TRAVELERS GROUP, CITICORP AND THE FEDERAL RESERVE

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On April 6, 1998 Travelers Group and Citicorp announced an agreement to merge in a transaction valued at $74.5 billion. The shareholders of each company will receive 50% of the shares of the combined organization, which will be named "Citigroup". On a pro forma basis Citigroup would have assets of almost $700 billion, net revenue of nearly $50 billion and equity of more than $44 billion. Perhaps as significant as the sheer size of Citigroup, which will have $125 billion more in assets than even NationsBank/BankAmerica, is the unprecedented combination of insurance underwriting and commercial banking.

A. PERMISSIBILITY OF THE PROPOSED TRANSACTION UNDER CURRENT LAW

1. *Retention of Insurance Businesses*

The Bank Holding Company Act

The proposed transaction is structured as a merger of Citicorp into Travelers. As a result of the merger Travelers (i.e., Citigroup) will acquire the bank subsidiaries of Citicorp and become a bank holding company. Section 4 of the Bank Holding Company Act of 1956, as amended (the "BHC Act"), generally prohibits a bank holding company from engaging in nonbanking activities other than those that the Board of Governors of the Federal Reserve System (the "Federal Reserve") has determined to be "so closely related to banking as to be a proper incident thereto". The Federal Reserve has determined that consumer finance, asset management, and all types of securities activities (including underwriting and dealing in equity securities) satisfy the "closely related to banking" test. However, the Federal Reserve is statutorily prohibited from determining that insurance agency and insurance underwriting activities are closely related to banking, with certain exceptions that are not relevant to the proposed transaction. Therefore, the life insurance and property and casualty insurance businesses of Travelers are not permissible activities for a bank holding company.

Notwithstanding this prohibition, Section 4(a)(2) of the BHC Act provides that a company that becomes a bank holding company may retain for two years shares of nonbank companies that would otherwise be impermissible for a bank holding company to own. Section 4(a)(2) does not authorize such a bank holding company to make acquisitions of additional impermissible businesses during this two-year period. The Federal Reserve may provide up to three one-year extensions of the two-year holding period if, "in its judgment, such extensions would not be detrimental to the public interest".

The use of Section 4(a)(2) to make a major cross-industry acquisition is unprecedented. The Federal Reserve could have stymied the Citigroup transaction by informing the parties that Citigroup would be required to undertake immediate efforts to divest the insurance underwriting businesses. Such a requirement would have been consistent with the way in which the Federal Reserve interprets other divestiture provisions in the BHC Act. Although the Federal Reserve stated that it did not promise to approve the transaction, the parties held a number of meetings with the legal and supervisory staff of the Federal Reserve and it seems very unlikely that the parties would have proceeded with the transaction without some assurances from the Federal Reserve that divestiture efforts will not be required immediately and that the Federal Reserve will provide Citigroup with five years to divest, the maximum divestiture period allowed under Section 4(a)(2).

The Federal Reserve's support for the transaction is consistent with its campaign to preserve its position as the preeminent federal banking regulator and to expand its role to that of the "umbrella" regulator for financial services companies. The regulatory alternatives for the Citigroup transaction (discussed below) were to place the insurance underwriting activities in a subsidiary of Citibank or operate Citigroup as a unitary savings and loan holding company. Either alternative would have divested the Federal Reserve of jurisdiction over one of the largest banking organizations and over the first truly diversified financial services company.

However, under current law the Federal Reserve does not have any discretion to allow Citigroup to retain the Travelers= insurance businesses beyond five years from the date on which it becomes a bank holding company. Unless there is a change in law within five years, which may be as narrow as extending the Section 4(a)(2) divestiture period beyond five years or as broad as the financial reform proposed in H.R. 10, Citigroup will have to divest its insurance underwriting businesses or restructure its operations in a manner that complies with current law.

State Insurance Laws

Travelers is licensed to conduct an insurance business in all fifty states and owns over fifty insurance company operating subsidiaries domiciled (i.e., incorporated) in about a dozen states. Although the proposed transaction is structured as a merger of Citicorp into Travelers, there is arguably a change in control for insurance regulatory purposes. If a domiciliary state insurance commissioner were to conclude that the transaction involved a change in control, Citigroup would need to obtain the approval of the commissioner with respect to acquiring control of the insurance operating subsidiaries domiciled in that state. State insurance laws generally do not preclude a bank holding company from acquiring control of an insurance company, but state insurance commissioners could come under considerable political pressure from the local insurance industry to disallow such a transaction. If the change in control were disallowed, then the insurance operating subsidiaries located in that state would have to be divested.

In addition to any change of control approvals that may be required, insurance licensing laws exist in certain states that prohibit an affiliate of a bank from being licensed as an insurance company.[1] The definition of "bank" varies from state to state and most such anti-affiliation statutes apply only where the bank is operating in the same state as the insurance company.

2. *Retention of Securities Businesses*

As noted above, the Federal Reserve has determined that all types of securities activities (except for formally acting as the distributor of a mutual fund) are permissible under the BHC Act. The securities activities of a bank holding company also must be permissible under the Glass-Steagall Act. Through recent acquisitions of Salomon Brothers and Smith Barney, Travelers has amassed a substantial securities business. Many articles in the financial press have stated that, in order for the Citigroup transaction to proceed, Congress will have to repeal the Glass-Steagall Act. This is incorrect. As a practical matter, the Glass-Steagall Act has been repealed (and not merely weakened) by regulatory interpretation and it is very unlikely that it will present an obstacle to completion of the proposed transaction.

Section 20 of the Glass-Steagall Act prohibits a bank from being affiliated with a company that is engaged principally in underwriting and dealing in securities. The Federal Reserve interprets Section 20 to prohibit a bank affiliation with a securities company that derives more than 25% of its gross revenue from underwriting and dealing in securities that a bank is not permitted to underwrite or deal in. Such "ineligible revenues" do not include revenues from such activities as securities brokerage, private placements, underwriting and dealing in government securities, mergers and acquisitions advisory services, and asset management activities. The Section 20 test is applied to each securities affiliate, not to the banking organization as a whole. Although it is a question of fact as to whether a securities affiliate meets this test, virtually all investment banks currently meet the test and it is very likely that the others could meet the test by reorganizing some of their activities.

B. ALTERNATIVE TRANSACTION STRUCTURES UNDER CURRENT LAW

The temporary nature of the Section 4(a)(2) exemption under which Citigroup will operate and the uncertain outlook for financial reform legislation (discussed below) raise the question whether there may be alternative ways for such combinations of commercial banks and insurance underwriters to be accomplished under current law.

1. *Insurance Underwriting Through a State Bank Subsidiary*

The Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") generally prohibits state banks from engaging in activities that are impermissible for national

[1] As of August 1997, the following states had anti-affiliation statutes: Arkansas, Colorado, Georgia, Mississippi, Nebraska, Nevada, New Jersey, Pennsylvania, Vermont and Wisconsin.

banks, and prohibits subsidiaries of state banks from engaging in activities that are impermissible for subsidiaries of national banks unless the Federal Deposit Insurance Corporation (the "FDIC") determines that the activity in question would pose no significant risk to the deposit insurance funds. FDICIA specifically provides that the FDIC may not make such a determination with respect to insurance underwriting activities.

Before FDICIA restricted the activities of the state banks and their subsidiaries, a number of banking organizations, including Citibank, took advantage of a Delaware law that allowed Delaware banks to establish insurance underwriting subsidiaries. FDICIA permitted a state bank subsidiary that was underwriting insurance on November 21, 1991 to continue to underwrite the same type of insurance for residents and businesses located in those states in which it was providing insurance on that date. Although Citibank's grandfather rights under this provision will not terminate as a result of merging into Travelers, it appears unlikely that Citibank's Delaware subsidiary was providing enough types of insurance in enough states on November 21, 1991 for such a subsidiary to assume all of Traveler's insurance underwriting business.

2. *Insurance Underwriting Through a National Bank Subsidiary*

The "Business of Banking"

The first sentence of 12 U.S.C. §24(7), which dates to 1864, authorizes a national bank to exercise "all such incidental powers as shall be necessary to carry on the business of banking", and lists five specific banking activities (such as making loans and receiving deposits). The second sentence of 12 U.S.C. §24(7), which was added by Section 16 of the Glass-Steagall Act, prohibits national banks from engaging in the "business of dealing in securities and stock."[2] For many years, the phrase "business of banking" was interpreted to mean traditional banking activities such as those specifically listed in the statute, and "incidental activities" were thought to be activities (such as hiring employees) that were necessary to conduct the listed activities. The prohibitions added by Section 16 of the Glass-Steagall Act were viewed as preventing national banks from engaging in securities activities.

[2] In pertinent part, Section 24(7) provides that a national bank shall have the power

> To exercise . . . all such incidental powers as shall be necessary to carry on the business of banking; by 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 according to the provisions of Section 62 of the Revised Statutes. The business of dealing in securities and stock by the [national bank] shall be limited to purchasing and selling such securities and stock solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock . . .

The first significant departure from this interpretation occurred in *Securities Industry Association v. Clarke*,[3] a 1990 case involving the authority of a national bank to underwrite securities representing interests in mortgages. The United States Court of Appeals for the Second Circuit held that such securitization activities are within the "business of banking" and that the limitations in Section 24(7) on engaging in the "business of dealing in securities and stock" are inapplicable to any activity that is within the "business of banking". In *Nationsbank of North Carolina v. Variable Annuity Life Insurance Co.*[4] ("*VALIC*") the United States Supreme Court upheld the determination of the Office of the Comptroller of the Currency (the "Comptroller") that the "business of banking" is broader than the five powers listed in the first sentence of Section 24(7) and, in particular, that the business of banking necessarily includes some securities activities. The Supreme Court left it to the Comptroller to determine which activities are within the business of banking. However, the court stated that the Comptroller's discretion in making such determinations "must be kept within reasonable bounds. Ventures distant from dealing in financial investment instruments—for example, operating a travel agency—may exceed those bounds."[5]

The Comptroller, through his Chief Counsel, responded to *VALIC* by developing a framework for determining whether an activity is within the "business of banking". The framework relies upon three key factors: "(i) whether an activity is functionally equivalent to, or a logical outgrowth of, a recognized bank power; (ii) whether the activity benefits bank customers and/or is convenient or useful to banks; and (iii) whether the activity presents risks of a type similar to those already assumed by banks."[6] Under this analysis the "business of banking" is viewed as an evolving concept that responds to developments in the financial marketplace and the needs of banks' customers. [7]

Permissible Activities of Operating Subsidiaries

When the Comptroller first permitted national banks to establish operating subsidiaries in 1965, the Federal Reserve and others questioned whether the ownership of stock in a subsidiary was consistent with the prohibition in Section 24(7) on a bank purchasing stock for its own account. The Comptroller took the position that it was incidental to the business of banking for a national bank to establish a subsidiary, just as a national bank was permitted to

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3 885 F.2d 1034 (2d. Cir.), cert. denied, 493 U.S. 1070 (1990).

4 513 U.S. 251 (1995).

5 513 U.S. at 258-259 n.2.

6 Williams & Jacobsen, "The Business of Banking: Looking to the Future", 50 Bus. Law. 783, 798 (1995).

7 Williams & Gillespie, "The Business of Banking: Looking to the FutureCPart II", 52 Bus. Law. 1279 (1997).

establish divisions within the bank to engage in different activities. An operating subsidiary was similar to a division of a bank because it was only permitted to engage in the same activities and at the same locations as the parent bank.

Part of the Comptroller's response to *VALIC* was to revise its operating subsidiary regulations. In promulgating the new regulations in 1996, the Comptroller took the position that although an operating subsidiary is limited to activities that are part of or incidental to the business of banking, operating subsidiaries were not limited to activities that are permissible for a national bank.[8] For example, an activity may be within the business of banking because it is a logical outgrowth of an existing banking activity, but it may involve risks that are acceptable only if conducted behind the corporate veil of a subsidiary. The Comptroller indicated that it would consider applications to engage in new activities through operating subsidiaries on a case-by-case basis.

The first significant approval granted under the new operating subsidiary regulation was an application by Zions First National Bank to underwrite municipal revenue bonds. The application presented an ideal opportunity for the Comptroller to apply its legal theories. The language that the Glass-Steagall Act added to Section 24(7) generally prohibits national banks from underwriting municipal bonds other than general obligation municipal bonds. However, *VALIC* made clear that the restrictions on securities activities in Section 24(7) would not have been necessary unless the "business of banking" included such activities. Thus, the prohibition in Section 24(7) on underwriting municipal revenue bonds did not prevent the Comptroller from finding that activity to be within the "business of banking". Moreover, because underwriting municipal revenue bonds is functionally similar to and a logical outgrowth of underwriting general obligation municipal bonds, a determination that underwriting municipal revenue bonds is within the business of banking was clearly consistent with the framework outlined by the Comptroller's Chief Counsel. The Comptroller then determined that establishing an operating subsidiary to conduct the proposed activity was "incidental" to the business of banking because it provided a means to insulate the bank from the additional risks that might arise from the activity. In view of the deference that courts are obliged to give the Comptroller's interpretations of the National Bank Act,[9] it is very unlikely that a court would overrule the Zion decision.

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[8] *Rules, Policies and Procedures for Corporate Activities*, 61 Fed. Reg. 60342 (1996).

[9] In *VALIC* the U.S. Supreme Court reiterated its earlier holdings regarding judicial deference:

> It is settled that courts should give great weight to any reasonable construction of a regulatory statute adopted by the agency charged with the enforcement of that statute. The Comptroller of the Currency is charged with the enforcement of banking laws to an extent that warrants the invocation of this principle with respect to his deliberative conclusions as the meaning of these laws.

513 U.S. at 256-257, (quoting *Investment Company Institute v. Camp*, 401 U.S. 617, 626, 627 (1971).

Insurance Underwriting in an Operating Subsidiary

If Citigroup were to apply to the Comptroller for permission to engage in insurance underwriting activities through an operating subsidiary the Comptroller would have to make a determination that such activities are part of, or incidental to, the business of banking. As discussed above, the three key considerations identified by the Comptroller are: (i) whether the activity is functionally equivalent to, or a logical outgrowth of, a recognized bank power; (ii) whether the activity benefits bank customers or is convenient or useful to banks; and (iii) whether the activity presents risks of a type similar to those already assumed by banks.

With regard to the first consideration, the Comptroller has interpreted the authority conferred on national banks by 12 U.S.C. §92 to engage in insurance agency activities in "any place the population of which does not exceed 5,000 inhabitants" in a way that allows national banks to engage in insurance agency activities on a nationwide basis, essentially without regard to the town of 5,000 limitation. State banks are also permitted to engage in insurance agency activities in many states. Based on this involvement of banks in insurance agency activities, it would not be difficult for the Comptroller to conclude that insurance underwriting is a "logical outgrowth" of such agency activities and that such underwriting activities "benefit bank customers" (such as by providing increased competition) and are useful to banks (such as by enabling them to tailor products to the specific needs of their customers).

It would be much more difficult for the Comptroller to conclude that the third consideration, that the risks of the activity are similar to those already assumed by banks, supports a determination that underwriting insurance is part of, or incidental to, the business of banking. The Comptroller could point to the limited underwriting activities conducted by banks pursuant to FDICIA grandfather rights (discussed above). The Comptroller also could limit the risks associated with insurance underwriting by requiring certain safeguards, such as limitations on the bank lending to or investing in such a subsidiary. Nevertheless, it would be difficult to argue that operating Travelers insurance underwriting business, especially the underwriting of property and casualty insurance, involved risks similar to those already assumed by banks. As the Supreme Court stated in *VALIC*, the Comptroller's discretion to determine that an activity is within the business of banking "must be kept within reasonable bounds." Inasmuch as the Supreme Court indicated that operating a travel agency might exceed those bounds, an approval by the Comptroller today of large scale insurance underwriting in a national bank subsidiary probably would not survive judicial review.

In order for insurance underwriting, particularly of property and casualty insurance, to be upheld as part of the "business of banking", the Comptroller would need to follow the same incremental process it has followed in other areas. This process might involve the gradual expansion of underwriting credit life insurance, which is now permissible, to include life insurance that is less directly related to an extension of credit. Similarly, underwriting property and casualty insurance might begin with insurance relating to extensions of credit and gradually be expanded to a broader range of transactions. Although such an incremental process could lead to an operating subsidiary of a national bank being authorized to conduct an

insurance underwriting business on the scale of Travelers= current business, it is likely to take at least five years, and probably somewhat longer, for this process to be completed.

3. Unitary Thrift Holding Company

A company that owns a single thrift institution, such as a federal savings bank, may also own any other type of company. In particular, such a company, which is known as a unitary savings and loan holding company, may own subsidiaries that engage in all types of securities and insurance activities. If financial reform legislation permitting the combination of commercial banking and insurance underwriting is not enacted within the next five years, one option that would be available to Citigroup would be to place its banking activities into a federal savings bank and operate as a unitary savings and loan holding company.

The geographic restrictions that have been a primary reason for bank holding companies to operate bank subsidiaries in different states would not prevent Citigroup from operating a single federal savings bank with branches in other states. Federal savings banks may engage in interstate branching without regard to state law. However, branching outside of the United States would create a question of first impression. The relevant statutory provisions do not address the authority of a federal savings association to establish offices or subsidiaries outside the United States or to engage in lending with respect to property located outside the United States. As late as 1993 the Office of Thrift Supervision (the "OTS") had concluded that federal savings associations could not establish foreign operating subsidiaries. However, in a 1994 opinion, the OTS concluded that such subsidiaries could be established provided that they engage exclusively in activities that federal savings associations may undertake directly and that the OTS is satisfied, in a particular case, that the savings association has sufficient familiarity with local markets, the association will maintain effective oversight and monitoring of the subsidiary and the OTS will have full access to and enforcement jurisdiction over the operating subsidiary. The OTS also has authorized the establishment of "foreign agency offices". The OTS regulations provide that, with the exception of making payments on savings accounts (which are regarded as tantamount to establishing a branch), the OTS may authorize the offering of any services through an agency office that could be offered from a federal savings association branch. In a 1994 OTS ruling, a federal savings association was permitted to establish a foreign agency office to provide, to U.S. based institutional trust customers, global custody services, securities lending, paying agent services and CEDEL depository services. Although the OTS has not yet done so to date, in our view it is likely that the OTS would permit a federal savings bank to establish branches outside the United States.

Another obstacle to converting Citigroup into a unitary savings and loan holding company is that no more than 20% of the assets of a federal savings bank may consist of commercial loans and half of that must consist of loans to small businesses. This provision would mean that, to the extent that the commercial loans held by Citigroup exceed these limits, they would need to be booked outside of the federal savings bank. The principal disadvantage of that approach is that such loans could not be funded with low cost insured deposits.

C. THE LEGISLATIVE OUTLOOK

Travelers and Citicorp stated in the press release announcing their merger that they "expect that current laws restricting bank holding companies from participating in insurance underwriting activities will change in the foreseeable future." The foreseeable future presumably means within the next five years. The press release was issued only days after H.R. 10, which would permit the proposed transaction, was withdrawn from consideration by the leadership in the U.S. House of Representatives after it became obvious that it could not be enacted in its current form. This was the eleventh time since 1979 that Congress failed to enact financial reform legislation.

In very broad terms, H.R. 10 would allow a holding company to engage in banking, securities activities, selling and underwriting all types of insurance, and a limited amount of nonfinancial activities. The legislation contemplated functional regulation of the component parts of such a holding company by banking, securities, insurance and commodities regulators, with the Federal Reserve as the umbrella regulator over the entire structure. The Federal Reserve also would be authorized to determine what types of additional "financial" activities such holding companies could undertake. The authority of the Comptroller to permit new activities to be conducted through national bank subsidiaries would be terminated and most insurance underwriting and securities activities would be forced out of banks and into nonbank affiliates. The bill would also prevent additional unitary savings and loan holding companies from being established.

H.R. 10 is supported by insurance agents, insurance underwriters, that part of the securities industry that has not been absorbed by banking organizations, and the Federal Reserve. The bill is opposed by most banks, including Citicorp. The insurance agents support the legislation because it would place virtually exclusive jurisdiction over insurance agency activities with state insurance commissioners. The agents argue that, without the oversight of state insurance commissioners, banks will evade anti-tie-in rules and force customers to purchase insurance from them as a condition of getting such credit products as mortgages and car loans. The agents view competition from banks as a question of survival and have shown no inclination to compromise. The banks believe that vesting such authority in state insurance regulators will result in a complicated patchwork of insurance regulation and discriminatory treatment of banks by state insurance regulators who to date have been hostile to bank involvement in the insurance business. The banks are content with the current law regarding insurance agency activities under which the banks are authorized to engage in insurance agency activities and the Comptroller has the authority to preempt discriminatory state insurance laws.

Insurance underwriters favor H.R. 10 primarily because it will allow the states to define what constitutes "insurance", which means that to the extent that banks engage in insurance activities they will be required to do so subject to the same insurance regulations that apply to other insurance underwriters. In addition to their general concern about discriminatory treatment from state insurance regulators, the banks object to this provision because they are concerned that a variety of new banking activities might be classified as insurance activities.

The Federal Reserve favors H.R. 10 because it would become the "umbrella regulator"—the regulator with overall responsibility for all financial institutions that engage in banking activities. The legislation would also force financial innovation out of banks and their subsidiaries, over which the Comptroller has primary jurisdiction, to holding company affiliates, over which the Federal Reserve has primary jurisdiction. Although in recent years the Federal Reserve has become more willing to approve new activities, the banks regard the Comptroller (or at least the jurisdictional competition between the Comptroller and the Federal Reserve) as an essential force for innovation in banking. The Administration opposes the exclusion of the Comptroller (and thus the Executive Branch) from future involvement in the evolution of financial institutions and financial markets.

In addition to these fundamental conflicts, H.R. 10 raises a variety of other contentious issues. Smaller banks and thrifts generally oppose the trend toward very large financial supermarkets, which the legislation would favor. Banks and the securities industry differ over the desirability of forcing securities activities out of banks and into affiliated broker-dealers. Companies that operate or would like to establish unitary savings and loan holding companies oppose the restrictions that the legislation would impose on such companies; banks favor the restrictions because their view such companies as unfairly competing for banking business without being subject to the BHC Act restrictions on nonbank affiliations.

The fact that the House leadership continues to propose financial reform legislation that takes the side of the insurance agents rather than the banks demonstrates the strength of the insurance agent lobby. It appears unlikely that legislation can be passed in the next few years if it is opposed by the insurance agents. At the same time, the withdrawal of H.R. 10 without even a floor vote indicates that financial reform legislation that is strongly opposed by the major banks cannot be enacted. Because the banks are free to engage in insurance agency activities without financial reform legislation the only reason for them to compromise on this issue is if the legislation provides some other benefits. One benefit that H.R. 10 offered banks was a ban on establishing additional unitary savings and loan holding companies. However, their refusal to support the bill indicates that such a ban does not outweigh the banks other objections to the legislation. This benefit may grow in significance as more nonbanks establish such holding companies and exploit the increasingly flexible federal savings bank charter.

The opportunity to affiliate with insurance underwriters is the other principal benefit that H.R. 10 offered banks. The question for banking organizations is not whether this is an attractive option, but whether H.R. 10 is the best way to attain it. Banking organizations penetrated the securities brokerage, underwriting and asset management businesses through a gradual process of regulatory interpretation and acquisitions. The incremental nature of the process not only enabled it to survive judicial review but provided time for regulators to learn about and develop techniques to manage new types of risks. This same process is well underway in the insurance business. Only a few years ago banking organizations were legally prevented from participating in the industry. Today, backed by the Comptroller's interpretations and authority to preempt discriminatory state insurance regulations, banks have

full legal authority to engage in insurance agency activities. Banking organizations can become formidable if not dominant competitors in insurance sales over the next few years through aggressive cross-marketing and acquisitions of insurance agencies. At some point, perhaps no more than five years from now, the involvement of banks in insurance activities will provide sustainable grounds for an interpretation by the Comptroller permitting insurance underwriting through a national bank subsidiary. The more transactions there are like the Citigroup transaction, even though they are based on temporary authority, the more support there will be for such an interpretation.

In our view, the Travelers/Citicorp transaction does not substantially alter the prospects for passage of financial reform legislation in the short term. It appears that even banks that want to affiliate with insurance underwriters in the near term will be unwilling to subject their insurance agency activities to the control of state insurance commissioners and that the insurance agents lobby will be able to block legislation that does not accomplish that result. To follow the path of Citigroup in the absence of legislation will involve legal risk. However, the risk diminishes as more transactions are done because it will become easier for the Comptroller to conclude that banking organizations are familiar with the risks associated with underwriting insurance and pressure will grow on Congress to permit the transactions, if only by extending the Section 4(a)(2) divestiture period.

In the meantime, the ability of many of the largest insurance companies to merge with banking organizations is impeded by their mutual form. For example, State Farm, Prudential, Principal, Metropolitan Life, New York Life and John Hancock are all mutual companies. A mutual company cannot be acquired by a banking corporation and the process of converting from mutual to stock form is difficult and time consuming. Mutual insurance companies that want to acquire banking organizations and that want to remain as mutual companies can form mutual holding companies and offer stock in an intermediate stock form holding company, but it is not clear how attractive such stock will be as merger consideration and the formation of mutual holding companies is also burdensome. A number of companies have started the demutualization process and the Travelers/Citicorp transaction is likely to accelerate that trend.

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