

British bank takeovers stalled

USLP charges turn acquisition bids into political hot potato

Ongoing efforts by City of London clearing banks to take over American banking institutions with aggregate assets over over \$24.3 billion have run into severe trouble with the U.S. regulatory authorities and financial public.

According to exclusive information received by the *Executive Intelligence Review*, New York State Banking Superintendent Muriel Siebert has written to Chairmen Proxmire and Reuss of the Senate and House Banking

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Committees demanding a full congressional investigation and public hearings on the "very large number of foreign purchases of U.S. banks" pending this year. Neither the New York State Banking Department (NYSBD) nor the Federal Reserve Board in Washington are willing to take responsibility for this political hot potato.

"Opening this issue up to Congress has tremendous implications," said one Washington source, "not the least of which is that all the acquisitions, already greatly delayed, would be delayed indefinitely."

Applications already pending at the Federal Reserve and other banking authorities include the acquisition by Hong Kong and Shanghai Banking Corporation of New York's Marine Midland; Standard Chartered Bank of Union Bank; National Westminster of National Bank of North America; and Barclays Bank of American Credit Corporation.

The real opposition to the British takeovers began with the U.S. Labor Party's Oct. 4, 1978 appeal to the Fed to deny Hong Shang's application, citing the Crown Colony bank as a major factor in the international illicit narcotics trade.

Delay hits Union stock

The U.S. political environment created by the Labor Party campaign has already impacted the market. On Feb. 9, for example, the Fed silently let the 90-day period which it had to comment on the Standard Chartered application for Union Bank lapse without a sign.

Word shot through the New York brokerage houses that the Labor Party allegations had delayed the Fed's deliberations to the point that the merger would not take place. Union's stock, which rose from \$12 per share to the \$30 dollar range on Standard Charter's \$33 per share offer, dropped sharply below \$25. It is now trading in the \$27-28 range for lack of further news.

But the real news is the delay on the entire British takeover scene — which could attenuate the already drawn-out business negotiations on all the mergers to the point that all the deals fall through. For example, Superintendent Siebert, referring to the Hong Shang bid, told a shocked financial press on Jan. 21: "I would expect a decision by the middle of the year ... I hoped to have a decision earlier ... (but) we still have a lot of material to sift through." But the May 18, 1978 Investment Agreement between Hong Shand and Marine Midland sets March 31, 1979 — not June — as the date on which the agreement terminates, unless either party explicitly reconcludes the agreement because the party "requires additional time ... to satisfy ... the Banking Department or Board of Governors."

"We ... are without question disappointed about the time span the superintendent outlined to the press," Edward M. Duffy, Marine's chairman, complained. "We think our shareholders deserve a speedier decision and we ... hope that she can make it sooner than mid-year."

The delay has also created a small panic at Standard Chartered. It showed through the extremely weak rejoinder written Feb. 14 by the bank's Washington lawyers Kutak, Rock, and Huie to the Fed Board in response to the Labor Party's January call for public hearings in the Union Bank case. The nine-page letter not only refuses to address the drug question completely, but attempts to prove the Labor Party has no standing in the case by citing a board ruling of Oct. 30, 1978 on a protest lodged during a domestic U.S. takeover situation.

A reading of the full text of the Fed Board ruling, however, makes it clear that the protesting party in the case cited was a banking association trying to get a hearing on the grounds that one of its members might be harmed by the takeover. That is, the party was not even claiming injury at all!

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But the lawyer's real purpose comes out in their conclusion: "It appears that the goal of the Labor Party is in fact delay, ... the desire to conduct a mere fishing expedition ... not adequate grounds for a hearing." Their rather obvious focus on the standing issue is nothing more than an attempt to squeak the application through before a time-consuming hearing can be called.

The Long Island Trust precedent

The real precedent in the British takeover boom is the May 9, 1973 denial by the New York State Banking Superintendent of an attempted purchase by London's Barclays Bank of the \$500 million Long Island Trust Company. "I think this whole spate of takeovers is a dead duck just because there are so many places where they can be fouled up," said one bank stock analyst on Feb. 28; "a prime example is the LITC ruling, which the New York banking department is using, I've heard, to complain to the Fed right now."

The May 1973 ruling raises the weighty question of reciprocity. "Applicant (Barclays — ed) in its applications asks reciprocity based on its assertion that United States banks do business in the United Kingdom," the Superintendent's ruling reads in part. "I do not accept this concept of reciprocity. ... No U.S. bank has acquired an overseas bank as the Barclays Group is seeking to acquire Long Island Trust. ... Of the U.K. clearing banks ... none have been acquired by a New York banking corporation.... Most New York banks in fact only engage in wholesale banking (in the U.K.) rather than retail banking." As a New York State source put it more bluntly this week: "Would the Bank of England let Citibank buy National Grindlays or Barclays? We doubt it. And that's not reciprocity."

Reached for comment, British Executive Director to the International Monetary Fund William Ryrie, the Bank of England's representative in the United States, was aghast. "New York would not do that.... There's no basis for that ... nonsense," he fumed, "No one would dare charge the U.K. does not give reciprocity. It's the freest market in the world, and we don't have all these silly state laws prohibiting this and that.... Of course, if it was a question of Barclays ... I do think the authorities would do something" When it was pointed out that the Long Island Trust ruling is on the New York State books, he rushed off to read the precedent, of which he was completely unaware.

Accounting for their income

The stickiest point for the NYSBD and the Fed is the British banks' accounting system.

As Hong Shang's auditors Peat, Marwick, Mitchell and Co. and Price, Waterhouse and Co., have told the Fed, "the financial statements of HSBC are not required (under the Hong Kong Companies Ordinance) and do

not comply with either United States generally accepted accounting principles or regulation S-X of the U.S. Securities and Exchange Commission. To this day Hong Shang, according to its auditors, transfers "an undisclosed amount of net operating profit to inner reserves ... (due to which) profit or loss for any one year in accordance with United States generally accepted accounting principles can not be determined by an investor because transactions which would be reported as a part of profit or loss under such principles are recorded directly to inner reserves. The amounts of such transactions are not disclosed." Standard Chartered, National Westminster, Barclays, and all London-headquartered clearing banks admit to precisely this form of accounting until as recently as 1972.

It means, simply, that no one has any way of determining what the sources of such a bank's income were, or how it was disbursed, in a given year, and whether it was drug-related on the income or expenditure account.

One protest received by the Fed regarding the National Westminster acquisition application was in fact from an irate Nat West business client in London who wrote: "Nat. West. stated they maintain alternate figures of their statements of account to those published and refuse to provide such alternate figures to their customers.... It further appears that the bank has taken advantage of its computer-based central clearing system to eke additional hidden pecuniary advantage from its customers' businesses." That is, not only does Nat West stand accused of two sets of books, but of larceny by its British customers.

"The real question is whether the Fed staff or the board will want to take the responsibility, after all this drug-related publicity, of okaying the takeovers and then being asked later by irate congressmen why they did such a thing. Therefore they may decide to grant the USLP an open hearing in one of its protests and then all hell could break loose," one New York analyst said.

The Fed Board and staff, meanwhile, held a public hearing on Feb. 21 at which the staff, to protect itself, proposed to the board a "Statement of Policy on Supervision and Regulation of Foreign Bank Holding Companies," which the board duly issued on Feb. 26. The five-page policy statement "specifies that U.S. subsidiary banks (those purchased by foreign banks) shall be operated safely and in a prudent manner." What, but the narcotics issue, can possibly be construed by the term "safely"?

In fact, the Fed board has asked its staff to prepare a full-length report on all the implications of foreign bank purchases of U.S. banks which will focus heavily on the reciprocity question. There will certainly be no rulings on pending acquisitions until this report is complete, Fed sources say.

— Kathy Burdman