Banking and Financial Services Law

Cases, Materials, and Problems

Third Edition

2015-2016 Supplement

Michael P. Malloy
Distinguished Professor and Scholar
University of the Pacific
McGeorge School of Law

<u>Carolina Academic Press</u> Durham, North Carolina Copyright © 2015 Michael P. Malloy All Rights Reserved

Carolina Academic Press 700 Kent Street Durham, North Carolina 27701 Telephone (919) 489-7486 Fax (919) 493-5668 E-mail: cap@cap-press.com www.cap-press.com

Supplementary Material

Chapte	er 1: The Regulatory Environment .	•				3
Chapte	er 2: Entry Rules					5
Chapte	er 3: Branch Banking					17
Chapte	er 4: Control Transactions					21
Chapte	er 5: Transactional Rules			•	•	23
Chapte	er 7: Securities Regulation	٠			•	63
Chapte	er 8: Resolution of Institution Failures					65
Selecte	d Bibliography	٠		•	٠	75
	Excerpts from United Current as of 31 Dec Title 12. Banks and	cemb	er 201			
	Chapter 2 – Nation	al Ban	ıks			
§21.	Formation of national banking association		porators;	articles	of	0.1
622	association		•	•		81
§22.	Organization certificate	•	•	•	•	81
§23. §24.	Corporate powers of associations .	•	•	•	•	82 82
§24. §24a.				•	•	83
§24a. §25b.	State law preemption standards for national clarified		and subs		•	88
§26.	Comptroller to determine if association ca		ence busi	iness	•	91
§20. §27.	Certificate of authority to commence bank				•	92
§27. §29.	Power to hold real property .	-	•	•	•	92
§30.	Change of name or location .	•	•	•	•	92
§30. §35.	Organization of State banks as national ba	nking a	senciation		•	93
836	Branch banks	anking a	350cianul		•	0:

BANKING AND FINANCIAL SERVICES LAW

§55.	Enforcing payment of deficiency in capital st	tock; ass	essments;		
	liquidation; receivership			•	. 97
§57.	Increase of capital by provision in articles of	associat	ion	•	. 98
§71.	Election			•	. 98
§71a.	Number of directors; penalties .				. 98
§72.	Qualifications				. 98
§81.	Place of business				. 99
§83.	Loans by bank on its own stock .				. 99
§84.	Lending limits				. 99
§85.	Rate of interest on loans, discounts and purc	hases			. 101
§86.	Usurious interest; penalty for taking; limitati				. 102
§91.	Transfers by bank and other acts in contemp		insolveno	ev	. 102
§92.	Acting as insurance agent or broker	_	_		. 102
§92a.	Trust powers				. 102
§93.	Violations of provisions of chapter .				. 104
§161.	Reports to Comptroller of the Currency				. 105
§181.	Voluntary dissolution; appointment and remo	oval of li	auidating	gagent	. 100
3101.	or committee; examination .	0 1 41 01 11	quidume	, agent	. 106
§182.	Notice of intent to dissolve .	•	•	•	. 106
§102. §191.	Appointment of Federal Deposit Insurance C	`ornorati	on as rec	eiver	. 100
§191. §192.	Default in payment of circulating notes	orporati	on as rec	CIVCI	. 107
§192. §193.	Notice to present claims	•	•	•	. 107
§193. §194.	Dividends on adjusted claims; distribution of	facceto	•	•	. 107
§19 7 . §197.	Shareholders' meeting; continuance of receiv		nnointm	ant of	. 100
g197.	agent; winding up business; distribution of		ірропшін	511t O1	. 108
§197a.	Resumption of business by closed bank on co		f danosita	· vra	. 108
§197a. §198.	Purchase by receiver of property of bank; rec				. 109
§196. §199.	Approval of request	quest to v	Compuoi	161	. 109 . 109
§199. §202.	Definitions	•	•	•	. 109 . 110
§202. §203.	Appointment of conservator .	•	•	•	. 110 . 110
§205. §205.	Termination of conservatorship .	•	•	•	. 110 . 111
§205. §206.	-	•	•	•	. 111 . 111
-	Conservator; powers and duties . Definitions	•	•	•	
§214.		:datian.	•	•	. 112
§214a.	Procedure for conversion, merger, or consoli	idation;			112
0014	vote of stockholders	•	•	•	. 112
§214c	Conversions in contravention of State law	•	•	•	. 113
§214d.	Prohibition on conversion .	•	•	•	. 113
§215	Consolidation of banks within the same State			•	. 113
§215a	Merger of national banks or State banks into	national	banks	•	. 115
-	.Interstate consolidations and mergers		•	•	. 116
-	Expedited Procedures for Certain Reorganiza		•	•	. 117
§215a-3	.Mergers and Consolidations with Subsidiarie	es			
	and Nonbank Affiliates	•	•	•	. 117
§215b.	Definitions			•	. 118
8215c.	Mergers, consolidations, and other acquisition	ons autho	rized		. 118

CONTENTS

Chapter 3 – Federal Reserve System

§221.	Definitions			•			118
§221a.	Additional definitions .						119
§222.	Federal reserve districts; members	hip of nat	ional ban	ıks			119
§248.	Enumerated powers .			•			119
§250.	Independence of financial regulate	ory agenci	ies	•			120
§321	Application for membership						121
§324.	Laws applicable on becoming mer	nbers	•				121
§325.	Examinations						121
§371.	Real estate loans			•			121
-	.Interbank liabilities .						122
§371c.	Banking affiliates .			•			122
	Restrictions on transactions with a	ffiliates		•			126
§371d.			poration				
3	holding premises .						127
§372.	Bankers' acceptances .						128
§375a.	Loans to executive officers of ban	ks					129
§375b.	Extensions of credit to executive of		irectors.	and			
3	principal shareholders of memb				_		130
§376.	Rate of interest paid to directors, of					Ċ	133
§378.	Dealers in securities engaging in b		ısiness: iı	ndividual	s or		
30,0.	associations engaging in banking						
		•	•	•	•		133
§461.	Reserve requirements .	•	•	•	•		134
§481.	Appointment of examiners; exami		member l	banks, Sta	ate		
	banks, and trust companies; rep		•	•	•		140
§503.	Liability of directors and officers	of membe	r banks	•	•		140
§504.	Civil money penalty .	•	•	•	•		140
§505.	Civil money penalty .	•					141
	Chapter 12 – Federa	al Saving	gs Asso	ciations	}		
01460	D 6:						1.46
	Definitions	•	•	•	•		142
§1463.	Supervision of savings association		•	•	•	٠	143
	Č	•	•	•	•		144
~	Regulations of holding companies	•	•	•	•	٠	158
	Intermediate holding companies		•	•	•	•	175
§1468.	Transactions with affiliates; extens						
	executive officers, directors, an	d principa	ıl shareho	olders	•	٠	177
	Chapter 14 – Fe	deral Cr	edit Un	ions			
	Subchapter I –	General	Provisi	ons			
01750	D-6:-:4:						170
	Definitions		•	•	•	٠	178
Q1/52a.	National Credit Union Administra	tion					179

BANKING AND FINANCIAL SERVICES LAW

§1753.	Federal credit union organ	nization					180
§1754.	Approval of organization	certificat	e				180
§1756.	Reports and examinations						181
§1757.	Powers						181
§1757a.	Limitation on member bus	siness loa	ns				185
§1758.	Bylaws						186
§1759.	Membership .		•				186
	Chapter 16 – Fede	eral De _l	posit In	surance	Corpor	ation	
§1811.	Federal Deposit Insurance	e Corpora	ition				189
§1813.	Definitions .						189
§1814.	Insured depository institut	tions			•		195
§1815.	Deposit insurance						196
§1816.	Factors to be considered						196
§1817.	Assessments .						196
§1818.	Termination of status as in	nsured de	epository	institutio	n		201
§1820a.	Examination of investmen						213
§1821.	Insurance funds .						213
§1823.	Corporation monies						223
§1828.	Regulations governing ins	sured dep	ository in	nstitution	S .		232
	Prudential safeguards				•		238
§1831a.	Activities of insured State	banks			•		239
§1831d.	State-chartered insured de	pository	institutio	ns and			
	insured branches of foreig	n banks					241
§1831e.	Activities of savings associated	ciations			•		242
§1831f.	Brokered deposits						242
§1831i.	Agency disapproval of dis	rectors an	nd senior	executive	e		
	officers of insured depo	sitory in	stitutions	or			
	depository institution	holding	compani	ies	•		244
§1831o.	Prompt corrective action				•		244
§1831o-1	Source of Strength				•		245
§1831r-1	.Notice of branch closure				•		245
§1831u.	Interstate bank mergers				•		246
§1831 v.	Authority of State insuran	ce regula	tor and				
	Securities and Exchang	e Comm	ission		•		252
§1831w.	Safety and soundness fire	walls app	licable to)			
	financial subsidiaries of	f banks			•		253
§1831x.	Insurance customer protect	ctions			•		254
§1831y.	CRA sunshine requiremen	nts			•		257
§1831aa.	Enforcement of Agreemen	nts			•		259
	Withdrawals by negotiabl		sferable i	nstrumen	ts		
	for transfers to third par	rties					260
§1835a.	Prohibition against depos	it produc	tion offic	es			260

CONTENTS

Chapter 17 – Bank Holding Companies

§1841.	Definitions			•		. 260
§1842.	Acquisition of bank shares or asse	ts				. 266
§1843.	Interests in nonbanking organizati					. 271
§1844.	Administration					. 287
§1846.	Reservation of rights to States					. 292
§1847.	Penalties					. 292
§1848.	Judicial review					. 292
§1849.	Saving provision					. 292
§1850.	Acquisition of subsidiary, nonbank	king ac	ctivity or l	ousiness,		
Ü	and tying arrangement: Federal				ngs;	
	application for authorization;			-	<i>U</i> ,	
	interest and person aggriev					. 294
§1850a.	Securities holding companies				_	. 294
§1851	Prohibitions on proprietary trading	and o	ertain rela	ationships		
3	with hedge funds and private equi					. 297
	1					
	Chapter $22 - T_1$	ving /	Arrangei	ments		
		, 6	8-			
§1971.	Definitions				_	. 306
§1972.	Certain tying arrangements prohib	ited:				
3	correspondent accounts.			_		. 306
§1975.	Civil actions by persons injured; ju	urisdic	tion and v	enue:		
3	amount of recovery .					. 309
§1976.	Injunctive relief for persons against	st threa	atened los	s		
0	or damages; equitable proceeding				ns	. 309
		0 71	J	3		
	Chapter 30 – Com	muni	ty Reinv	estmen	t	
§2903.	Financial institutions; evaluation					. 309
§2905. §2906.	Written evaluations .	•	•	•	•	. 310
§2908.	Small bank regulatory relief	•	•	•	•	. 312
<i>§2700.</i>	Small bank regulatory letter	•	•	•	•	. 312
	Chapter 33 – Depository Ins	titutio	on Mana	gement	Interlo	cks
§3201.	Definitions					. 312
§3202.	Dual service of management offic	ial as r	nanageme	nt		
	official of unaffiliated institutio	n or ho	olding con	npany in		
	same area, town, or village pr	rohibit	ed .			. 314
§3203.	Dual service of management offic	ial of §	32,500,000	0,000		
	institution or holding company	as mar	nagement	official of	f	
	unaffiliated \$1,500,000,000 i		_			
	company prohibited					. 314
§3204.	Exceptions					. 314
§3205.	Management official in position p	rior				
-	to November 10, 1978 .		_			. 316

Copyright © 2015 Michael P. Malloy. All rights reserved.

BANKING AND FINANCIAL SERVICES LAW §3206. Administration and enforcement 316 . 316 §3207. Rules and regulations 317 §3208. Powers available to Attorney General for enforcement Chapter 40 – International Lending Supervision §3907. Capital adequacy . 317 Title 15. Commerce and Trade Chapter 1 – Monopolies and Combinations in Restraint of Trade §1. Trusts, etc., in restraint of trade illegal; penalty §2. Monopolizing trade a felony; penalty . . 318 §18. Acquisition by one corporation of stock of another . . 319 Chapter 2A – Securities and Trust Indentures Subchapter I – Domestic Securities §77b. Definitions; promotion of efficiency, competition, and capital formation §77c. Classes of securities under this subchapter . Fraudulent interstate transactions 320 §77q. Chapter 2B – Securities Exchanges §78c. Definitions and application Manipulative and deceptive devices §78j. . 326 §781. Registration requirements for securities Chapter 2D – Investment Companies and Advisers Subchapter I – Investment Companies §80a-2. Definitions §80a-3. Definition of investment company. . §80a-8. Registration of investment companies . 328 Subchapter II – Investment Advisers §80b-2. Definitions

§80b-3. Registration of investment advisers §80b-10a. Consultation

CONTENTS

Chapter III – Insurance

§6701.	Operation of state law					. 332
	Subtitle A	- State Regi	ulation of	Insurar	ice	
§6711.	Functional regulation of	insurance .			·	. 337
§6712.	Insurance underwriting i	n national bar	ıks .			. 337
§6713.	Title insurance activities and their affiliates	of national ba	anks			. 338
§6714.	Expedited and equalized	dispute resol	ution for			
	federal regulators		•	•	•	. 339
§6715.	Certain state affiliation l		d for			
	insurance companies					. 340
§6716.	Interagency consultation	١				. 340
§6717.	Definition of state			•		. 342
	Subtitle $B - R$	edomesticat	tion of Mu	ıtual In	surers	
§6731.	General application				•	. 342
§6732.	Redomestication of muti	ual insurers.	•			. 342
§6733.	Effect on state laws restr	ricting redome	estication			. 344
§6734.	Other provisions .					. 345
§6735.	Definitions .		•	•	•	. 345
Su	btitle C – National As	ssociation o	f Register	ed Age	nts and l	Brokers
§6751.	National Association of	Registered Ag	gents and Br	okers		. 346
§6752.	Purpose					. 346
§6753.	Membership .					. 347
§6754.	Board of Directors			_		. 352
§6755.	Bylaws, standards, and o	lisciplinary ac	tions .			. 355
§6756.	•					. 356
§6757.						. 356
§6758.	Liability of the Associati		oard membe	rs.	·	
30750.	officers, and employee			,		. 356
§6759.	Presidential oversight		ciation .	•	•	. 357
§6760.	Relationship to State law		•	•	•	. 357
§6761.	Coordination with Finan		Regulatory	Authorits	•	. 358
§6762.	Right of action .	ciai inaustry i	acogulatory 1	14thOffty	•	. 358
§6763.	Federal funding prohibit	ed .	•	•	•	. 358
§6764.	Definitions .		•	•	•	. 358
3070T.	- VIIII1110110 .		•	•	•	. 556

BANKING AND FINANCIAL SERVICES LAW

Chapter V – Privacy

Subtitle A – Disclosure of Nonpublic Personal Information

§6801.	Protection of nonpublic	persona	l informat	tion			359
§6802.	Obligations with respec	t to discl	osures of				
	personal information						359
§6803.	Disclosure of institution	privacy	policy				361
§6804.	Rulemaking .					•	362
§6805.	Enforcement .						363
§6807.	Relation to state laws					•	365
§6809.	Definitions .						365