FINANCIAL SERVICES/Unitary Thrifts

SUBJECT: **Financial Services Modernization Act of 1999 . . . S. 900. Gramm motion to table the Johnson modified amendment No. 309.**

ACTION: MOTION TO TABLE FAILED, 32-67

SYNOPSIS: As reported, S. 900, the Financial Services Modernization Act of 1999, will reform Depression-era laws in order to eliminate barriers that prevent banks, insurance companies, and securities firms from affiliating. The bill will create a new statutory framework for the financial services industry that will increase its safety and soundness and that will give consumers more choices and lower prices.

The Johnson modified amendment would amend the section on unitary thrifts to forbid the sale of such thrifts to other commercial firms. (A "unitary thrift" is a savings and loan that is owned by a commercial business. A "commercial" business refers to a business that provides non-financial products and services. For instance, manufacturing or trucking businesses are commercial. Unitary thrifts have been legal since they were authorized by Congress in 1967. There are only 22 unitary thrifts in existence, with 9 applications to start such thrifts pending. Unitary thrifts operate under rules intended to prevent their owners from using deposits for unfair commercial advantages.) Both the Johnson amendment and the underlying bill would prevent the formation of new unitary thrifts. The underlying bill will allow the sale of existing unitary thrifts to other commercial businesses; the Johnson amendment would limit their sale to other financial firms.

Debate was limited by unanimous consent. After debate, Senator Gramm moved to table the amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

NOTE: After the vote, the amendment was adopted by voice vote.

Those favoring the motion to table contended:

Unitary thrifts have existed for the past 30 years. They do not exist due to some sort of accidental "loophole" in the law that was

(See other side)

YEAS (32)		NAYS (67)				NOT VOTING (0)	
Republicans (24 or 44%)	Democrats (8 or 18%)	Republicans (30 or 56%)		Democrats (37 or 82%)		Republicans (0)	Democrats (0)
Allard	Akaka	Abraham	Hutchinson	Baucus	Kennedy		
Bennett	Breaux	Ashcroft	Hutchison	Bayh	Kerrey		
Bunning	Dodd	Bond	Inhofe	Biden	Kerry		
Campbell	Inouye	Brownback	Jeffords	Bingaman	Kohl		
Chafee	Lieberman	Burns	Murkowski	Boxer	Landrieu		
Cochran	Murray	Collins	Roberts	Bryan	Lautenberg		
Coverdell	Reed	Craig	Santorum	Byrd	Leahy		
Domenici	Robb	Crapo	Sessions	Cleland	Levin		
Enzi		DeWine	Shelby	Conrad	Lincoln		
Gorton		Frist	Snowe	Daschle	Mikulski		
Gramm		Grams	Specter	Dorgan	Moynihan		
Hagel		Grassley	Thomas	Durbin	Reid		
Kyl		Gregg	Thompson	Edwards	Rockefeller		
Lott		Hatch	Thurmond	Feingold	Sarbanes		
Lugar		Helms	Voinovich	Feinstein	Schumer		
Mack				Graham	Torricelli		
McCain				Harkin	Wellstone		
McConnell				Hollings	Wyden		
Nickles				Johnson			
Roth							
Smith, Bob							
Smith, Gordon							
Stevens							
Warner							

VOTING PRESENT (1)
Fitzgerald

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

discovered and exploited by commercial businesses--they exist because Congress, after numerous hearings and lengthy debate, decided in 1967 that allowing them to exist was a good idea. For the past 30 years they have operated well in practice. They have been better managed, have had lower failure rates, and have had fewer complaints about violating provisions of various Federal laws than have had other savings & loans. Our colleagues believe that allowing them to exist breaks the wall between commerce and banking. We agree that breaking that wall is not a good idea (at least at present; in the future, with safeguards, that barrier may be largely and appropriately removed). The danger that can come from mixing banking and commerce is that a bank's lending practices can be distorted to give unfair competitive advantages to the commercial firm to which it is tied. In the case of unitary thrifts, though, that danger is largely nonexistent. By law, most of a unitary thrift's lending, at least 65 percent, must be for mortgage, consumer, and small business loans. Further, no more than 20 percent of its assets may be used for commercial loans, and at least half of such loans must go to small businesses. These rules effectively prevent businesses from buying thrifts to give themselves a piggybank.

At present, there are 22 unitary thrifts in America. Most of them were formed during the savings & loan crisis, when the Federal Government cajoled commercial companies into buying thrifts and pumping cash into them to keep them solvent. Those businesses put about $3 billion into a number of thrifts. If they had not taken that action, the thrifts would have failed and the American taxpayers would have had to pay tens of billions of dollars to cover the losses. Now our colleagues tell us that we ought to severely restrict to whom these existing unitary thrifts may be sold to by barring their sale to other commercial businesses. That sudden limitation in the number of possible buyers would instantly depress the sale price of those unitary thrifts by 10 percent to 20 percent. The problem with that effect, besides being totally unfair to those companies that went into this business at the Government's urging, is that it would probably be ruled unconstitutional under the takings clause.

Financial institutions like this amendment. They do not like competition from nonfinancial institutions in their field. We know, therefore, that many of our colleagues have been under pressure from banks to accept this amendment. We urge them not to take that step. The issue, for us, is one of fairness. If our colleagues had offered an amendment that said that unitary thrifts, of which there are very few, would be compensated out of the insurance fund for the losses they would incur from being barred from selling to other commercial companies, we would not have arguments against this amendment. However, our colleagues have basically said "tough"; legislation has winners and losers, and, as far as they are concerned, unitary thrifts will be losers under this bill. We oppose that approach as unjust and, thus, oppose this amendment.

Those opposing the motion to table contended:

Our colleagues and we are not really that far apart in our position on unitary thrifts. Senators unanimously agree that new such thrifts should not be allowed, and they unanimously agree that existing such thrifts should be allowed to stay in business. The only difference of opinion comes when the subject shifts to the terms under which they may be sold. We do not believe that commercial firms that currently do not have unitary thrifts should be allowed to purchase them. We need to close down this one loophole in the otherwise total legal separation between commercial companies and financial institutions. The current owners are not causing any of the types o f problems that Members understand can occur with this type of arrangement; we should not assume from that fact that no problems would arise with other owners.

The arguments against this amendment are that it proposes an unconstitutional "taking" of property from the owners of unitary thrifts and that it is unfair. We reject both arguments. Courts have made numerous decisions on takings over the years. Generally, they have required that real property be involved. It is very questionable to say that courts would agree that a charter that was granted by the Government to a business was real property. That question aside, we note that courts have generally found that compensation is not required unless there has been an invasion of property or a total loss of the property's economic value. Neither result would occur as a result of the Johnson amendment. Very few commercial enterprises have shown any interest in owning a unitary thrift. However, other financial institutions, such as insurance or securities companies, have been very interested in owning thrifts, and, in fact, hundreds of thrifts are so owned. The potential market, therefore, would only be reduced slightly. Our colleagues say that the Johnson amendment would lower the sale price of unitary thrifts by up to 20 percent; we doubt it.

It is true that it would cause some harm for owners of unitary thrifts. That harm is outweighed by the public benefit that would be gained by guarding against the mixing of commerce and banking. For most bills passed by Congress there are one or more groups that end up financially worse off. Congress is aware of those losses but it imposes them because it is also aware of benefits and it believes that the net effect for the public is positive. We note, for instance, Congress imposed a qualified thrift lender test in 1987 that made all savings and loans hold a percentage of their total assets as qualified thrift investments. That change cost thrifts, but it benefitted the public. Such legislative changes are common and appropriate. Far from being unconstitutional acts, those types of decisions are the types of public policy decisions that Members of Congress were elected to make.

We believe that as a matter of public policy a very strict separation should be kept between commerce and finance. In light of the ongoing disaster in Asia, which is largely the result of not having such a separation, we think that all Members should agree on this point. No new commercial businesses should be allowed to own thrifts. The bill before us will leave open one avenue for commercial businesses that do not now control thrifts to acquire them. The Johnson amendment would close that avenue. We strongly urge our colleagues not to table this amendment.