

BANK SERVICE COMPANY ACT

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§ 1. Short title and definitions

(a) Short title

This Act may be cited as the “Bank Service Company Act”.

(b) Definitions

For the purpose of this chapter

(1) the term “appropriate Federal banking agency” shall have the meaning provided in section 3(q) of the Federal Deposit Insurance Act;

(2) the term “bank service company” means—

(A) any corporation

(i) which is organized to perform services authorized by this chapter;
and

(ii) all of the capital stock of which is owned by 1 or more insured depository institutions; and

(B) any limited liability company—

(i) which is organized to perform services authorized by this chapter;
and

(ii) all of the members of which are 1 or more insured depository institutions.

(3) the term “Board” means the Board of Governors of the Federal Reserve System;

(4) the term “depository institution” means, except when such term appears in connection with the term “insured depository institution”, an insured bank, financial institution subject to examination by the

Director of the Office of Thrift Supervision or the National Credit Union Administration Board, or a financial institution the accounts or deposits of which are insured or guaranteed under State law and are eligible to be insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration Board;

(5) Insured depository institution

The term “insured depository institution” has the same meaning as in section 3(c) of the Federal Deposit Insurance Act;

(6) the term “invest” includes any advance of funds to a bank service company, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment;

(7) the term “limited liability company” means any company, partnership, trust, or similar business entity organized under the law of a State (as defined in section 3 of the Federal Deposit Insurance Act) which provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company;

(8) the term “principal investor” means the insured depository institution that has the largest dollar amount invested in the equity of a bank service company. In any case where two or more insured depository institutions have equal dollar amounts invested in a bank service company, the company shall, prior to commencing operations,

select one of the insured depository institutions as its principal investor and shall notify the depository institution's appropriate Federal banking agency of that choice within 5 business days of its selection; and

(9) the terms "State depository institution", "Federal depository institution", "State savings association" and "Federal savings association" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

§ 2. Amount of investment in bank service company

Notwithstanding any limitation or prohibition otherwise imposed by any provision of law exclusively relating to banks or savings associations, other than the limitation on the amount of investment by a Federal savings association contained in section 5(c)(4)(B) of the Home Owners' Loan Act, an insured depository institution may invest not more than 10 per centum of paid-in and unimpaired capital and unimpaired surplus in a bank service company. No insured depository institution shall invest more than 5 per centum of its total assets in bank service companies.

§ 3. Permissible bank service company activities for depository institutions

Without regard to the provisions of sections 4 and 5 of this Act, an insured depository institution may invest in a bank service company that performs, and a bank service company may perform, the following services only for depository institutions: check and deposit sorting and posting, computation and posting of interest and

other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a depository institution.

§ 4. Permissible bank service company activities for other persons

(a) Services permissible other than taking deposits

A bank service company may provide to any person any service authorized by this section, except that a bank service company shall not take deposits.

(b) Services to be performed in State where shareholders or members are located

Except as permissible under subsection (c), (d), or (e) or with the prior approval of the Board under section 5(b) of this Act in accordance with subsection (f) of this section—

(1) a bank service company shall not perform the services authorized by this section in any State other than that State in which its shareholders or members are located; and

(2) all insured bank shareholders or members of a bank service company shall be located in the same State.

(c) Performance where State bank or savings association is shareholder or member

A bank service company in which a State bank or State savings association is a shareholder or member shall perform only those services that such State bank or State savings association shareholder or member is authorized to perform under the law of the State in which such State bank or State savings association operates and shall perform such services only at locations in the State in which such State bank or State savings association shareholder or member could be authorized to perform such services.

(d) Performance where national bank or Federal savings association is shareholder or member

A bank service company in which a national bank or Federal savings association is a shareholder or member shall perform only those services that such national bank or Federal savings association shareholder or member is authorized to perform under the law of the United States and shall perform such services only at locations in the State at which such national bank or Federal savings association shareholder or member could be authorized to perform such services.

(e) Performance where State bank and national bank are shareholders or members

A bank service company may perform—

(1) only those services that each depository institution shareholder or member is otherwise authorized to perform under any applicable Federal or State law; and

(2) such services only at locations in a State in which each such

shareholder or member is authorized to perform such services.

(f) Geographic location

Notwithstanding the other provisions of this section or any other provision of law, other than the provisions of Federal and State branching law regulating the geographic location of banks or savings associations to the extent that those laws are applicable to an activity authorized by this subsection, a bank service company may perform at any geographic location any service, other than deposit taking, that the Board has determined, by regulation, to be permissible for a bank holding company under section 4(c)(8) of the Bank Holding Company Act as of the day before November 12, 1999.

§ 5. Prior approval for investments in bank service companies

(a) Approval of Federal banking agency

No insured depository institution shall invest in the capital stock of a bank service company that performs any service under authority of subsection (c), (d), or (e) of section 4 of this Act without prior notice, as determined by the appropriate Federal banking agency for the insured depository institution.

(b) Approval of Board

No insured depository institution shall invest in the capital stock of a bank service company that performs any service authorized only under authority of section 4(f) of this Act and no bank service

company shall perform any activity authorized only under section 4(f) of this Act without the prior approval of the Board.

(c) Considerations in determining approval

In determining whether to approve or deny any application for prior approval or whether to approve or disapprove any notice under this section, the Board or the appropriate Federal banking agency, as the case may be, is authorized to consider the financial and managerial resources and future prospects of any insured depository institution and bank service company involved, including the financial capability of the insured depository institution to make a proposed investment under this Act, and possible adverse effects such as undue concentration of resources, unfair or decreased competition, conflicts of interest, or unsafe or unsound banking practices.

(d) Failure to act on application for approval

In the event the Board or the appropriate Federal banking agency, as the case may be, fails to act on any application under this section within ninety days of the submission of a complete application to the agency, the application shall be deemed approved.

§ 6. Services to nonstockholders or nonmembers

No bank service company shall unreasonably discriminate in the provision of any services authorized under this Act to any depository institution that does not own stock in or is not a member of the service company on the basis of the fact that such depository institution is in competition with an institution that owns stock in or

is a member of the bank service company, except that—

(1) it shall not be considered unreasonable discrimination for a bank service company to provide services to a nonstockholding or nonmember institution only at a price that fully reflects all of the costs of offering those services, including the cost of capital and a reasonable return thereon; and

(2) a bank service company may refuse to provide services to a nonstockholding or nonmember institution if comparable services are available from another source at competitive overall costs, or if the providing of services would be beyond the practical capacity of the service company.

§ 7. Regulation and examination of bank service companies

(a) Principal investor

A bank service company shall be subject to examination and regulation by the appropriate Federal banking agency of its principal investor to the same extent as its principal investor. The appropriate Federal banking agency of the principal shareholder or principal member of such a bank service company may authorize any other Federal banking agency that supervises any other shareholder or member of the bank service company to make such an examination.

(b) Applicability of section 8 of the Federal Deposit Insurance Act

A bank service company shall be subject to the provisions of

section 8 of the Federal Deposit Insurance Act as if the bank service company were an insured depository institution. For this purpose, the appropriate Federal banking agency shall be the appropriate Federal banking agency of the principal investor of the bank service company.

(c) Services performed by contract or otherwise

Notwithstanding subsection (a) of this section, whenever a depository institution that is regularly examined by an appropriate Federal banking agency, or any subsidiary or affiliate of such a depository institution that is subject to examination by that agency, causes to be performed for itself, by contract or otherwise, any services authorized under this chapter, whether on or off its premises —

(1) such performance shall be subject to regulation and examination by such agency to the same extent as if such services were being performed by the depository institution itself on its own premises, and

(2) the depository institution shall notify such agency of the existence of the service relationship within thirty days after the making of such service contract or the performance of the service, whichever occurs first.

(d) Issuance of regulations and orders

The Board and the appropriate Federal banking agencies are authorized to issue such regulations and orders as may be necessary to enable them to administer and to carry out the purposes of this

Act and to prevent evasions thereof.