HOW THE PROPOSED COMPETITIVE EQUALITY BANKING ACT OF 1987 DIFFERS FROM S. 2851 OF 1984

TITLE II

SECURITIES ACTIVITIES

Like S. 2851, our bill grants bank holding companies new securities powers and does not allow those powers to be exercised through a subsidiary bank. The subparagraph on mutual fund activities is based on S. 2851 as originally introduced, and authorizes bank holding companies to organize, sponsor, and operate regulated investment companies; to underwrite, deal in, and distribute the shares of such companies; and to act as investment advisors to regulated open-end investment companies. The Senate-passed version of S. 2851 deleted all mutual fund activities except acting as an investment advisor.

The only other difference in the language describing the four new powers is the substitution of "any obligations" for "all obligations" at the beginning of the subparagraph dealing with municipal revenue bonds. That change is purely technical; "all" must have meant "any or all" (although it could conceivably have been misconstrued as requiring a bank holding company to underwrite all of the obligations of a particular governmental entity in order to have authority to underwrite any such obligations).

Unlike S. 2851, our bill would allow a bank holding company to exercise the new powers in question without transferring the existing securities activities of the holding company's subsidiary banks to a depository institution securities affiliate (or "DISA"). By remaining silent about whether the new powers could be combined with activities under section 4(c)(8), our bill

leaves the Federal Reserve Board free to determine whether, and to what extent, the two kinds of activities could be combined. See section 101(e) (specifically authorizing the Board to impose limitations on the four new securities activities).

Unlike S. 2851, our bill would not expressly amend sections 20 and 32 of the Glass-Steagall Act (12 U.S.C. secs. 78, 377). The four new securities activities would be contrary to section 20. Because our bill specifically authorizes those activities, we could expect the courts to construe the bill as implicitly modifying section 20. It would be harder to make such an argument in the case section 32 because that section could be reconciled with our new section 4(c)(15). As long as a 4(c)(15) subsidiary had no officers, directors, or employees in common with a member bank, its underwriting activities would be perfectly consistent with section 32. (That would be of little comfort to the banking industry, since only large bank holding companies could afford to maintain such a separation.) In contending that our bill implicitly modified section 32, a bank holding company would have to rely on legislative history and on two general principles of statutory construction: that the new supercedes the old, and that the specific takes precedent over the general.