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# Multibank Holding Company and Branching Law in Perspective in Oklahoma

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The structure of the American banking industry has been and continues to be rapidly changing. The law of banking has been substantially revised through “deregulation” and “reregulation” in recent years. The banking industry has been subject to stringent restrictions controlling not only the powers and activities in which commercial banks may engage but also the organization, operation, and geographic location of those activities. Intense competition in the marketplace has been the key factor in establishing geographic and structure restrictions as well as promoting changes in corporate makeup. This article reviews new rules that will provide more flexible geographic regulations for commercial banks in Oklahoma in comparison with prior law governing intrastate and interstate banking activities. This article also points out some of the potential pitfalls and opportunities under the new Oklahoma bank structure law.

## *Intrastate and Interstate Banking Perspective*

On October 1, 1983,<sup>1</sup> Oklahoma law for the first time permitted commercial banks to establish branches and for multibank holding companies to conduct operations within the state. With the recent passage of a multibank and branch-banking bill,<sup>2</sup> the Oklahoma legislature moved Oklahoma from the status of a “unit-banking” state to that of a state permitting both the establishment of statewide multibank holding companies and limited branching by banks. When the

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By resolution of the Oklahoma Bankers Association’s membership, the Association is neutral on structure-related legislation. No position is intended to be taken by or attributed to the Association in any fashion by this article.—*Ed.*

1. Op. Att’y Gen. No. 244 (Okla. Sept. 28, 1983) says that because the authority to establish branches did not become effective until October 1, 1983, the Oklahoma Banking Board was not authorized to approve applications for branches prior to that date.

2. H.B. No. 1123, Act of June 20, 1983, ch. 221, 1983 Okla. Sess. Laws Serv. 624 (West), to be codified at 6 OKLA. STAT. §§ 415, 501 and 502 (Supp. 1983) [hereinafter cited as Act] (passed both houses of the Oklahoma legislature on June 15, 1983, signed by the Governor on June 20, 1983, contained an emergency clause, operative Oct. 1, 1983). Prior to October 1, 1983, banking regulators (Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, and Oklahoma State Banking Department) had processed applications for new branch locations and bank mergers and acquisitions, but clearly no approved transaction could be consummated until that date.

Oklahoma law went into effect, Kansas became the last unit-banking state in the nation.<sup>3</sup>

This is not to say that Oklahoma previously had no intrastate and interstate banking. The Douglas Amendment<sup>4</sup> to the federal Bank Holding Company Act of 1956<sup>5</sup> generally prohibits the interstate control of a bank by a bank holding company unless the statutes of the state in which the bank is or will be located specifically permits such control.<sup>6</sup> The federal McFadden Act<sup>7</sup> recognizes that state boundaries limit the branching of banks and only permits national banks to branch within a state to the extent that state banks are permitted by the individual state's laws to branch intrastate. It is because certain loopholes to these general restrictions exist that intrastate and interstate banking operations have already been conducted in Oklahoma.

Because the federal Bank Holding Company Act of 1956<sup>8</sup> generally has been interpreted to define a "company" as excluding an individual, interstate ownership of banks by individual investors has not been precluded.<sup>9</sup> Additionally, the definition of a "bank" as an institution that both accepts deposits and makes commercial loans<sup>10</sup> permits the establishment of entities popularly referred to as "nonbank banks,"<sup>11</sup> which engage in one or the other of these two activities but not both. Other loopholes in the federal Bank Holding Company Act were created by the definition of "control," which permits generally an ownership of up to 24.9% of the stock of any class of voting

3. KAN. STAT. ANN. §§ 9-504, -505, -111 (1982).

4. Pub. L. No. 96-221, 94 Stat. 132, 189 (1980) (codified at 12 U.S.C. § 1542(d) (1982)).

5. Ch. 240, 70 Stat. 133 (codified at 12 U.S.C. §§ 1841-50 (1982)).

6. Reciprocal and *limited*-reciprocal statutes have been adopted in a number of states at this time, including Connecticut, Delaware, Maine, Maryland, Massachusetts, Nebraska, New York, Rhode Island, South Dakota and Virginia, but not Oklahoma.

7. Ch. 191, 44 Stat. 1224 (1927), amended by Banking Act of 1935, ch. 614, 49 Stat. 684, 708 (codified at 12 U.S.C. § 36 (1982)). A case pending in Oklahoma involving a McFadden Act interpretation and approval of a branch for a national bank has been recently vacated upon the dismissal of the appeal after passage of H.B. No. 1123, Act of June 20, 1983, ch. 221, 1983 Okla. Sess. Law Serv. 624 (West). First Nat'l Bank & Trust Co. v. Empie, No. 78-296-C (E.D. Okla. 1982) (consolidated with CIV-78-01026-D (W.D. Okla.), *vacated*).

8. Ch. 240, 70 Stat. 133 (codified at 12 U.S.C. §§ 1841-50 (1982)).

9. "Company" is defined to mean "any corporation, partnership, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust . . ." 12 U.S.C. § 1841(b) (1982).

10. The definition of "bank" is "any institution . . . which (1) accepts deposits that a depositor has a legal right to withdraw on demand, and (2) engages in the business of making commercial loans . . ." 12 U.S.C. § 1841(c) (1982).

11. "Nonbank banks" are a recent phenomenon recognized by the federal banking regulators as entities permissible within the loopholes of the federal Bank Holding Company Act. See FED. RES. BULL., June 24, 1983, on file in Oklahoma Law Review office (Federal Reserve Board decision approving the application of Citizens Fidelity Corporation, Louisville, Kentucky, to acquire *de novo* Citizens Fidelity, N.A., Cincinnati, Ohio, June 24, 1983).

securities of a bank before the restrictions on interstate ownership are violated.<sup>12</sup>

Likewise the federal McFadden Act<sup>13</sup> provides loopholes for the establishment of branch offices despite state geographic restrictions on branching. The definition of a "branch" is an office at which deposits are received and checks paid or money lent; if none of these three activities are conducted at an office, the limitations of the Act do not come into play.<sup>14</sup>

Loan production offices,<sup>15</sup> automatic teller machines,<sup>16</sup> and chain banking operations<sup>17</sup> are all permitted at geographic locations that would otherwise be disallowed for commercial banks and bank holding companies by the geographic restrictions of federal and state banking law. Even automatic teller machines have been challenged successfully as "branches" at locations not permitted under the McFadden Act, but not as "banks" under the federal Bank Holding Company Act.<sup>18</sup>

Similarly, state law in Oklahoma permits intrastate banking in many of the same forms as occurring in interstate banking. Loan production offices and chain banking operations were not limited by the restrictions of the Oklahoma Banking Code, which otherwise disallowed multibank holding company operations and branching in Oklahoma,<sup>19</sup>

12. A bank holding company is deemed to control a bank if

(A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company; (B) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or (C) the Board determines, after notice and opportunity for hearing, that the company directly exercises a controlling influence over the management or policies of the bank or company.

12 U.S.C. § 1841(a)(2) (1982). Rebuttable and irrebuttable presumptions of control are set out in Regulation Y of the Federal Reserve Board, 12 C.F.R. § 225.4 (1982).

13. Ch. 191, 44 Stat. 1224 (1927), amended by Banking Act of 1935, ch. 614, 49 Stat. 684, 708 (codified at 12 U.S.C. § 36 (1982)).

14. A "branch" is defined to include "any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent." 12 U.S.C. § 36(f) (1982).

15. See *Independent Bankers Ass'n v. Heimann*, 613 F.2d 1164 (D.C. Cir. 1979); 12 C.F.R. § 7.7380 (1983).

16. Automatic teller machines are also known as "customer-bank computer terminals" and are established as part of electronic funds transfer networks.

17. Chain banking operations are simply the ownership and control of more than one bank by an investor who does not meet the definition of "company" in the federal Bank Holding Company Act of 1956, ch. 240, 70 Stat. 133, codified at 12 U.S.C. §§ 1841-50 (1982).

18. See *Independent Bankers Ass'n v. Smith*, 534 F.2d 921 (D.C. Cir. 1976).

19. Act, ch. 221, §§ 3 and 4, 1983 Okla. Sess. Laws Serv. 624, 625-26 (West) (amending 6 OKLA. STAT. §§ 501, 502 (1981), respectively).

nor will these activities be limited under the new Oklahoma bank structure law. Automatic teller machines can be established statewide in Oklahoma under the specific authorization of the Oklahoma Banking Code permitting "consumer banking electronic facilities."<sup>20</sup>

### *Oklahoma's New Bank Structure Law*

Until October 1, 1983, Oklahoma banks were limited under the multibank and branching provisions of the Oklahoma Statutes to having a main office, outside attached facilities, and one detached facility within 1,000 feet of the main office of the bank.<sup>21</sup> The new bank structure law amends section 415 of Title 6 of the Oklahoma Statutes to permit a bank to establish two detached facilities, one within 1,000 feet of the bank's main office and one within three miles of the bank's main office.<sup>22</sup> Each facility must be more than 330 feet from any other bank's main office building, unless the other bank irrevocably permits the facility to be closer.<sup>23</sup> The distance is measured by a straight line between the nearest exterior walls.<sup>24</sup> There is a grandfather provision that permits the continued operation of any detached facility authorized by current law that may not meet the new 330-foot restriction or measurement requirements.

The previous restriction in section 415 disallowing the "making of loans" at detached facilities will continue, so that any banking activity except the "making of loans" can be conducted at a detached facility.<sup>25</sup> At minimum, this restriction requires that loans be "approved and made" at a national bank's main office or branch and that the "loans are approved and loan proceeds are disbursed" at a state bank's main office or branch.<sup>16</sup>

Section 501 of Title 6 of the Oklahoma Statutes has been amended to permit each bank to operate two branches that may be located (1) within the city limits of the main bank office, or (2) within five miles of the main bank office in Oklahoma County, or (3) within

20. 6 OKLA. STAT. § 422 (1981).

21. *Id.* § 415.

22. Act, ch. 221, § 1, 1983 Okla. Sess. Law Serv. 624 (West) (amending 6 OKLA. STAT. § 415 (1981)). Note that this restriction does not apply to another bank's branch, but instead only to any other bank's main office.

23. *Id.* (amending 6 OKLA. STAT. § 415(A)(3) (1981)).

24. *Id.* (amending 6 OKLA. STAT. § 415(A)(5) (1981) and subsection 25.12 of rule 25 of the Oklahoma State Banking Department, which defines "exterior wall").

25. 6 OKLA. STAT. § 415 (1981).

26. See 12 C.F.R. § 7.7380 (1983) as to national banks, and Silkey, *Branch Banking and Multibank Holding Companies—Oklahoma Banking In Transition*, 54 OKLA. B.J. 2037, 2083 (1983).

twenty-five miles of the main bank office if the branch(es) would be in a city or town<sup>27</sup> that has no state or national bank.<sup>28</sup> Thus, it appears there are two alternative locations available for branch offices of banks throughout the state and three locations available for branch offices of banks in Oklahoma County.<sup>29</sup> The Oklahoma Banking Commissioner has informally interpreted these provisions as imposing no restriction on a bank in Oklahoma County crossing the county lines under the second option.<sup>30</sup>

The bill provides, with regard to the third option, that if a bank charter application has been filed, the State Banking Board, but not the Office of the Comptroller of the Currency, is required to give priority to the charter application.<sup>31</sup> Additionally, the establishment of a branch or the conversion of a bank into a branch in a town or city would not, under the language of the statute, preclude the establishment of additional branch offices by other banks in that same city or town.<sup>32</sup>

In Oklahoma County one bank's branch office cannot be closer than 330 feet from another bank's main bank office or branch office without the irrevocable consent of the other bank, with the nearest-wall measurement applying to determine this distance.<sup>33</sup> The Oklahoma State Banking Board's new rule 25 establishes the rules for measuring this distance.<sup>34</sup> The statute does not address the permissibility of a branch operating an attached drive-in and walk-up window.

27. "City" is defined to mean "a municipality which has incorporated as a city in accordance with the laws of Oklahoma and, at the time of incorporation, had a population of one thousand (1,000) inhabitants or more," and "town" to mean "a municipality which has incorporated as a town in accordance with the laws of Oklahoma" pursuant to 11 OKLA. STAT. §§ 1-102(2), (10) (1981).

28. Act, ch. 221, § 2, 1983 Okla. Sess. Law Serv. 624, 626 (West) (amending 6 OKLA. STAT. § 501(B)(1)-(3) (1981)).

29. The State Banking Board has approved an application of Union Bank and Trust Company of Oklahoma City to establish a branch within the city limits but more than five miles from the main office of the bank. Minutes of Meeting of State Banking Board of July 20, 1983, and subsequent reapproval at Meeting of the State Banking Board of October 26, 1983.

30. Presentation of Commissioner Robert Y. Empie at Oklahoma City University Law School, CLE Program held July 8, 1983, titled "The New Financial Structure."

31. Act, ch. 221, § 2, 1983 Okla. Sess. Law Serv. 624, 625 (West) (amending 6 OKLA. STAT. § 501(B)(3) (1981)).

32. The State Banking Commissioner and Office of the Comptroller of the Currency have informally interpreted the words "state or national bank" in section 2 of the act (to be codified at 6 OKLA. STAT. § 501(B)(3) (Supp. 1983)) to mean only a main office of a state or national bank. Presentation of Commissioner Empie, *supra* note 30.

33. Act, ch. 221, § 2, 1983 Okla. Sess. Law Serv. 624, 625 (West) (amending 6 OKLA. STAT. § 501(B) (1981)).

34. See Oklahoma Banking Board Rule 25, approved by State Banking Board at Meeting of June 29, 1983, and published at 22 Okla. Gaz. (No. 13, July 1, 1983).

The definition of "branch" is changed, for purposes only of section 501 of Title 6 of the Oklahoma Statutes, to include "any branch bank, branch office, branch agency, additional office or any place of business, located within this state at which deposits are received, checks paid, and money lent."<sup>35</sup> This definition is less restrictive than the McFadden Act definition of "branch," which is where "deposits are received, or checks paid or money lent."<sup>36</sup> This definition would appear to permit the establishment of offices that might be dubbed "nonbranch branches" as a potential loophole in the Oklahoma bank structure statutes if it can be shown that all three of these activities are not conducted at the office location. It should be noted that the federal definition could be triggered by any one of the three activities, and thus a national bank would be required to apply for approval from the Office of the Comptroller of the Currency for this "non-branch bank location."<sup>37</sup>

### *Multibank Holding Companies*

Section 502 of Title 6 of the Oklahoma Statutes was amended to permit multibank holding companies to conduct business in Oklahoma beginning October 1, 1983. A "multibank holding company" is defined generally as a company that controls two or more banks.<sup>38</sup> A number of restrictions in section 502 apply only to multibank holding companies and not to one-bank holding companies, and thus another series of loopholes may exist in the law because the term "multi-bank holding company" is used throughout this section. The term "bank" is defined for purposes of section 502 as any banking association "authorized to engage in the banking business"<sup>39</sup> and may arguably include entities beyond those chartered as national or state banks.

A multibank holding company in Oklahoma is permitted to own or control any number of banks, but "at the time of acquisition"<sup>40</sup> of any new bank by a multibank holding company, the total deposits of

35. Act, ch. 221, § 2, 1983 Okla. Sess. Law Serv. 624, 625 (West) (amending 6 OKLA. STAT. § 501(A) (1981)).

36. 12 U.S.C. § 36 (1982).

37. See 12 C.F.R. § 5 (1983).

38. "Multibank holding company" is defined to mean "a company which directly or indirectly owns or controls two or more banks, two or more bank holding companies, or one or more of each." Act, ch. 221, § 3, 1983 Okla. Sess. Law Serv. 624, 626 (West) (amending 6 OKLA. STAT. § 502(B)(5) (1981)).

39. *Id.* (amending 6 OKLA. STAT. § 502(B)(1) (1981)).

40. Under this language it appears that the deposit base of subsidiary banks could be decreased (e.g., by purchase of federal funds rather than issuance of large denomination certificates of deposit) to come under the ceiling, and then raised over the ceiling immediately after consummation of the transaction, without legal penalty.

all bank subsidiaries of the multibank holding company and the bank to be acquired cannot exceed 11% of the aggregate deposits of all insured banks, thrifts, and credit unions in Oklahoma.<sup>41</sup> Because both the language “at the time of acquisition” and “prohibited if such acquisition results” appears in the statute, some bank counsel have interpreted this section to provide that the measurement applies only to the banks held by the acquiror but not the acquiree. It would appear to be the more conservative interpretation that the banks held by both the acquiror and the acquiree should be combined for purposes of the statutory ceiling.

### *Divestiture*

There is no requirement for divestiture if total deposits of the owned or controlled banks grow to exceed the 11% figure. There appears to be no divestiture requirement in Oklahoma even if (1) the bank holding company acquires control by securing or collecting a debt previously contracted, or (2) the holding company acquires control of a failing bank with regulatory approval. In the first instance, the statute specifically requires that after five years from the time the bank holding company acquires control, the deposits of the acquired bank would be included in computing the deposit limit of the multibank holding company. In the second, priority is required to be given by the regulators in the acquisition of a failing bank to qualified bidders who hold less than the 11% ceiling.<sup>42</sup>

There is a requirement that a majority of the directors of each bank acquired by a multibank holding company be from the local area in which the bank is located.<sup>43</sup> There is also a prohibition on a multibank holding company purchasing a bank for which an application is “filed, received or granted by the appropriate authorizing agency after July 1, 1983” for a period of five years (the five-year period probably begins to run at the time of approval of the charter). Such a purchase of a newly chartered bank by any investor not deemed to be a “multibank holding company” would appear to be permissible.<sup>44</sup> *De novo* charters by multibank holding companies also are not permitted.<sup>45</sup> However, interim charters are clearly permitted for the purpose of purchasing or merging with an existing bank.<sup>46</sup>

41. Act, ch. 221, § 3, 1983 Okla. Sess. Law Serv. 624, 626 (West) (amending 6 OKLA. STAT. § 502(D) (1981)). Eleven percent of aggregate deposits is currently approximately \$3.5 billion.

42. *Id.* (amending 6 OKLA. STAT. § 502(F)(2) and (3) (1981)).

43. *Id.* (amending 6 OKLA. STAT. § 502(E) (1981)).

44. *Id.* (amending 6 OKLA. STAT. § 502(G) (1981)).

45. *Id.* (amending 6 OKLA. STAT. § 502(H) (1981)).

46. *Id.* (amending 6 OKLA. STAT. § 502(I) (1981)). These interim charters are also known as “phantom banks” and are shell companies used in the acquisition or merger transaction.

*Control Tests*

The definition of a "company" and the "control" tests mirror those of the federal Bank Holding Company Act<sup>47</sup> and Regulation Y of the Federal Reserve Board.<sup>48</sup> In fact, for the purposes of section 502, a company will be deemed to be in control of a bank if the control tests are met under federal law. In determining whether control exists, state regulatory procedures are required to be the same as the federal procedures.<sup>49</sup> Because these tests have not previously been employed in determining whether Oklahoma structure restrictions come into play, there is some possibility that a company may find itself deemed to be a multibank holding company under the new Oklahoma law and subject to the restrictions of this section without any overt action to acquire a bank or to merge with any other company.

Mobile locations of the variety dealt with in the classic national bank branching case of *First National Bank v. Dickerson*<sup>50</sup> appear to be permissible in Oklahoma, but confusion surrounds the labeling and permissible activities of such operations. For instance, unless all three activities required to trigger the Oklahoma "branch" definition are conducted,<sup>51</sup> it appears that no branch would exist, and the three options permitted for establishment of branch locations would not be available. If the operation is instead considered to be a "detached facility," only the more limited locations permitted by section 415 would be available. In either case, the operations would be required to be conducted "on property owned or leased by the bank"<sup>52</sup> and thus, at minimum, leasing arrangements would appear to have to be made for the locations where operations would be conducted.

Oklahoma's Attorney General has issued an opinion<sup>53</sup> concerning the constitutionality of section 3 of Oklahoma's new bank structure law.<sup>54</sup> The opinion concludes that section 3, permitting multibank holding companies to operate in Oklahoma, is constitutional and does not violate article IX, section 41 of the Oklahoma constitution, which

47. 12 U.S.C. §§ 1841-50 (1982).

48. 12 C.F.R. § 225 (1983).

49. Act, ch. 221, § 3, 1983 Okla. Sess. Law Serv. 624, 626 (West) (amending 6 OKLA. STAT. § 502(A)(9) (1981)).

50. 396 U.S. 122 (1969).

51. Act, ch. 221, § 2, 1983 Okla. Sess. Law Serv. 624, 625 (West) (amending 6 OKLA. STAT. § 501 (1981)).

52. *Id.*, §§ 1 and 2 (amending 6 OKLA. STAT. § 415(A)(2) and 501(B) (1981), respectively).

53. Op. Att'y Gen. No. 181 (Okla. Sept. 12, 1983).

54. Act, ch. 221, § 3, 1983 Okla. Sess. Law Serv. 624, 626 (West) (amending 6 OKLA. STAT. § 502 (1981)).

prohibits trust companies, banks, or banking companies from owning stock of any other trust company or bank or banking company.<sup>55</sup> However, the opinion finds that “whether a bank holding company is a ‘bank or banking company,’ as those terms are used in Article IX, section 41, depends on whether it engages in the activities of accepting deposits and making loans.”<sup>56</sup> Additionally, the opinion emphasized the “separate legal entities” principle, in which a corporation is viewed as a separate entity so long as it preserves a corporate structure separate from the structure of the corporation it owns. Factors to be considered in deciding whether a subsidiary corporation is a separate legal entity are listed in the case of *Luckett v. Bethlehem Steel Corp.*<sup>57</sup> The Attorney General indicated that the *Luckett* factors would be relevant for judging whether a particular bank holding company is not a separate legal entity from its subsidiary bank or trust company and therefore in violation of the constitutional restrictions.<sup>58</sup> Thus, potential pitfalls in operating a bank holding company or multibank holding company in Oklahoma may exist in the provisions of the Oklahoma constitution as interpreted by the Attorney General.<sup>59</sup>

#### *Other Considerations*

Potential regulatory pitfalls also exist for bank counsel not familiar with the regulatory procedures for geographic expansion of a bank or bank holding company. On June 29, 1983, the State Banking Board approved new Board Rule 25 prescribing procedures to be used by state banks applying for approval for branches and detached facilities.<sup>60</sup> The State Banking Board adopted a new five-page “Application for Certificate to Maintain and Operate a Branch or Detached Facility.” State banks apply for branch approval not only to the State Banking Board but also to the Federal Deposit Insurance Corporation. If a merger of two banks is contemplated to create a

55. OKLA. CONST. art. IX, § 41 provides:

No trust company, or bank or banking company shall own, hold or control, in any manner whatever, the stock of any other trust company or bank or banking company, except such stock as may be pledged in good faith to secure bona fide indebtedness, acquired upon foreclosure, execution sale, or otherwise for the satisfaction of debt; and such stock shall be disposed of in the time and manner hereinbefore provided.

56. Op. Att’y Gen. No. 181, at 7 (Okla. Sept. 12, 1983).

57. 618 F.2d 1373 (10th Cir. 1980).

58. Op. Att’y Gen. No. 181, at 11 (Okla. Sept. 12, 1983).

59. The opinion says, “If the activities of a multi-bank holding company are such that it is deemed a bank or banking company . . . then [OKLA. CONST. art. IX,] § 41 will have been violated.” *Id.* at 12.

60. 22 Okla. Gaz. (No. 13, July 1, 1983).

bank and a branch and the resulting bank will be a state bank member of the Federal Reserve System, application with the Federal Reserve Board is necessary.<sup>61</sup> National bank applications for branches and detached facilities are submitted to the Office of the Comptroller of the Currency.<sup>62</sup> Applications for formation of a bank holding company or purchase of a bank by a bank holding company go to the Federal Reserve Board. An acquisition or merger by a bank holding company cannot be consummated without prior approval of the Federal Reserve Board.<sup>63</sup>

Pitfalls await bank counsel who do not recognize the impact of other areas of law, such as federal antitrust law, on bank chartering and acquisition and merger transactions. The Bank Merger Act of 1966,<sup>64</sup> as well as certain sections of the Sherman<sup>65</sup> and Clayton acts,<sup>66</sup> are applicable to mergers and acquisitions of banks and bank holding companies, and antitrust considerations bear heavily in the determination by the Federal Reserve Board.

State corporate law also applies to such transactions and the steps set out for a merger or acquisition, including proper shareholders' notice and approval of a plan of acquisition, in some cases must be followed.<sup>67</sup> Additionally, federal and state securities laws may come into play and a full-blown registration with the Securities and Exchange Commission may be required.<sup>68</sup> Even where mergers and acquisitions can be accomplished by a private placement or in-state offering, thus avoiding the initial registration expense and ongoing reporting requirements, antifraud provisions of securities law still apply and bank counsel should seek the advice of securities counsel.

### *Conclusion*

The new Oklahoma bank structure law permits additional geographic expansion of Oklahoma commercial banks and their holding companies within the state of Oklahoma. The opportunities afforded by this new law should be considered in light of other

61. 12 U.S.C. § 321 (1982). All Oklahoma banks are currently in the Kansas City District of the Federal Reserve Board except those in the counties of McCurtain, Pushmataha, Choctaw, Atoka, Bryan, Coal, Johnston, and Marshall, which are in the Dallas District.

62. 12 U.S.C. § 36 (1982); 12 C.F.R. § 5.30 (1983) (application form CC7021-01).

63. 12 U.S.C. § 1842 (1982); 12 C.F.R. §§ 225, 265 (1983).

64. 12 U.S.C. § 1828(c) (1982).

65. 15 U.S.C. §§ 1-7 (1982).

66. 15 U.S.C. §§ 12-27 (1982).

67. 18 OKLA. STAT. §§ 1.1-1.247a (1981).

68. See 15 U.S.C. §§ 77a-77bddd (1982); 15 U.S.C. §§ 78a-78kk (1982); 71 OKLA. STAT. §§ 1-703 (1981).

available vehicles for such expansion in the sphere of permissible intrastate and interstate banking.

The opportunities available to investors in commercial banks and bank holding companies can be properly considered only if the potential legal loopholes and pitfalls of the various alternatives are reviewed and understood by bank counsel. This article has set out some of those opportunities and pitfalls that are apparent shortly after the enactment of Oklahoma's new bank structure law. Bank counsel will need to follow the solidification and clarification of branching and multibank holding company law in Oklahoma as it is developed through additional regulatory interpretation and case law.

