporation" (1932): Emergency Relief and Construction Act, Pub. L. No. 72-302, § 201(e), 47 Stat. 709, 713 (July 21, 1932).
30. recipient of emergency loans ("any individual, partnership, or corporation") (1932): *Id.* § 210, 47 Stat. 709, 715.
31. "building and loan association" (1932): *Id.*
32. "insurance company" (1932): *Id.*
33. "mortgage loan company" (1932): *Id.*
34. "credit union" (1932): *Id.*
35. Federal Home Loan Bank member (1932): Federal Home Loan Bank Act, Pub. L. No. 72-304, § 2, 47 Stat. 725 (July 22, 1932).
36. "cooperative bank" (1932): *Id.*
37. "homestead association" (1932): *Id.*
38. "nonmember borrower" (FHLB) (1932): *Id.* § 4, 47 Stat. 726.
39. "issuer" (Sec. Act of 1933) (1933): Securities Act of 1933, Pub. L. No. 73-22, § 2, 48 Stat. 74-75 (May 27, 1933).
40. "underwriter" (Sec. Act of 1933) (1933): *Id.*
41. "dealer" (Sec. Ex. Act, 1933) (1933): *Id.*
42. "trustees" of foreign securities (1933): *Id.* § 203, 48 Stat. 74, 93.
43. "financial agents" (1933): *Id.*
44. "dealers in foreign securities" (1933): *Id.*
45. "Federal savings and loan association" (1933): Home Owners' Loan Act, Pub. L. No. 73-43, §§ 1, 5, 48 Stat. 128, 129, 132 (June 13, 1933).

46. "affiliate" (Banking Act of 1933) (1933): Banking Act of 1933, Pub. L. No. 73-66, § 1, 48 Stat. 162 (June 16, 1933).
47. "holding company affiliate" (bank) (1933): *Id.* § 1, 48 Stat. 162, 163.
48. "Morris Plan banks" (1933): *Id.* § 5(a), 48 Stat. 162, 164.
49. "mutual savings bank" (1933): *Id.* § 5(c), 48 Stat. 162, 165.
50. "[FDIC] nonmember bank" (1933): *Id.* § 8, 48 Stat. 162, 169.
51. "correspondent bank" (1933): *Id.* § 32, 48 Stat. 162, 194.
52. "facility" (of exchange) (1934): Securities Exchange Act of 1934, Pub. L. No. 73-291, § 3(a), 48 Stat. 881, 882 (June 6, 1934).
53. "member" (of exchange) (1934): *Id.* § 3(a), 48 Stat. 881, 883.
54. "broker" (1934): *Id.*
55. "dealer" (§ Ex. Act. of 1934) (1934): *Id.*
56. "bank" (§ Ex. Act. of 1934) (1934): *Id.*
57. "issuer" (§ Ex. Act. of 1934) (1934): *Id.*
58. "national securities exchange" (1934): *Id.* § 6(a), 48 Stat. 881, 885.
59. "foreign securities exchanges" (1934): *Id.* § 30(a), 48 Stat. 881, 904 (heading).
60. "national mortgage associations" (1934): National Housing Act, Pub. L. No. 73-479, § 301, 48 Stat. 1246, 1252 (June 27, 1934).
61. "insured institution" (Nat'l. Housing Act) (1934): *Id.* § 401, 48 Stat. 1246, 1255.
62. "Federal credit union" (1934): Federal Credit Union Act, Pub. L. No. 73-467, § 2, 48 Stat. 1216 (June 26, 1934).
63. "state nonmember bank" (insured) (1935): Banking Act of 1935, Pub. L. No. 74-305, § 101, 49 Stat. 684, 685 (Aug. 23, 1935).
64. "national member bank" (1935): *Id.*
65. "national nonmember bank" (insured) (1935): *Id.*
66. "insured bank" (1935): *Id.*
67. "noninsured bank" (1935): *Id.*
68. "affiliate" (Fed. Res. Act) (1935): *Id.* § 301, 49 Stat. 684, 707.
69. "member of a contract market" (1936): Commodity Exchange Act, Pub. L. No. 74-675, § 3, 49 Stat. 1491 (June 15, 1936).
70. "futures commission merchant" (1936): *Id.*
71. "floor broker" (1936): *Id.*
72. "national securities association" (1938): Securities Exchange Act Amendments of 1938, § 1, Pub. L. No. 75-719, 52 Stat. 1070 (June 25, 1938).
73. "affiliated securities association" (1938): *Id.*
74. member broker (of association) (1938): *Id.* 52 Stat. 1070, 1074.
75. member dealer (of association) (1938): *Id.*
76. nonmember broker (of association) (1938): *Id.*
77. nonmember dealer (of association) (1938): *Id.*
78. "affiliated company" (Inv. Co. Act, Inv. Adv. Act) (1940): Investment Company Act and Investment Advisers Act, Pub. L. No. 76-768, § 2(a), 54 Stat. 789, 791 (Aug. 22, 1940).
79. "affiliated person" (Inv. Co. Act, Inv. Adv. Act) (1940): *Id.*
80. "bank" (Inv. Co. Act, Inv. Adv. Act) (1940): *Id.*
81. "broker" (Inv. Co. Act) (1940): *Id.*

82. "company" (Inv. Co. Act, Inv. Adv. Act) (1940): *Id.*
83. "dealer" (Inv. Co. Act, Inv. Adv. Act) (1940): *Id.* 54 Stat. 789, 792.
84. "employees' security company" (1940): *Id.*
85. "exchange" (Inv. Co. Act, Inv. Adv. Act) (1940): *Id.*
86. "insurance company" (Inv. Co. Act, Inv. Adv. Act) (1940): *Id.* 54 Stat. 789, 793.
87. "investment adviser" (Inv. Co. Act) (1940): *Id.*
88. "investment banker" (1940): *Id.*
89. "issuer" (Inv. Co. Act) (1940): *Id.*
90. "principal underwriter" (Inv. Co. Act) (1940): *Id.* 54 Stat. 789, 794.
91. "promoter" (1940): *Id.*
92. "underwriter" (Inv. Co. Act) (1940): *Id.* 54 Stat. 789, 795.
93. "investment company" (1940): *Id.* § 3(a), 54 Stat. 789, 797.
94. "face-amount certificate company" (1940): *Id.* § 4, 54 Stat. 789, 799.
95. "unit investment trust" (1940): *Id.*
96. "management company" (1940): *Id.*
97. "open-end company" (1940): *Id.* § 5(a), 54 Stat. 789, 800.
98. "closed-end company" (1940): *Id.*
99. "diversified company" (1940): *Id.*
100. "non-diversified company" (1940): *Id.*
101. "unregistered investment company" (1940): *Id.* § 7(a), 54 Stat. 789, 802.
102. "depositor" (of underwriter) (1940): *Id.* 54 Stat. 789, 803.
103. "trustee" (of underwriter) (1940): *Id.*
104. "regular broker" (1940): *Id.* § 10(a), 54 Stat. 789, 806.
105. "custodian" (of registered mgmt. co. securities) (1940): *Id.* § 17(e), 54 Stat. 789, 816.
106. "broker" (Inv. Adv. Act) (1940): *Id.* § 202(a), 54 Stat. 789, 848.
107. "investment adviser" (Inv. Adv. Act) (1940): Id. (see also "affiliated persons of an investment adviser, *id.* § 10(a), 54 Stat. 789, 806).
108. "underwriter" (Inv. Adv. Act) (1940): *Id.* 54 Stat. 789, 849.
109. "State bank" (FDI Act) (1950): Federal Deposit Insurance Act, Pub. L. No. 81-797, § 1, 64 Stat. 873 (Sep. 21, 1950).
110. "State member bank" (FDI Act) (1950): *Id.*
111. "District bank" (1950): *Id.*
112. "national member bank" (1950): *Id.* 64 Stat. 873, 874.
113. "national nonmember bank" (1950): *Id.*
114. "new bank" (1950): *Id.*
115. "savings bank" (1950): *Id.*
116. "bank holding company" (1956): Bank Holding Company Act, Pub. L. No. 84-511, § 2(a), 70 Stat. 133 (May 9, 1956).
117. "company" (BHC Act) (1956): *Id.*
118. "bank" (BHC Act) (1956): *Id.*
119. "subsidiary" (BHC Act) (1956): *Id.* 70 Stat. 133, 134.
120. "successor" (1956): *Id.*
121. "nonbanking organization" (1956): *Id.* § 4(a), 70 Stat. 133, 135.
122. "qualified bank holding company" (1956): *Id.* § 10(a), 70 Stat. 133, 139, 145.

123. "holding company" (National Housing Act) (1959): An Act to promote and preserve local management of savings and loan associations by protecting them against encroachment by holding companies, Pub. L. No. 86-374, § 1, 73 Stat. 691, 691-92 (Sep. 23, 1959).
124. "bank service corporation" (1962): Bank Service Corporation Act, Pub. L. No. 87-856, § 1, 76 Stat. 1132 (Oct. 23, 1962).
125. "person associated with a broker or dealer" (1964): Securities Act Amendments of 1964, Pub. L. No. 88-467, § 2, 78 Stat. 565 (Aug. 20, 1964).
126. "person associated with a member" (of national securities exchange) (1964): *Id.*
127. "organization" (TILA) (1968): Consumer Credit Protection Act [Truth in Lending Act], Pub. L. No. 90-321, § 103, 82 Stat. 146, 147 (May 29, 1968).
128. "person" (TILA) (1968): *Id.*
129. "creditor" (TILA) (1968): *Id.*
130. "uninsured institution" (Nat'l. Housing Act) (1968): Savings and Loan Holding Company Amendments, Pub. L. No. 90-255, § 2, 82 Stat. 5, 6 (Feb. 14, 1968).
131. "company" (Nat'l. Housing Act) (1968): *Id.*
132. "savings and loan holding company" (1968): *Id.*
133. "multiple savings and loan holding company" (1968): *Id.*
134. "diversified savings and loan holding company" (1968): *Id.*
135. "subsidiary" (Nat'l. Housing Act) (1968): *Id.*
136. "affiliate" (Nat'l. Housing Act) (1968): *Id.*
137. "uninsured banks or uninsured institutions of any type" (BSA) (1970): Bank Secrecy Act &c, Pub. L. No. 91-508, § 122, 84 Stat. 1114, 1116 (Oct. 26, 1970).
138. "financial institution" (BSA) (1970): *Id.* § 203, 84 Stat. 1114, 1119.
139. "financial agency" (BSA) (1970): *Id.*
140. "card issuer" (BSA) (1970): *Id.* § 501, 84 Stat. 1114, 1126.
141. "consumer reporting agency" (1970): *Id.* § 603, 84 Stat. 1114, 1129.
142. "self-regulatory organization" (1970): Securities Investor Protection Act of 1970, Pub. L. No. 91-598, § 9, 84 Stat. 1636, 1654 (Dec. 30, 1970).
143. "thrift institutions' bank" (1970): Bank Holding Company Amendments Act of 1970, Pub. L. No. 91-607, § 101, 84 Stat. 1760, 1761 (Dec. 31, 1970).
144. "thrift institution" (BHC Act) (1970): *Id.* 84 Stat. 1760, 1763.
145. "card issuer" (TILA) (1974): Depository Institutions Amendments of 1974, Pub. L. No. 93-495, § 410, 88 Stat. 1500, 1519 (Oct. 28, 1974).
146. "state lending agencies" (1974): *Id.* § 412, 88 Stat. 1500, 1519.
147. "banking organization" (ECOA) (1974): *Id.* § 602, 88 Stat. 1500, 1525.
148. "business association" (ECOA) (1974): *Id.*
149. "financial organization" (ECOA) (1974): *Id.*
150. "title company" (1974): Real Estate Settlement Practices Act, Pub. L. No. 93-533, § 3, 88 Stat. 1724, 1725 (Dec. 22, 1974).
151. "cooperative bank" (RESPA) (1974): *Id.* § 11(a), 88 Stat. 1724, 1730.
152. "depository institution" (HMDA) (1975): An Act to extend the authority for the flexible regulation of interest rates on deposits and share accounts in depository institutions, to extend the National Commission on Electronic Fund Transfers, and to provide for home mortgage disclosure [Home Mortgage Disclosure Act], Pub. L. No. 94-200, § 303, 89 Stat. 1124, 1125 (Dec. 31, 1975).

153. "consumer lessor" (1976): Consumer Leasing Act of 1976, Pub. L. No. 94-240, § 3, 90 Stat. 257 (Mar. 23, 1976).
154. "regulated financial institution" (1977): Community Reinvestment Act, Pub. L. No. 95-128, § 802, 91 Stat. 1111, 1147 (Oct. 12, 1977).
155. "deposit facility" (1977): *Id.*
156. "branch" (of FBO) (1978): International Banking Act, Pub. L. No. 95-369, § 1(b), 92 Stat. 607 (Sep. 17, 1978).
157. "Federal branch" (of FBO) (1978): *Id.*
158. "foreign bank" (1978): *Id.*
159. "commercial lending company" (of FBO) (1978): *Id.*
160. "state agency" (of FBO) (1978): *Id.*
161. "state branch" (of FBO) (1978): *Id.* 92 Stat. 607, 608.
162. "foreign-owned banking institutions" (1978): *Id.* § 3(a), 92 Stat. 607, 608.
163. "representative office" (of FBO) (1978): *Id.* § 10, 92 Stat. 607, 624.
164. "depository institution" (§ 19(b), Fed. Res. Act) (1980)
165. "bank" (§ 19(b), Fed. Res. Act) (1980)
166. "lender" (mortgages, Title V, Dep. Inst. Dereg. and Mon. Control Act) (1980)
167. "depository institution" (mortgages, Title V, Dep. Inst. Dereg. And Mon. Control Act) (1980): Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221, § 102-3, 94 Stat. 132, 133 (Mar. 31, 1980).
168. "bankers' banks" (1980): *Id.* § 710, 94 Stat. 132, 189.
169. "domestic financial institution" (1980): *Id.* § 901, 94 Stat. 132, 192.
170. "insured Federal savings bank" (1982): Garn-St. Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, § 113, 96 Stat. 1469 , 1473 (Oct. 15, 1982).
171. "insured State nonmember bank" (1982): *Id.*
172. "association" (1982): *Id.* § 114, 96 Stat. 1469, 1475.
173. "insured depository institution" (Nat'l. Housing Act) (1982): *Id.* §§ 116, 123, 96 Stat. 1469, 1478, 1484.
174. "in-State depository institution" (1982): *Id.*
175. "in-State holding company" (1982): *Id.*
176. "Federal stock savings and loan association" (1982): *Id.* § 121, 96 Stat. 1469, 1479-80.
177. "Federal stock savings bank" (1982): *Id.*
178. "Federal stock savings institutions" (1982): *Id.*
179. "domestic building and loan association" (1982): *Id.* § 334, 96 Stat. 1469, 1504.
180. "lender" (due-on-sale preemption, Garn-St. Germain Act) (1982): *Id.* § 341, 96 Stat. 1469, 1505.
181. "bankers' banks" (1982): *Id.* § 404, 96 Stat. 1469, 1511.
182. "bank" (tying, § 106, BHC Act of 1970) (1982): *Id.* § 428(c), 96 Stat. 1469, 1526.
183. "subsidiary" (Fed. Res. Act) (1982): *Id.* § 410, 96 Stat. 1469, 1516.
184. "bank" (Fed. Res. Act, § 23A) (1982): *Id.*
185. "industrial bank" (1982): *Id.* § 703(a), 96 Stat. 1469, 1538.
186. "depository institution" (Bank Serv. Corp. Act) (1982): *Id.* § 709, 96 Stat. 1469, 1541.
187. "housing creditor" (alternative mortgage transactions) (1982): *Id.* § 803, 96 Stat. 1469, 1545-46.
188. "government securities broker" (1986): Government Securities Act of 1986, Pub. L. No. 99-571, § 101, 100 Stat. 3208, 3216-17 (Oct. 28, 1986).

189. "government securities dealer" (1986): *Id.*
190. "person associated with a government securities broker or government securities dealer" (1986): *Id.*
191. "financial institution" (SEA of 1934) (1986): *Id.*
192. "registered broker or dealer" (Gov't. Sec. Act of 1986) (1986): *Id.*
193. "depository institution" (Gov't. Sec. Act of 1986) (1986): *Id.* § 101, 100 Stat. 3208, 3223-24.
194. "affiliate" (BHC Act) (1987): Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, § 101, 101 Stat. 552, 557 (Aug. 10, 1987).
195. "savings bank holding company" (1987): *Id.*
196. "qualified savings bank" (1987): *Id.*
197. "thrift institutions' bank" (1987): *Id.* § 101, 101 Stat. 552, 562.
198. "primary dealer" (1987): *Id.* § 101, 101 Stat. 552, 559.
199. "principal underwriter" (Fed. Res. Act) (1987): *Id.* § 102, 101 Stat. 552, 565.
200. "foreign savings and loan holding company" (1987): *Id.* § 104, 101 Stat. 552, 570.
201. "interim savings institution" (1987): *Id.* § 107, 101 Stat. 552, 577.
202. "mutual holding company" (1987): *Id.* § 107¸ 101 Stat. 552, 579.
203. "mutual institution" (1987): *Id.*
204. "freestanding state-chartered banks" (1987): *Id.* § 201, 101 Stat. 552, 583.
205. "state chartered, federally insured thrifts" (1987): *Id.* § 402, 101 Stat. 552, 611.
206. "minority association" (HOLA) (1987): *Id.* § 404, 101 Stat. 552, 611.
207. "minority institution" (HOLA) (1987): *Id.* § 404, 101 Stat. 552, 612.
208. "underutilized thrift institution" (1987): *Id.* § 412, 101 Stat. 552, 620.
209. "underutilized minority thrift institution" (1987): *Id.*
210. "affiliated insured bank" (1987): *Id.* § 502, 101 Stat. 552, 627.
211. "bridge banks" (1987): *Id.* § 503, 101 Stat. 552, 629.
212. "out-of-state bank" (1987): *Id.* § 503, 101 Stat. 552, 631.
213. "out-of-state holding company" (FDI Act) (1987): *Id.* § 503, 101 Stat. 552, 632.
214. "new bank" (1987): *Id.*
215. "check clearinghouse association" (1987): *Id.* § 602, 101 Stat. 552, 636.
216. "local originating depository institution" (1987): *Id.*
217. "originating depository institution" (1987): *Id.* § 602, 101 Stat. 552, 637.
218. "receiving depository institution" (1987): *Id.*
219. "electronic clearinghouse" (1987): *Id.* § 602, 101 Stat. 552, 649.
220. "person associated with a transfer agent" (1987): Securities Exchange Commission Authorization Act of 1987, Pub. L. No. 100-181, § 306, 101 Stat. 1249, 1254 (Dec. 4, 1987).
221. "clearing agency" (1987): *Id.* § 321, 101 Stat. 1249, 1257.
222. "transfer agent" (1987): *Id.*
223. "municipal securities dealer" (1987): *Id.*
224. "insured depository institution" (FDI Act) (1989): Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, § 201, 103 Stat. 183, 187 (Aug. 9, 1989).
225. "savings association" (FDI Act) (1989): *Id.* § 204, 103 Stat. 183, 190.
226. "Federal savings association" (FDI Act) (1989): *Id.*
227. "State savings association" (1989): *Id.*

228. "depository institution" (FDI Act) (1989): *Id.* § 204, 103 Stat. 183, 191 (*see also* criminal provisions related to "institution-affiliated party," *id.* § 901, 103 Stat. 183, 446).
229. "Federal depository institution" (FDI Act) (1989): *Id.*
230. "State depository institution" (1989): *Id.*
231. "institution-affiliated party" (1989): *Id.* § 204, 103 Stat. 183, 193.
232. "depository institution holding company" (1989): *Id.*
233. "subsidiary" (FDI Act) (1989): *Id.*
234. "insured savings association" (FDI Act) (1989): *Id.* § 205, 103 Stat. 183, 194.
235. "interim Federal savings association" (1989): *Id.* § 205, 103 Stat. 183, 196.
236. "commonly controlled depository institution" (1989): *Id.* § 206, 103 Stat. 183, 201, 205.
237. "uninsured institution" (FDI Act) (1989): *Id.* (*see* heading).
238. "minority bank" (FDI Act) (1989): *Id.* § 217, 103 Stat. 183, 257.
239. "qualified affiliate" (sec. inv.) (1989): *Id.* § 222, 103 Stat. 183, 269.
240. "deposit broker" (1989): *Id.* § 224, 103 Stat. 183, 274.
241. "troubled institution" (1989): *Id.* § 224, 103 Stat. 183, 275.
242. "savings association" (HOLA) (1989): *Id.* § 301, 103 Stat. 183, 277-78.
243. "Federal savings association" (HOLA) (1989): *Id.*
244. "District association" (1989): *Id.* § 301, 103 Stat. 183, 315.
245. "specialized savings association serving transient military personnel" (1989): *Id.* § 301, 103 Stat. 183, 346.
246. "Puerto Rico savings associations" (1989): *Id.* § 301, 103 Stat. 183, 349.
247. "Virgin Islands savings associations" (1989): *Id.*
248. "minority depository institution" (FIRREA) (1989): *Id.* § 307, 103 Stat. 183, 354 (*see also* "minority financial institution," *id.* § 308, 103 Stat. 183, 353-54).
249. "clearinghouses" (1989): *Id.* § 308, 103 Stat. 183, 380.
250. "independent auditor" (1989): *Id.* § 931, 103 Stat. 183, 493.
251. "state-licensed appraiser" (1989): *Id.* § 1114, 103 Stat. 183, 514-15.
252. "state appraiser certifying and licensing agency" (1989): *Id.* § 1121, 103 Stat. 183, 517-18.
253. "low-income credit union" (1989): *Id.* § 1204, 103 Stat. 183, 521.
254. "women's bank" (1989): *Id.*
255. "person participating in an offering of a penny stock" (1990): Penny Stock Reform Act of 1990, Pub. L. No. 101-429, § 504, 104 Stat. 953 (Oct. 15, 1990).
256. "large trader" (1990): Securities Markets Reform Act of 1990, Pub. L. No. 101-432, § 3, 104 Stat. 963, 966 (Oct. 16, 1990)
257. "Bank Insurance Fund members" (1991): Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, § 105, 105 Stat. 2236, 2239 (Dec. 19, 1991).
258. "small institutions" (1991): *Id.* § 111, 105 Stat. 2236, 2241.
259. "government-controlled institutions" (1991): *Id.* (*see* heading).
260. "insured branch" (1991): *Id.* § 111, 105 Stat. 2236, 2242.
261. "large insured depository institution" (1991) *Id.* § 111, 105 Stat. 2236, 2244 (*see* heading).
262. "undercapitalized depository institution" (1991): *Id.* § 142, 105 Stat. 2236, 2281.
263. "private deposit insurers" (1991): *Id.* § 151, 105 Stat. 2236, 2282-83.
264. "depository institution" (private deposit insurance, FDICIA) (1991): *Id.* § 151, 105 Stat. 2236, 2283.

265. "affiliate" (of FBO) (1991): *Id.* § 202, 105 Stat. 2236, 2291.
266. "office" (of FBO) (1991): *Id.*
267. "financial institution" (stock loan reporting, § 7(j)(9), FDI Act) (1991): *Id.* § 204, 105 Stat. 2236, 2293.
268. "community development bank" (1991): *Id.* § 234, 105 Stat. 2236, 2315-17.
269. "broker or dealer" (payment system risk, Title IV, FDICIA) (1991): *Id.* § 402, 105 Stat. 2236, 2372-73.
270. "clearing organization" (payment system risk, Title IV, FDICIA) (1991): *Id.*
271. "failed financial institution" (payment system risk, Title IV, FDICIA) (1991): *Id.*
272. "failed member" (payment system risk, Title IV, FDICIA) (1991): *Id.*
273. "financial institution" (payment system risk, Title IV, FDICIA) (1991): *Id.*
274. "futures commission merchant" (payment system risk, Title IV, FDICIA) (1991): *Id.*
275. "member" (of clearing organization, payment system risk, Title IV, FDICIA) (1991): *Id.*
276. "community development financial institution" (1994): Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. No. 103-325, § 103, 108 Stat. 2160, 2164 (Sep. 23, 1994)
277. "insured community development financial institution" (1994): *Id.*
278. "subsidiary" (of CDFI) (1994): *Id.*
279. "financial institution" (small bus. cap. access, Sub. B, Riegle Comm. Dev. Act) (1994): *Id.* § 252, 108 Stat. 2160, 2205.
280. "money transmitting business" (1994): *Id.* § 408, 108 Stat. 2160, 2249.
281. "agents of money transmitting business" (1994): *Id.* § 408, 108 Stat. 2160, 2251.
282. "casinos" (1994): *Id.* § 409, 108 Stat. 2160, 2252.
283. "regulated lending institution" (flood ins.) (1994): *Id.* § 511, 108 Stat. 2160, 2257.
284. "out-of-state bank" (1994): Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, § 101, 108 Stat. 2338, 2342-43 (Sep. 29, 1994).
285. "out-of-state bank holding company" (branching, Riegle-Neal Act) (1994): *Id.*
286. "de novo branch" (1994): *Id.* § 101, 108 Stat. 2338, 2353.
287. "state branch or agency" (of FBO) (1994): *Id.* § 104, 108 Stat. 2338, 2354.
288. "subsidiary commercial lending company" (of FBO) (1994): *Id.*
289. "interstate bank" (branch closure notice) (1994): *Id.* § 106, 108 Stat. 2338, 2358.
290. "uninsured branch" (of FBO) (1994): *Id.* § 107, 108 Stat. 2338, 2360.
291. "insured banks in U.S. territories" (1994): *Id.*
292. "shell branches" (1994): *Id.*
293. "interstate branch" (1994): *Id.* § 109, 108 Stat. 2338, 2364.
294. "domestic branch" (1994): *Id.* § 110, 108 Stat. 2338, 2364.
295. "financial holding company" (1999): Gramm-Leach-Bliley Act, Pub. L. No. 106-102, § 103, 113 Stat. 1338, 1342 (Nov. 12, 1999).
296. "insurance company" (BHC Act) (1999): *Id.* § 103, 113 Stat. 1338, 1351.
297. "affiliate" (GLB Act) (1999): *Id.* § 104, 113 Stat. 1338, 1358.
298. "insurer" (GLB Act) (1999): *Id.*
299. "limited purpose bank" (1999): *Id.* § 107, 113 Stat. 1338, 1359.
300. "limited purpose credit card banks" (1999): *Id.* § 107, 113 Stat. 1338, 1361.
301. "functionally regulated subsidiary" (1999): *Id.* § 111, 113 Stat. 1338, 1364, 1366.

302. "functionally regulated affiliate" (1999): *Id.* § 112, 113 Stat. 1338, 1367-68.
303. "financial subsidiaries of national banks" (1999): *Id.* § 121, 113 Stat. 1338, 1373, 1378.
304. "financial agency subsidiary" (1999): *Id.* § 121, 113 Stat. 1338, 1374 (*see* heading).
305. "third-party brokerage" (1999): *Id.* § 201, 113 Stat. 1338, 1385.
306. "carrying broker" (1999): *Id.* § 201, 113 Stat. 1338, 1389.
307. "[bank] affiliated investment company" (1999): *Id.* § 212, 113 Stat. 1338, 1396 (*see also* "bank investment company," *id.* § 211, 113 Stat. 1338, 1396).
308. "investment bank holding company" (1999): *Id.* § 231, 113 Stat. 1338, 1402, 1406.
309. "supervised investment bank holding company" (1999): *Id.*
310. "insurance affiliate" (1999): *Id.* § 302, 113 Stat. 1338, 1409.
311. "insurance subsidiary" (1999): *Id.*
312. "insurance licensee" (1999): *Id.* § 315, 113 Stat. 1338, 1421.
313. "institution" (mutual ins. redomestication) (1999): *Id.*
314. "mutual insurer" (1999): *Id.*
315. "redomesticated insurer" (1999): *Id.*
316. "redomesticating insurer" (1999): *Id.*
317. "insurance producer" (GLB Act) (1999): *Id.* § 336, 113 Stat. 1338, 1433.
318. "secondary market institutions" (privacy, Title V, GLB Act) (1999): *Id.* § 509, 113 Stat. 1338, 1443-45.
319. "affiliate" (privacy, Title V, GLB Act) (1999): *Id.*
320. "financial institution" (privacy, Subtitle B, GLB Act) (1999): *Id.* (*see also id.* § 527, 113 Stat. 1338, 1449).
321. "community financial institution" (FHLB membership) (1999): *Id.* § 602, 113 Stat. 1338, 1450.
322. "board of trade" (2000): Commodity Futures Modernization Act, Pub. L. No. 106-554, § 101, 114 Stat. 2763A-365, 2763A-366 (Dec. 21, 2000) (*see also* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 738, 124 Stat. 1376, 1726 (July 21, 2010) ("foreign board of trade").
323. "derivatives clearing organization" (2000): *Id.*
324. "electronic trading facility" (2000): *Id.*
325. "eligible commercial entity" (2000): *Id.*
326. "eligible contract participant" (2000): *Id.*
327. "financial institution" (CEA) (2000): *Id.*
328. "member of a contract market" (2000): *Id.* § 738, 114 Stat. 2763A-365, 2763A-372.
329. "member of a derivatives transaction execution facility" (2000): *Id.*
330. "organized exchange" (2000): *Id.* § 738, 114 Stat. 2763A-365, 2763A-374.
331. "registered entity" (2000): *Id.*
332. "trading facility" (2000): *Id.* § 738, 114 Stat. 2763A-365, 2763A-375.
333. "multilateral clearing organization" (2000): *Id.* § 112, 114 Stat. 2763A-365, 2763A-391.
334. "clearing organization" (CEA) (2000): *Id.*
335. "clearing bank" (resolution, CEA) (2000): *Id.*
336. "bank" (Legal Certainty for Bank Products Act of 2000) (2000): *Id.* § 402, 114 Stat. 2763A-365, 2763A-457.
337. "public accounting firm" (2002): Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, § 2, 116 Stat. 745, 747 (July 30, 2002) (*see also* "registered public accounting firm," *Id.* at 748).

338. "person associated with a public accounting firm" (2002): *Id.*
339. "foreign public accounting firm" (2002): *Id.* § 106, 116 Stat. 745, 764.
340. "credit rating agencies" (2002): *Id.* § 702, 116 Stat. 745, 787.
341. "card issuer" (FATCA) (2003): Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159, § 111, 117 Stat. 1952, 1954 (Dec. 4, 2003).
342. "financial institution" (FATCA) (2003): *Id.* § 111, 117 Stat. 1952, 1955.
343. "reseller" (FATCA) (2003): *Id.*
344. "nationwide specialty consumer reporting agency" (2003): *Id.*
345. "debt collector" (2003): *Id.* § 155, 117 Stat. 1952, 1967.
346. "consumer reporting agency" (FATCA) (2003): *Id.* § 211, 117 Stat. 1952, 1969.
347. "credit repair organization" (2003): *Id.* § 312, 117 Stat. 1952, 1992.
348. "furnisher" (2003): *Id.*
349. "depository institution" (IOR, Title II, FSRRA) (2006): Financial Services Regulatory Relief Act of 2006, Pub. L. No. 109351, § 201, 120 Stat. 1966, 1968-69 (Oct. 16, 2006).
350. "nonfederally insured credit unions" (2006): *Id.* § 505, 120 Stat. 1966, 1975-76 (*see* heading).
351. "relevant depository institution" (removal of affiliated persons) (2006): *Id.* § 708, 120 Stat. 1966, 1989.
352. "loan originator" (2008): Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, § 1503, 122 Stat. 2654, 2811 (July 30, 2008).
353. "loan processor or underwriter" (2008): *Id.* § 1503, 122 Stat. 2654, 2812.
354. "registered loan originator" (2008): *Id.*
355. "state-licensed loan originator" (2008): *Id.*
356. "new depository institution" (2008): *Id.* § 1603, 122 Stat. 2654, 2829.
357. "bridge depository institution" (2008): *Id.*
358. "payment settlement entity" (2008): *Id.* § 3091, 122 Stat. 2654, 2908.
359. "third party settlement organization" (2008): *Id.*
360. "electronic payment facilitators" (2008): *Id.* § 3091, 122 Stat. 2654, 2909.
361. "third party payment network" (2008): *Id.* § 3091, 122 Stat. 2654, 2909-10.
362. "nonbank financial company " (2010): Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 102, 124 Stat. 1376, 1391 (July 21, 2010).
363. "foreign nonbank financial company" (2010): *Id.*
364. "significant nonbank financial company" (2010): *Id.*
365. "significant bank holding company" (2010): *Id.*
366. "U.S. nonbank financial company" (2010): *Id.*
367. "U.S. nonbank financial company supervised by the Board of Governors" (2010): *Id.*
368. "intermediate holding company" (2010): *Id.* § 102, 124 Stat. 1376, 1400.
369. "company predominantly engaged in financial activities" (2010): *Id.*
370. "foreign bank intermediate holding company" (2010): *Id.* § 174, 124 Stat. 1376, 1441.
371. "bridge financial company " (2010): *Id.* § 201, 124 Stat. 1376, 1442, 1496.
372. "covered broker or dealer" (Title II, Dodd-Frank Act) (2010): *Id.*
373. "private fund" (2010): *Id.* § 402, 124 Stat. 1376, 1570.
374. "foreign private adviser" (2010): *Id.*
375. "hedge fund" (2010): *Id.* (*see* heading).
376. venture capital fund advisers (2010): *Id.* § 407, 124 Stat. 1376, 1574.

377. mid-sized private fund advisers (2010): *Id.* § 408, 124 Stat. 1376, 1575 (*see* heading).
378. family offices (2010): *Id.* § 409, 124 Stat. 1376, 1575.
379. "admitted insurer" (2010): *Id.* § 527, 124 Stat. 1376, 1592-94.
380. "insurer" (2010): *Id.* §§ 413, 527, 124 Stat. 1376, 1587-88, 1592-94.
381. "affiliate" (insurance, Title V, Dodd-Frank Act) (2010): *Id.*
382. "small insurer" (2010): *Id.* § 413, 124 Stat. 1376, 1582 (*see* heading).
383. "non-United States insurer" (2010): *Id.* § 413, 124 Stat. 1376, 1587-88.
384. "United States insurer" (2010): *Id.*
385. "financial company" (2010): *Id.* §§ 151, 622, 124 Stat. 1376, 1412, 1633 (for Office of Financial Research and concentration limit purposes, respectively).
386. "covered financial company" (orderly liquidation, Title II, DFA) (2010): *Id.* § 201, 124 Stat. 1376, 1442.
387. "covered subsidiary" (orderly liquidation, Title II, DFA) (2010): *Id.*
388. "insurance company" (orderly liquidation, Title II, DFA) (2010): *Id.*
389. "financial institution" (orderly liquidation, Title II, DFA) (2010): *Id.* § 201, 124 Stat. 1376, 1481.
390. "financial institution" (commodities, Title VII, DFA) (2010): *Id.* § 803, 124 Stat. 1376, 1804.
391. "eligible financial company" (orderly liquidation, Title II, DFA) (2010): *Id.* § 201, 124 Stat. 1376, 1509.
392. "exempt commercial purchaser" (of insurance) (2010): *Id.* § 527, 124 Stat. 1376, 1592.
393. "nonadmitted insurer" (2010): *Id.* § 527, 124 Stat. 1376, 1593.
394. "surplus lines broker" (insurance) (2010): *Id.* § 527, 124 Stat. 1376, 1594.
395. "reinsurer" (2010): *Id.* § 533, 124 Stat. 1376, 1596.
396. "commercial firm" (2010): *Id.* § 602, 124 Stat. 1376, 1596-97.
397. "trust bank" (2010): *Id.* § 603, 124 Stat. 1376, 1597.
398. "swaps entity" (2010): *Id.* § 716, 124 Stat. 1376, 1648.
399. "grandfathered unitary savings and loan holding company" (2010): *Id.* § 626, 124 Stat. 1376, 1638.
400. "associated person of a security-based swap dealer or major security-based swap participant" (2010): *Id.* § 721, 124 Stat. 1376, 1658.
401. "associated person of a swap dealer or major swap participant" (2010): *Id.*
402. "commodity pool operator" (2010): *Id.*
403. "derivatives transaction execution facility" (2010): *Id.* § 721, 124 Stat. 1376, 1660.
404. "introducing broker" (2010): *Id.* § 721, 124 Stat. 1376, 1662.
405. "major swap participant " (2010): *Id.* § 721, 124 Stat. 1376, 1663.
406. "security-based swap dealer" (2010): *Id.* (*see also id.* § 761, 124 Stat. 1376, 1758).
407. "swap data repository" (2010): *Id.* (*see also id.* § 728, 124 Stat. 1376, 1697-98).
408. "swap dealer" (Title VII, DFA) (2010): *Id.*
409. "swap execution facility" (2010): *Id.* (*see also id.* § 733, 124 Stat. 1376, 1712).
410. "financial entity" (Title VII, DFA) (2010): *Id.* § 723, 124 Stat. 1376, 1679 (*see also id.* § 763, 124 Stat. 1376, 1765).
411. "large swap trader" (2010): *Id.* § 730, 124 Stat. 1376, 1702.
412. "special entities" (Title VII, DFA) (2010): *Id.* § 731, 124 Stat. 1376, 1708.
413. "contract market" (2010): *Id.* § 735, 124 Stat. 1376, 1718 (*but see* Commodity Futures Modernization Act, Pub. L. No. 106-554, § 252, 114 Stat. 2763A-365, 2763A-445 (Dec. 21, 2000)).
414. multilateral clearing organizations (2010): *Id.* § 740, 124 Stat. 1376, 1729.

415. "security-based swap data repository" (2010): *Id.* § 761, 124 Stat. 1376, 1758.
416. "security-based swap execution facility" (2010): *Id.* (see also *id.* § 763, 124 Stat. 1376, 1769-70).
417. "large trader" (Title VII, DFA) (2010): *Id.* § 763, 124 Stat. 1376, 1779.
418. "designated clearing entity" (2010): *Id.* § 803, 124 Stat. 1376, 1804.
419. "designated financial market utility" (2010): *Id.*
420. "financial market utility" (2010): *Id.* § 803, 124 Stat. 1376, 1805.
421. "systemically important financial market utilities" (2010): *Id.* § 805, 124 Stat. 1376, 1809.
422. service providers (to FMUs) (2010): *Id.* § 807, 124 Stat. 1376, 1814.
423. "financial planners" (2010): *Id.* § 919C, 124 Stat. 1376, 1839.
424. Subsidiary (of NRSRO) (2010): *Id.* § 931, 124 Stat. 1376, 1872.
425. "controlled company" (2010): *Id.* § 952, 124 Stat. 1376, 1903.
426. "municipal advisor" (2010): *Id.* § 975, 124 Stat. 1376, 1916.
427. "nondepository covered persons" (CFPB) (2010): *Id.* § 1024, 124 Stat. 1376, 1987.
428. "person regulated by the CFTC" (2010): *Id.* § 1002, 124 Stat. 1376, 1955-56.
429. "person regulated by the SEC" (2010): *Id.*
430. "person that performs income tax preparation activities for consumers" (2010): *Id.* § 1027, 124 Stat. 1376, 1998.
431. "person regulated by a State insurance regulator" (2010): *Id.* § 1027, 124 Stat. 1376, 2000.
432. "motor vehicle dealer" (2010): *Id.* § 1029, 124 Stat. 1376, 2004.
433. "remittance transfer provider" (2010): *Id.* § 1073, 124 Stat. 1376, 2065.
434. "payment card network" (2010): *Id.* § 1075, 124 Stat. 1376, 2072, 2074.
435. "issuer" (payment cards, DFA) (2010): *Id.*
436. "exchange facilitators" (2010): *Id.* § 1079, 124 Stat. 1376, 2079.
437. "federally insured depository institution" (2010): *Id.* § 1203, 124 Stat. 1376, 2130.
438. "mortgage originator" (2010): *Id.* § 1401, 124 Stat. 1376, 2137.
439. "fee appraiser" (TILA) (2010): *Id.* § 1472, 124 Stat. 1376, 2189.
440. "appraisal management companies" (2010): *Id.* § 1473, 124 Stat. 1376, 2191.
441. "third party providers of appraisal management services" (2010): *Id.*
442. "resource extraction issuer" (2010): *Id.* § 1504, 124 Stat. 1376, 2220.
443. "affiliate" (CFPB, Title X, Dodd-Frank Act) (2010): *Id.* § 1002, 124 Stat. 1376, 1955.
444. "regulated foreign subsidiary" (2014): Insurance Capital Standards Clarification Act of 2014, Pub. L. No. 113-279, § 2, 128 Stat. 3017 (Dec. 18, 2014).
445. "regulated foreign affiliate" (2014): *Id.*
446. small bank holding company (2014): An Act to enhance the ability of community financial institutions to foster economic growth and serve their communities, boost small businesses, increase individual savings, and for other purposes, Pub. L. No. 113-250, § 1, 128 Stat. 2886 (Dec. 18, 2014).
447. "qualifying community bank" (for CBLR) (2018): Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, § 201, 132 Stat. 1296, 1306 (May 24, 2018).
448. "agent institution" (for reciprocal deposits) (2018): *Id.* § 202, 132 Stat. 1296, 1307-08.
449. "deposit placement network" (2018): *Id.*
450. "network member bank" (2018): *Id.*
451. "small public housing agency" (2018): *Id.* § 209, 132 Stat. 1296, 1313.

452. "financial institution" (online banking enrollment, EGRRCPA) (2018): *Id.* § 213, 132 Stat. 1296, 1319.
453. "covered financial institution" (disclosure-related immunity, EGRRCPA) (2018): *Id.* § 303, 132 Stat. 1296, 1336.
454. "insurance agency" (2018): *Id.*
455. "insurance producer" (EGRRCPA) (2018): *Id.*
456. "investment adviser representative" (2018): *Id.*
457. "registered representative" (2018): *Id.*
458. "qualifying venture capital fund" (2018): *Id.* § 504, 132 Stat. 1296, 1362.
459. "covered institution" (TILA safe harbor, Title I, EGRRCPA) (2018): *Id.* § 101, 132 Stat. 1296, 1297-98.
460. "covered insured depository institution" (reciprocal deposits, Title II, EGRRCPA) (2018): *Id.* § 202, 132 Stat. 1296, 1308.
461. "covered savings association" (HOLA, Title II, EGRRCPA) (2018): *Id.* § 206, 132 Stat. 1296, 1310.
462. "grandfathered covered savings association" (2018): *Id.*