

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 26.
BANKS AND OTHER FINANCIAL
INSTITUTIONS.

CHAPTER 14.
UNIVERSAL BANK CERTIFICATION.

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CHAPTER 14. UNIVERSAL BANK CERTIFICATION.

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CHAPTER 14. UNIVERSAL BANK CERTIFICATION.

SUBCHAPTER I. GENERAL PROVISIONS.

§ 26-1401.01. SHORT TITLE.

This chapter may be cited as the "Universal Bank Certification Act of 2000".
(June 9, 2001, D.C. Law 13-308, § 201, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

Law 13-308, the "21st Century Financial Modernization Act of 2000", was introduced in Council and assigned Bill No. 13-867, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on January 26, 2001, it was assigned Act No. 13-597 and transmitted to both Houses of Congress for its review. D.C. Law 13-308 became effective on June 9, 2001.

§ 26-1401.02. DEFINITIONS.

For the purposes of this chapter, the term:

- (1) "Affiliate" shall have the same meaning as set forth in § 26-551.02(1).
- (2) "Appropriate federal financial institutions agency" shall have the same meaning as set forth in § 26-551.02(2).
- (3) "Bank holding company" shall have the same meaning as set forth in section 2(a) of the Bank Holding Company Act of 1956, approved May 9, 1956 (70 Stat. 133; 12 U.S.C. § 1841(a)).
- (4) "Capital" shall have the same meaning as set forth in § 26-551.02(6).
- (5) "Capital accounts" means unimpaired capital stock, unimpaired surplus, and undivided profits or retained earnings of a financial institution.
- (6) "Capital stock" means the aggregate of shares of nonwithdrawable capital stock issued.
- (7) "Commissioner" shall have the same meaning as set forth in § 26-551.02(7).
- (8) "Community Reinvestment Act" means the Community Reinvestment Act of 1977, approved October 12, 1977 (91 Stat. 1147; 12 U.S.C. § 2901 *et. seq.*).
- (9) "Department" shall have the same meaning as set forth in § 26-551.02(9).
- (10) "Director" shall have the same meaning as set forth in § 26-551.02(10).
- (11) "District" means the District of Columbia.
- (12) "District of Columbia Banking Code" shall have the same meaning as set forth in § 26-551.01(14).
- (13) "District savings institution" shall have the same meaning as set forth in § 26-551.02(15).
- (14) "Equity securities" means a security representing an ownership interest in a corporation or independent agency head
- (15) "Federal agency" shall have the same meaning as set forth in § 26-551.02(17).
- (16) "Federal financial institutions agency" means a federal government agency with regulatory authority over a financial institution.
- (17) "Federally chartered savings institutions" means a financial institution chartered by the Office of

Thrift Supervision, or a successor agency to the Office of Thrift Supervision.

(18) "Financial institution" shall have the same meaning as set forth in § 26-551.02(18).

(19) "Investment securities" means commercial paper, banker's acceptances, marketable securities in the form of bonds, notes, and debentures, and similar instruments that are regarded as investment securities.

(20) "Loan" includes a line of credit or other extension of credit.

(21) "Low-income" means an individual income that is less than 60% of the median individual income for the Washington, D.C. metropolitan area according to the statistics of the United States Department of Housing and Urban Development or a median family income that is less than 60% of the median family income for the Washington, D.C. metropolitan area according to the statistics of the United States Department of Housing and Urban Development.

(22) "Moderate-income" means an individual income that is at least 60%, and less than 80%, of the median individual income for the Washington, D.C. metropolitan area according to the statistics of the United States Department of Housing and Urban Development, or a median family income that is at least 60%, and less than 80%, of the median family income for the Washington, D.C. metropolitan area according to the statistics of the United States Department of Housing and Urban Development.

(23) "National bank" means a financial institution chartered and supervised by the Office of the Comptroller of the Currency, or a successor agency to the Office of the Comptroller of the Currency.

(24) "Person" shall have the same meaning as set forth in § 26-551.02(21).

(25) "Savings institution" shall have the same meaning as set forth in § 26- 551.02(23).

(26) "State bank" means a bank chartered and supervised by a financial institutions agency of a state of the United States.

(27) "State financial institutions agency" means a government agency of a state of the United States authorized to charter and supervise financial institutions.

(28) "Subsidiary" shall have the same meaning as set forth in § 26- 551.02(24).

(29) "Superior Court" means the Superior Court of the District of Columbia.

(30) "Universal bank" means a financial institution which is authorized by its articles of incorporation or other organizational documents to act as a financial institution and is certified under this chapter as a universal bank.

(June 9, 2001, D.C. Law 13-308, § 202, 48 DCR 3244; June 11, 2004, D.C. Law 15-166, § 2(e), 51 DCR 2817.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 15-166 rewrote pars. (7) and (9) which had read as follows:

"(7) 'Commissioner' means the Commissioner of the Department of Banking and Financial Institutions."

"(9) 'Department' means the Department of Banking and Financial Institutions."

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(e) of Consolidation of Financial Services Emergency Amendment Act of 2004 (D.C. Act 15-381, February 27, 2004, 51 DCR 2653).

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

For Law 15-166, see notes following § 26-131.02.

SUBCHAPTER II. APPLICATION AND CERTIFICATION AS A UNIVERSAL BANK.

§ 26-1401.03. APPLICATION TO BE CERTIFIED AS A UNIVERSAL BANK; REVIEW AND APPROVAL OR DISAPPROVAL OF APPLICATION.

(a) A financial institution may apply to be certified as a universal bank by filing a written application with the Commissioner. The application shall include such information as the Commissioner may require by regulation. The application shall be on such forms, and shall be prepared and filed in accordance with such procedures, as the Commissioner may prescribe by regulation.

(b) An application submitted by a financial institution under subsection (a) of this section shall be approved or disapproved in writing by the Commissioner within 90 days after its submission to the Commissioner. The Commissioner and the financial institution may agree to extend the application period for an additional 60 days.

(c) The Commissioner shall not certify a financial institution as a universal bank unless:

- (1) The financial institution is authorized under its articles of incorporation or other organizational documents to act as financial institution;
- (2) The financial institution is chartered or organized, regulated, supervised, and examined under the District of Columbia Banking Code and is under the authority and supervision of the Commissioner;
- (3) The financial institution is in good standing with the Department and there is no investigatory or enforcement action pending against the financial institution by the Department;
- (4) The financial institution is in good standing with appropriate federal and state financial institutions agencies and there is no investigatory or enforcement action pending against the financial institution by an appropriate federal or state financial institutions agency;
- (5) The financial institution is well capitalized and has maintained a capital level prior to certification as a universal bank as the Commissioner may require based on safety and soundness consideration;
- (6) The financial institution does not exhibit a combination of financial, managerial, operational, and compliance weaknesses that are moderately severe or unsatisfactory, as determined by the Commissioner, based upon the Commissioner's assessment of the financial institution's capital adequacy, adequacy of liquidity, and sensitivity to market risk;
- (7) The most recent evaluation prepared under the Community Reinvestment Act, if any, demonstrates that the financial institution has received a rating of "outstanding" or "satisfactory" in meeting the credit needs of its entire community, including low-income and moderate-income neighborhoods, consistent with the safe and sound operation of the financial institution;
- (8) The most recent examination which the financial institution has received from its appropriate federal financial institutions agency, if any, indicates that the financial institution is in compliance with applicable federal law and regulations;
- (9) The financial institution agrees to comply with applicable regulations and rules promulgated by the Commissioner and any lawful order of the Commissioner;
- (10) The financial institution agrees to comply with any conditions imposed by the Commissioner in connection with the approval of an application, including additional requirements that the Commissioner determines are necessary for the protection of depositors or shareholders of the financial institution or of the general public.
- (11) The financial institution agrees to comply with any written agreement entered into with the Commissioner in connection with the approval of an application;
- (12) The Commissioner determines that it is reasonable to believe that the financial institution will act in a safe and sound manner and maintain a safe and sound condition; and
- (13) The Commissioner determines that certification of the financial institution as a universal bank will serve the public interest.

(June 9, 2001, D.C. Law 13-308, § 203, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.04. ISSUANCE OF CERTIFICATE OF AUTHORITY.

If the Commissioner approves the application of a financial institution to become certified as a universal bank, the Commissioner shall issue to the financial institution a certificate of authority stating that the financial institution is certified as a universal bank under this chapter.

(June 9, 2001, D.C. Law 13-308, § 204, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.05. REVOCATION OR SUBSEQUENT LIMITATION OF

CERTIFICATE OF AUTHORITY.

If a universal bank fails to maintain the standards and requirements of § 26-1401.03(c), the Commissioner shall, by order, revoke or limit the exercise of the powers of the universal bank.

(June 9, 2001, D.C. Law 13-308, § 205, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.06. VOLUNTARY TERMINATION OF CERTIFICATION.

A financial institution that is certified as a universal bank under this chapter may elect to terminate its certification by giving 60 days prior written notice of the termination to the Commissioner. A termination under this section shall be effective only with the written approval of the Commissioner. A financial institution shall, as a condition to a termination under this section, terminate its exercise of all powers granted under this chapter before the termination of the certification. The Commissioner's written approval of a financial institution's termination under this section shall be void if the financial institution fails to satisfy the condition to termination under this section.

(June 9, 2001, D.C. Law 13-308, § 206, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

SUBCHAPTER III. POWERS AND AUTHORITY OF UNIVERSAL BANKS.

§ 26-1401.07. PREEXISTING POWERS OF UNIVERSAL BANKS.

A universal bank may exercise any power that it was authorized to exercise under the District of Columbia Banking Code before its certification as a universal bank.

(June 9, 2001, D.C. Law 13-308, § 207, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.08. PARITY OF POWERS OF UNIVERSAL BANK.

(a) The Commissioner may authorize a universal bank to exercise a power that may be exercised by any other state bank, state or federally chartered savings bank, state or federally chartered savings and loan association, or federally chartered national bank.

(b)(1) A universal bank shall file with the Commissioner a written request to exercise a power under subsection (a) of this section. Within 60 days after receiving a request under this subsection, the Commissioner shall approve the request if the Commissioner determines that:

(A) The power requested by the universal bank may be exercised by a state bank, state or federally chartered savings bank, a state or federally chartered savings and loan association, or a federally chartered national bank; and

(B) The universal bank will exercise the power requested in a safe and sound manner.

(2) The Department and the universal bank may agree to extend the 60-day period under paragraph (1) of this subsection for an additional 60 days.

(c) A universal bank shall exercise a power authorized under this section only through a subsidiary of the universal bank, with the appropriate safeguards to limit the risk exposure of the universal bank and to protect the banking customers of the universal bank.

(June 9, 2001, D.C. Law 13-308, § 208, 48 DCR 3244.)

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.09. SPECIFIC POWERS OF UNIVERSAL BANKS.

(a) Subject to applicable laws, regulations, and any required approval of the Commissioner or other regulators, a universal bank may:

- (1) Establish eligibility requirements and the types and terms of deposits that the universal bank may solicit and accept;
- (2) Make, sell, purchase, arrange, participate in, invest in, or otherwise deal in a loan or extension of credit for any purpose and invest in debt instruments or debt securities ("make a loan"), subject to § 26-1401.12;
- (3) Acquire an equity interest or other form of interest as security in a project funded through a loan made under paragraph (2) of this section, subject to § 26-1401.12;
- (4) Acquire an equity interest in a profit-participation project, including a project funded through a loan from the universal bank, subject to § 26-1401.13;
- (5) Purchase, sell, underwrite, and hold investment securities, consistent with safe and sound banking practices, subject to § 26-1401.13;
- (6) Purchase, sell, underwrite, and hold equity securities, consistent with safe and sound banking practices, subject to § 26-1401.13;
- (7) Invest in housing projects, as defined in § 26-1401.13, with the prior written approval of the Commissioner, subject to § 26-1401.13;
- (8) Purchase, sell, and invest in such other investments as the Commissioner, by regulation, may provide, consistent with safe and sound practices, subject to § 26-1401.13;
- (9) Buy and sell securities as an agent or broker, subject to § 26-1401.15;
- (10) Buy and sell real estate and interests in real estate as an agent or broker;
- (11) Manage real estate and other property;
- (12) Sell annuities, subject to § 26-1401.15;
- (13) Sell life insurance, accident insurance, health insurance, property insurance, casualty insurance, and any other form of insurance, subject to § 26-1401.15;
- (14) Act as a broker-dealer, securities agent, investment adviser, investment adviser representative, insurance agent, or insurance broker, if otherwise qualified, upon obtaining a license from the Department of Insurance and Securities Regulation, subject to § 26-1401.15;
- (15) Buy and sell commodities as a principal, agent, or broker, with the prior written approval of the Commissioner, subject to § 26-1401.15;
- (16) Underwrite and distribute annuities, subject to § 26-1401.15, with the prior written approval of the Commissioner and the appropriate federal financial institutions agency of the universal bank; provided, that the underwriting and distribution shall be conducted only through a non-depository financial institution affiliate of the universal bank unless federal law permits the underwriting and distribution to be conducted through a subsidiary of the financial institution;
- (17) Underwrite and distribute life insurance, accident insurance, health insurance, property insurance, casualty insurance, and any other form of insurance, with the prior written approval of the Commissioner, subject to § 26-1401.15; provided, that the underwriting and distribution shall be conducted only through a non-depository financial institution affiliate of the universal bank unless federal law permits the underwriting and distribution to be conducted through a subsidiary of the financial institution;
- (18) Underwrite, deal in, or make a market in securities, with the prior written approval of the Commissioner, subject to § 26-1401.15; provided, that the underwriting, dealing, market-making shall be conducted only through a subsidiary of the universal bank; and
- (19) Distribute shares in investment companies, with the prior written approval of the Commissioner, subject to § 26-1401.15; provided, that the distribution shall only be conducted through a subsidiary of the universal bank.

(b) With the approval of the Commissioner, a universal bank may securitize its assets for sale to the public. The Commissioner may establish procedures governing the exercise of authority granted under this subsection.

(June 9, 2001, D.C. Law 13-308, § 209, 48 DCR 3244; June 11, 2004, D.C. Law 15-166, § 2(f), 51 DCR 2817; Apr. 13, 2005, D.C. Law 15-354, § 35(d), 52 DCR 2638.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 15-166, in the introductory language of subsec. (a), deleted "of the Department of Insurance and Securities Regulation" following "Commissioner".

D.C. Law 15-354, in subsec. (a)(18), validated a previously made technical correction.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(f) of Consolidation of Financial Services Emergency Amendment Act of 2004 (D.C. Act 15-381, February 27, 2004, 51 DCR 2653).

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

For Law 15-166, see notes following § 26-131.02.

For Law 15-354, see notes following § 26-551.05.

§ 26-1401.10. NECESSARY OR CONVENIENT POWERS.

Unless otherwise prohibited by law or regulation, a universal bank may exercise all powers necessary or convenient to effect the purposes for which the universal bank is organized or to further a business, activity, or operation in which the universal bank is lawfully engaged. The Commissioner may, by rule or order, establish that certain powers shall not be considered necessary or convenient to effect the purposes for which a universal bank is organized or to further a business, activity, or operation in which a universal bank is lawfully engaged.

(June 9, 2001, D.C. Law 13-308, § 210, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.11. REASONABLY RELATED AND INCIDENTAL ACTIVITIES.

(a) Subject to any applicable District or federal licensing or regulatory requirements, a universal bank may engage, directly or through a subsidiary, in activities that are reasonably related or incident to the lawful and authorized purposes, activities, operations, or business of the universal bank.

(b) The following activities shall be considered reasonably related or incident to the lawful and authorized purposes, activities, operations, or business of a universal bank:

- (1) An activity that a statute or regulation authorizes a universal bank to engage in;
- (2) An activity permitted under the Bank Holding Company Act;
- (3) Business services;
- (4) Data processing;
- (5) E-commerce services, including web hosting, Internet service provider services, and e-commerce logistics and support;
- (6) Courier and messenger services;
- (7) Credit related activities;
- (8) Consumer services;
- (9) Real estate-related services, including real estate brokerage services;
- (10) Insurance and related services (other than insurance underwriting);
- (11) Securities brokerage;
- (12) Investment advice;
- (13) Securities and bond underwriting;
- (14) Mutual fund activities;
- (15) Management consulting;

- (16) Tax planning and preparation;
- (17) Community development and charitable activities; and
- (18) Debt cancellation contracts.

(c) The Commissioner may, by rule, prescribe additional activities that shall be considered reasonably related or incident to the purposes, activities, operations, or business of a universal bank.

(d)(1) If the activity is not described in subsection (a) or (b) of this section, a universal bank shall provide written notice to the Commissioner of the universal bank's intent to engage in an activity under this section at least 60 days before the universal bank intends to engage in the activity.

(2) The Commissioner may deny or revoke the authority of a universal bank to engage in an activity for which notice was provided under paragraph (1) of this subsection if the Commissioner determines that:

- (A) The activity is not an activity reasonably related or incident to the purposes, activities, operations, or business of a universal bank;
- (B) The universal bank is not well-capitalized;
- (C) The universal bank is the subject of an enforcement action; or
- (D) The universal bank does not have satisfactory management expertise to engage in the activity for which notice was provided.

(e) The Commissioner shall take the following factors into account when determining whether an activity is reasonably related or incidental to the purposes, activities, operations, or business of a universal bank:

- (1) Domestic and international competition for banking and other financial services;
- (2) The convergence of financial institutions and financial products;
- (3) Changes, or reasonably expected changes, in the marketplace in which financial institutions compete;
- (4) Changes, or reasonably expected changes, in the technology for delivering banking or related financial services;
- (5) Whether such activity is necessary or appropriate to allow universal banks to:
 - (A) Compete effectively with a company seeking to provide banking or related financial services in the United States;
 - (B) Use an available or emerging technology in providing financial services, including an application necessary to protect the security or efficacy of systems for the transmission of data related to financial transactions; and
 - (C) Offer customers an available or emerging technology for using banking or related financial services; and
- (6) Whether the activity may pose risks to the continued safety and soundness of a universal bank.

(f) The Commissioner may impose conditions upon a universal bank's engagement in an activity that is reasonably related or incidental to the purposes, activities, operations, or business of a universal bank.

(June 9, 2001, D.C. Law 13-308, § 211, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

SUBCHAPTER IV. LIMITATIONS, AND EXCEPTIONS TO LIMITATIONS, ON POWERS OF UNIVERSAL BANKS.

§ 26-1401.12. LIMITATIONS ON LOAN POWER OF UNIVERSAL BANKS.

(a) A universal bank shall not make loans under § 26-1401.09(a)(2) through the universal bank, or a subsidiary of the universal bank, in an aggregate amount that exceeds 20% of the universal bank's capital; provided, that:

- (1) For the purposes of computing this limitation, loans made to a municipal corporation shall not be included; and

(2) A universal bank may make loans under § 26-1401.09(a)(2) through the universal bank, or a subsidiary of the universal bank, in an aggregate amount not to exceed 50% of the universal bank's capital if the loans made under § 26-1401.09(a)(2) are limited to a liability in the form of a note or bond that:

(A) Is secured by not less than an equal amount of bonds or notes of the United States issued since April 24, 1917 or in certificates of indebtedness of the United States;

(B) Is secured or covered by guarantees, commitments, or agreements to take over or purchase the note or bond, and the guarantee, commitment, or agreement is made by a Federal Reserve Bank, the Small Business Administration, the Department of Defense, or the Federal Maritime Commission; or

(C) Is secured by mortgages or deeds of trust insured by the Federal Housing Administration.

(b) A loan made under § 26-1401.09(a)(2) shall require the prior approval of the board of directors or other governing board of the universal bank or its subsidiary.

(c) An equity interest or other form of interest taken as security in a project funded through a loan made under § 26-1401.09(a)(3) shall require the prior approval of the board of directors or other governing board of the universal bank or its subsidiary.

(d) The Commissioner may suspend a universal bank's authority under § 26-1401.09(a)(2) or (3) if the Commissioner determines that the universal bank is not exercising, or will not exercise, authority under § 26-1401.09(a)(2) or (3) in a safe and sound manner or that the condition of the universal bank is not, or will not be, safe and sound. In making a determination to suspend a universal bank's authority under this subsection, the Commissioner shall consider the universal bank's capital adequacy, asset quality, earnings quantity, earnings quality, adequacy of liquidity, and sensitivity to market risk; the ability of the management of the universal bank; and any other factor the Commissioner determines is appropriate. If the Commissioner suspends the authority of a universal bank under this subsection, the Commissioner may specify how the universal bank or its subsidiary shall treat an outstanding loan.

(e) A universal bank shall not purchase foreign bonds unless the Commissioner promulgates a rule authorizing the purchase of foreign bonds by universal banks; provided, that a universal bank may purchase a general obligation bond issued by a foreign national government if the bond is payable in United States funds. The Commissioner shall not promulgate a rule under this subsection authorizing a universal bank to invest in foreign bonds issued by a single issuer in an aggregate amount that exceeds 10% of the universal bank's capital.

(f) A universal bank shall not consider any health information obtained from the records of an affiliate of the universal bank that is engaged in the business of insurance in the universal bank's determination of whether to make a loan under § 26-1401.09(a)(2) or in the determination of whether to make any other loan, unless the person to whom the health information relates consents to the consideration of the health information in the universal bank's determination of whether to make the loan.

(g) A universal bank shall not loan any part of its capital, surplus, or deposits on its own capital stock, notes, or debentures as collateral security; provided, that a universal bank may make a loan secured by its own capital stock, notes, or debentures to the same extent that the universal bank may make a loan secured by the capital stock, notes, and debentures of a holding company for the universal bank.

(h) The restrictions and limits in subsections (a), (e), and (f) of this section shall not apply to a liability:

(1) That is secured by not less than an equal dollar amount of direct obligations of the United States which will mature not more than 18 months after the date on which the liability is incurred;

(2) That is a direct obligation of the United States, the District, or a federal or District agency and that is fully and unconditionally guaranteed by the United States or the District;

(3) In the form of a note, debenture, or certificate of interest of the Commodity Credit Corporation; or

(4) Created by the discounting of bills of exchange drawn in good faith against actually existing values or the discounting of commercial or business paper actually owned by the person negotiating the commercial or business paper.

(June 9, 2001, D.C. Law 13-308, § 212, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.13. LIMITATIONS ON INVESTMENT POWERS OF UNIVERSAL BANK.

(a)(1) A universal bank shall not acquire an equity interest in a profit-participation project under § 26-

1401.09(a)(4) in an aggregate amount that exceeds 20% of the universal bank's capital; provided, that an investment described in § 26-1401.14 shall not be included computation of this limitation. The Commissioner may suspend a universal bank's authority under § 26-1401.09(a)(4) if the Commissioner determines that the universal bank is not exercising this authority under § 26-1401.09(a)(4), will not exercise the authority in a safe and sound manner, or that the condition of the universal bank is not, or will not be, safe and sound. In making a determination to suspend a universal bank's authority under this subsection, the Commissioner shall consider the universal bank's capital adequacy, asset quality, earnings quantity, earnings quality, adequacy of liquidity, and sensitivity to market risk; the ability of the universal bank's management; and any other factor the Commissioner determines is appropriate. If the Commissioner suspends the authority of a universal bank under this subsection, the Commissioner may specify how the universal bank or its subsidiary shall treat an outstanding investment.

(2) The authority granted to a universal bank under § 26-1401.09(a)(4) shall not authorize a universal bank, or a subsidiary of the universal bank, to underwrite insurance.

(b) A universal bank may purchase, sell, underwrite, and hold investment securities, consistent with safe and sound banking practices, under § 26- 1401.09(a)(5) in an amount not to exceed 100% of the universal bank's capital; provided, that:

(1) A universal bank shall not invest an aggregate amount that exceeds 20% of the universal bank's capital in the investment securities of any one obligor or issuer; provided further, that an investment described in § 26-1401.14 shall not be included in the computation of this 20% limitation; and

(2) The underwriting activities of the universal bank shall be conducted through a subsidiary of the universal bank, with the appropriate safeguards to limit the risk exposure of the universal bank and to protect the banking customers of the universal bank;

(c)(1) A universal bank shall not purchase, sell, underwrite, or hold equity securities under § 26-1401.09(a)(6) in an aggregate amount that exceeds 20% of the universal bank's capital; provided, that:

(A) The Commissioner may authorize a universal bank, by written order, to purchase, sell, underwrite, or hold equity securities under § 26- 1401.09(a)(6) in an aggregate amount that exceeds 20% of the universal bank's capital if such greater amount is consistent with safe and sound practices and the safe and sound operation and condition of the universal bank; and

(B) An investment described in § 26-1401.14 shall not be included in the computation of the 20% limitation.

(2) The underwriting activities of universal bank under § 26-1401.09(a)(6) shall be conducted through a subsidiary of the universal bank, with the appropriate safeguards to limit the risk exposure of the universal bank and to protect the banking customers of the universal bank.

(d) A universal bank may purchase, sell, underwrite, and hold investment securities or equity securities in other financial institutions under § 26- 1401.09(a)(5) or (6); provided, that a universal bank shall not purchase and hold stock in a bank chartered under the District of Columbia Banking Code, a national bank, or in a holding company wholly owning a District-chartered or national bank without the authorization of the Commissioner; provided further, that the Commissioner shall not authorize a universal bank to purchase and hold stock under this subsection in an amount that exceeds 10% of the universal bank's capital.

(e)(1) A universal bank may invest in housing projects under § 26- 1401.09(a)(7); provided, that: (1) the aggregate investment in any one housing project shall not exceed 15% of the universal bank's capital and the aggregate investment in all housing projects shall not exceed 50% of the universal bank's capital; and (2) a universal bank shall not invest in a housing project under § 26-1401.09(a)(7) unless the universal bank is in compliance with the capital requirements established by the Commissioner and with the capital maintenance requirements of the universal bank's deposit insurance corporation. An investment described in § 26-1401.14 shall not be included in the computation of the 15% and 50% limitations.

(2) For the purposes of this subsection and of § 26-1401.09(a)(7), the term "housing project" shall mean the development or redevelopment of home sites or housing for sale or rental, including projects for the reconstruction, rehabilitation, or rebuilding of residential properties to meet the minimum standards of health and occupancy, the provision of accommodations for retail stores and other community services that are reasonably related, or incident, to the housing project, and the stock of a corporation that owns a housing project and that is wholly owned by one or more financial institutions.

(f) Except as provided in subsections (b)(1) and (b)(2) of this section, a universal bank may make an investment under § 26-1401.09(a)(3) through (8), directly or through a subsidiary, unless the Commissioner determines that such investment shall be made through a subsidiary or with appropriate safeguards to limit the risk exposure of the universal bank.

(g)(1) A universal bank shall not purchase or hold more than 10% of its own capital stock, notes, or debentures; provided that:

(A) A universal bank may purchase or hold more than 10% of its own capital stock, notes, or debentures, if approved by the Commissioner consistent with safe and sound practices; and

(B) A universal bank may purchase or hold more than 10% of its own capital stock, notes, or debentures if the purchase is necessary to prevent loss upon a debt previously contracted in good faith; provided further, that:

- (i) The universal bank shall sell or cancel the stock, notes, or debentures held or purchased under this subparagraph within 12 months of acquisition; and
- (ii) Stocks, notes, or debentures held or purchased under this subparagraph shall not be held by the universal bank for more than 6 months if the stock, notes, or debentures can be sold for the amount of the claim of the universal bank against the holder of the debt previously contracted.

(2) Cancellation of stock, notes, or debentures under paragraph (1)(B) of this subsection shall reduce the amount of the universal bank's capital stock, notes, or debentures. If the reduction reduces the universal bank's capital below the minimum level required by the Commissioner, the universal bank shall increase its capital to the amount required by the Commissioner.

(June 9, 2001, D.C. Law 13-308, § 213, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.14. EXCEPTIONS TO LIMITATIONS ON INVESTMENT POWERS OF UNIVERSAL BANKS.

The percentage limitations in § 26-1401.13 shall not apply to, and a universal bank may invest without limitation in, any of the following:

- (1) Stocks or obligations of a corporation organized for business development by the District, the United States, or a District or federal agency;
- (2) Obligations of an urban renewal investment corporation organized under the laws of the District or of the United States;
- (3) An equity interest in an insurance company or an insurance holding company organized to provide insurance for universal banks and for persons affiliated with universal banks to the extent that ownership of the equity interest is a prerequisite to obtaining directors' and officers' insurance or blanket bond insurance for the universal bank through the insurance company;
- (4) Shares of stock, whether purchased or otherwise acquired, in a corporation acquiring, placing, and operating remote service units or bank communications terminals;
- (5) Equity, debt securities, or debt instruments of a service corporation subsidiary of the universal bank;
- (6) Advances of federal funds;
- (7) Financial futures transactions, financial options transactions, forward commitments, or other financial products for the purpose of reducing, hedging, or otherwise managing the universal bank's interest rate risk exposure; provided, that the prior written approval of the Commissioner shall be required to make the investments described in this paragraph;
- (8) A subsidiary of the universal bank organized to exercise corporate fiduciary powers under this chapter;
- (9) An agricultural credit corporation; provided, that the universal bank shall not own more than 80% of the stock of an agricultural credit corporation and shall not invest more than 20% of the universal bank's capital in agricultural credit corporations;
- (10) Deposit accounts or insured obligations of a financial institution, the accounts of which are insured by a deposit insurance corporation;
- (11) Obligations of, or obligations that are fully guaranteed by, the United States;
- (12) Stocks or obligations of any Federal Reserve Bank, Federal Home Loan Bank, the Student Loan Marketing Association, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Deposit Insurance Corporation; or
- (13) Any other investment authorized by the Commissioner.

(June 9, 2001, D.C. Law 13-308, § 214, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.15. LIMITS ON INSURANCE AND SECURITIES POWERS OF UNIVERSAL BANKS.

(a)(1) If a universal bank is permitted to engage in the business of insurance or securities under any authority granted by this chapter, the insurance and securities activities of the universal bank shall be subject to the regulation and supervision of the Department and appropriate federal agencies and shall be carried out under all laws, rules, and regulations applicable to insurance and securities; provided, that the Commissioner may exempt a universal bank from a provision of this chapter, or any rule or regulation promulgated under this chapter, which has been preempted by federal law, rule, or regulation.

(2) The Department shall maintain functional regulatory authority over the insurance and securities activities of the insurance or securities subsidiary or holding company affiliate of a universal bank. The regulatory authority of the Department shall include reviewing and taking necessary actions, including approval and disapproval, on applications and other documents or reports concerning a proposed acquisition of, or a change or continuation of control of, an insurer domiciled in the District of Columbia.

(b)(1) A universal bank shall disclose, or cause to be disclosed, to purchasers of, prospective purchasers of, and persons solicited to purchase, an insurance policy of the universal bank that the insurance offered or sold is not a deposit, is not insured by the federal deposit insurance corporation, and is not guaranteed by the universal bank; provided, that this disclosure requirement shall not apply to the solicitation or sale of a credit unemployment insurance policy, group credit life insurance policy, group credit health insurance policy, group credit accident insurance policy, or group credit health and accident insurance policy, or a similar group credit insurance policy covering the person of the insured.

(2) A person soliciting the purchase of, or selling, insurance on the premises of a universal bank shall disclose, or cause to be disclosed, to purchasers of, prospective purchasers of, and persons solicited to purchase, an insurance policy of the universal bank that the insurance offered or sold is not a deposit, is not insured by the federal deposit insurance corporation, and is not guaranteed by the universal bank; provided, that this disclosure requirement shall not apply to the solicitation or sale of a credit unemployment insurance policy, group credit life insurance policy, group credit health insurance policy, group credit accident insurance policy, or group credit health and accident insurance policy, or a similar group credit insurance policy covering the person of the insured.

(3) A disclosure required under paragraph (1) or (2) of this subsection shall be made in writing and in clear and concise language.

(c) If a person obtains insurance and credit from a universal bank, the expense of the credit and insurance transactions shall be disclosed in separate contractual provisions, and the expense of insurance premiums shall not be included in the primary credit transactions without the express written consent of the person; provided, that this subsection shall not apply if the insurance policy being obtained is a flood insurance policy, a credit unemployment insurance policy, a group credit life insurance policy, a group credit health insurance policy, group credit accident insurance policy, or a group credit health and accident insurance policy, or a similar group credit insurance policy covering the person of the insured.

(d)(1) A universal banks shall not condition the making of a loan, including a loan under § 26-1401.09(a)(2), the lease or sale of property of any kind, or the furnishing of any services to a customer on the requirement that the customer obtain insurance from the universal bank, an affiliate or subsidiary of the universal bank, or a particular insurer, agent, or broker. A universal bank shall not fix or vary the consideration charged to a customer for the making of a loan, including a loan under § 26-1401.09(a)(2), the lease or sale of property of any kind, or the furnishing of any services based on whether the customer obtains insurance from the universal bank, an affiliate or subsidiary of the universal bank, or a particular insurer, agent, or broker.

(2) The prohibitions under paragraph (1) of this subsection shall not prevent a universal bank from informing a person that insurance is required to obtain a loan or credit, that loan or credit approval is contingent upon the person's procurement of acceptable insurance, or that insurance is available from the universal bank; provided, that the universal bank shall also inform the person in writing that his or her choice of insurance provider shall not affect the universal bank's credit decision or credit terms; provided further, that the disclosure shall be given again before or at the time that the universal bank, or the person selling or soliciting the purchase of insurance on the premises of the universal bank, solicits the purchase of insurance from a customer who has applied for a loan or extension of credit.

(e)(1) A universal bank may engage in an activity under § 26-1401.09(a)(6) through (19) directly or indirectly through a subsidiary, unless the Commissioner determines that the activity shall be conducted through a subsidiary; provided that:

(A) An underwriting or distribution of annuities under § 26-1401.09(a)(16) shall be conducted only

through a non-depository financial institution affiliate of the universal bank unless federal law permits the underwriting and distribution to be conducted through a subsidiary of the financial institution;

(B) An underwriting or distribution of life insurance, accident insurance, health insurance, property insurance, casualty insurance, or any other form of insurance under § 26-1401.09(a)(17) shall be conducted only through a non-depository financial institution affiliate of the universal bank unless federal law permits the underwriting and distribution to be conducted in a subsidiary of the financial institution;

(C) An underwriting, dealing, or market-making in securities under § 26- 1401.09(a)(18) shall be conducted only in a subsidiary of the universal bank; and

(D) A distribution of shares in investment companies under § 26- 1401.09(a)(19) shall only be conducted through a subsidiary of the universal bank.

(2) The Commissioner may require that a subsidiary or affiliate of a universal bank engaged in an activity under § 26-1401.09(a)(6) through (19) implement and maintain appropriate safeguards to limit the risk exposure of the universal bank.

(f) The investment in a subsidiary that engages in an activity under § 26- 1401.09(a)(6) through (19) shall not exceed 20% of the universal bank's capital; provided, that the Commissioner may authorize a higher percentage, by written order, if the percentage is consistent with safe and sound practices and the safe and sound operation and condition of the universal bank.

(g) The aggregate investment in all subsidiaries that engage in an activity under § 26-1401.09(a)(6) through (19) shall not exceed 50% of the universal bank's capital; provided, that the Commissioner may authorize a higher percentage, by written order, if the percentage is consistent with safe and sound practices and the safe and sound operation and condition of the universal bank.

(h) A subsidiary that engages in an activity under § 26-1401.09(a)(6) through (19) may be owned jointly with one or more persons, including universal banks.

(June 9, 2001, D.C. Law 13-308, § 215, 48 DCR 3244; Oct. 19, 2002, D.C. Law 14-213, § 18(f), 49 DCR 8140; June 11, 2004, D.C. Law 15-166, § 2(g), 51 DCR 2817.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 14-213, in subsec. (a)(1), validated a previously made technical correction.

D.C. Law 15-166, in subsec. (a), deleted "of Insurance and Securities Regulation" following "Department", and deleted ", with the approval of the Commissioner of the Department of Insurance and Securities Regulation," following "Commissioner".

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(g) of Consolidation of Financial Services Emergency Amendment Act of 2004 (D.C. Act 15-381, February 27, 2004, 51 DCR 2653).

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

For Law 14-213, see notes following § 26-131.02.

For Law 15-166, see notes following § 26-131.02.

SUBCHAPTER V. COMMISSIONER POSSESSION, RECEIVERSHIP, CONSERVATORSHIP, AND LIQUIDATION OF UNIVERSAL BANKS.

§ 26-1401.16. LIQUIDATION OF UNIVERSAL BANKS IN GENERAL.

A universal bank shall not be liquidated except as provided by this chapter or in accordance with the order of a court of competent jurisdiction.

(June 9, 2001, D.C. Law 13-308, § 216, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.17. COMMISSIONER TAKING POSSESSION OF UNIVERSAL BANKS.

(a) Subject to § 26-1401.15 as it relates to the functional regulatory authority of the Commissioner with respect to the liquidation or rehabilitation of an insurance subsidiary or holding company affiliate, the Commissioner may take possession of the business and property of a universal bank if the Commissioner has determined that one or more of the events described in subsection (b) of this section has occurred.

(b) The Commissioner may take possession of the properties or business of a universal bank under subsection (a) of this section if the universal bank:

- (1) Has violated a law, rule, regulation, a condition imposed by the Commissioner in connection with the approval of an application, an order or authorized request by the Commissioner, or a term or condition of a written agreement entered into with the Commissioner, and such violation affects the safe and sound condition and operation of the bank or the severity of the violation calls into question the competency of management or the quality of the operation of the bank;
- (2) Is conducting its business in an unauthorized or unsafe or unsound manner;
- (3) Is in an unsafe and unsound condition to transact its business;
- (4) Has an impairment of its capital;
- (5) Has suspended payment of its obligations;
- (6) Has neglected or refused to comply with the terms of a duly issued order of the Commissioner;
- (7) Has refused, upon proper demand, to submit its records and affairs for inspection to an examiner of the Department;
- (8) Has refused to be examined upon oath regarding its affairs; or
- (9) Has neglected, refused or failed to take or continue proceedings for voluntary liquidation in accordance with any of the provisions of this chapter.

(c) If the Commissioner takes possession of the property or business of a universal bank under this section, the Commissioner shall inform the universal bank of the universal bank's right to seek review of the Commissioner's action under subsection (e) of this section.

(d) The Commissioner may maintain possession of the property or business of a universal bank until:

- (1) The affairs of the universal bank are finally liquidated;
- (2) The universal bank, with the written approval of the Commissioner, voluntarily winds up its affairs; or
- (3) The Commissioner authorizes the universal bank to resume business under § 26-1401.18.

(e) Within 10 days after the Commissioner takes possession of the property or business of a universal bank under this section, the universal bank may apply to the Superior Court for an order requiring the Commissioner to show cause why the Commissioner should not be enjoined from continuing his or her possession of the property or business. The Superior Court may, upon good cause shown, direct the Commissioner to surrender possession of some or all of the business or property of the universal bank or direct the Commissioner to take, or refrain from taking, any action.

(f) In addition to the authority granted under this section, the Commissioner may appoint a receiver for the universal bank as provided in § 26-1401.19.

(June 9, 2001, D.C. Law 13-308, § 217, 48 DCR 3244; June 11, 2004, D.C. Law 15-166, § 2(h), 51 DCR 2817.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 15-166, in subsec. (a), deleted "of the Department of Insurance and Securities Regulation" following "authority of the Commissioner".

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(h) of Consolidation of Financial Services Emergency Amendment Act of 2004 (D.C. Act 15-381, February 27, 2004, 51 DCR 2653).

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

For Law 15-166, see notes following § 26-131.02.

§ 26-1401.18. RESUMPTION OF BUSINESS BY A UNIVERSAL BANK.

A universal bank of which the Commissioner takes possession or which is operating under restrictions imposed by the Commissioner may be permitted by the Commissioner to resume business in accordance with the provisions of this chapter and subject to such conditions as may be imposed by the Commissioner.

(June 9, 2001, D.C. Law 13-308, § 218, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.19. APPOINTMENT OF A RECEIVER FOR A UNIVERSAL BANK.

(a) The Commissioner may petition the Superior Court to appoint a receiver for a universal bank if there is a reasonable basis to believe the universal bank:

- (1) Has violated a law, rule, regulation, a condition imposed by the Commissioner in connection with the approval of an application, an order or authorized request by the Commissioner, or a term or condition of a written agreement entered into with the Commissioner, and such violation affects the safe and sound condition and operation of the bank or the severity of the violation calls into question the competency of management or the quality of the operation of the bank;
- (2) Has violated a condition imposed by the Commissioner in connection with the approval of an application, an order or authorized request of the Commissioner, or a written agreement entered into with the Commissioner;
- (3) Is conducting its business in an unauthorized, unsafe, or unsound manner;
- (4) Is in an unsafe and unsound condition;
- (5) Has an impairment of its capital;
- (6) Has suspended payment of its obligations;
- (7) Has refused, upon proper demand, to submit its records and affairs for inspection to an examiner of the Department;
- (8) Has refused to be examined upon oath regarding its affairs; or
- (9) Has neglected, refused, or failed to take or continue proceedings for voluntary liquidation in accordance with any of the provisions of this chapter.

(b) If the Commissioner petitions the Superior Court to appoint a receiver for a universal bank, the Commissioner shall request that the Superior Court appoint the Federal Deposit Insurance Corporation as the receiver if any of the deposits in the universal bank are insured by the Federal Deposit Insurance Corporation.

(c) The Superior Court may act upon a petition by the Commissioner for the appointment of a receiver immediately and without notice to any person. The Superior Court may appoint a receiver if the Superior Court determines that a condition set forth in subsection (a) of this section exists and that the bank is operating, or may operate, in an unsafe or unsound manner. The Superior Court may also issue an injunction to require a universal bank to correct any condition set forth in subsection (a) of this section, notwithstanding whether the bank is operating, or may operate, in an unsafe or unsound manner. If the Superior Court appoints a receiver and, after the appointment of a receiver, it appears to the Superior Court that reasons for receivership do not, or no longer, exist, the Superior Court shall dissolve the receivership and terminate any pending proceedings.

(d) Unless otherwise provided by law, a receiver, other than a receiver who is an employee of the Department and acting in his or her official capacity, shall post a bond in an amount to be determined by the Superior Court.

(e) The receiver shall, on a regular basis, report to the Commissioner regarding all matters involving the receivership.

(f) If a universal bank has been closed and placed in receivership, and the Federal Deposit Insurance Corporation pays, or makes available for payment, the insured deposit liabilities of the closed bank, the rights of the Federal Deposit Insurance Corporation, whether or not the Federal Deposit Insurance Corporation is the receiver of the bank, shall be subrogated to all of the rights of the owners of the deposits against the closed universal bank in the same manner and to the same extent as subrogation of the Federal Deposit Insurance Corporation is provided for in section 11(g) of the Federal Deposit Insurance Act, approved September 21, 1950 (64 Stat. 884; 12 U.S.C. § 1821(g)).

(June 9, 2001, D.C. Law 13-308, § 219, 48 DCR 3244.)

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.20. RECEIVER DUTIES AND POWERS.

(a) Subject to Superior Court approval, a receiver shall:

- (1) Take possession of the books, records, and assets of the universal bank and collect all debts, dues, and claims belonging to the universal bank;
- (2) Sue, defend, compromise, arbitrate, or otherwise settle all claims involving the universal bank;
- (3) Sell all real and personal property;
- (4) Exercise all fiduciary functions of the universal bank;
- (5) Pay all administrative expenses of the receivership, which expenses shall be a first charge upon the assets of the universal bank and shall be fully paid before a final distribution or payment of dividends to creditors or shareholders;
- (6) Pay, ratably, all debts of the universal bank; provided, that debts not exceeding \$500 may be paid in full, but the holders of such debt shall not be entitled to interest on the debt;
- (7) Repay, ratably, any amount paid in by a shareholder by reason of an assessment made upon the stock of the universal bank by the Department in accordance with this chapter;
- (8) Pay, ratably, to the shareholders of the universal bank, in proportion to the number of shares held and owned by each, the balance of the net assets of the universal bank after payment or provision for payments as provided in this section;
- (9) Have all the powers of the directors, officers, and shareholders of the universal bank as necessary to support an action taken on behalf of the universal bank; and
- (10) Hold title to all the bank's property, contracts, and rights of action.

(b) Subject to Superior Court approval, a receiver may:

- (1) Borrow money as necessary or expedient in aiding the liquidation of the universal bank and secure the borrowed money by the pledge, hypothecation, or mortgage of the assets of the bank;
- (2) Employ agents, legal counsel, accountants, appraisers, consultants, and other personnel, including, with the prior written approval of the Commissioner, personnel of the Department, that the receiver considers necessary or expedient to assist in the performance of the receiver's duties; provided, that the expense of employing Department personnel shall be an administrative expense of the liquidation that shall be payable to the Department; or
- (3) Exercise any other power and duty authorized by the Superior Court.

(June 9, 2001, D.C. Law 13-308, § 220, 48 DCR 3244; Oct. 19, 2002, D.C. Law 14-213, § 18(g), 49 DCR 8140.

D.C. Law 14-213, in subsec. (a)(7), validated a previously made technical correction.

For Law 13-308, see notes following § 26-1401.01.

For Law 14-213, see notes following § 26-131.02.

§ 26-1401.21. LIEN ON PROPERTY OR ASSETS; VOIDABLE TRANSFER.

(a) Except as provided in subsection (c) of this section, the transfer of, or a lien on, the property or assets of the universal bank shall be voidable by the receiver if the transfer or lien was:

- (1) Made or created within one year before the date the universal bank is ordered into receivership if the receiving transferee or lien holder was at the time an affiliate, officer, director, employee, or principal shareholder of the universal bank or an affiliate of the universal bank;
- (2) Made or created within 90 days before the date the universal bank is ordered into receivership, with the intent of giving to a creditor or depositor, or enabling a creditor or depositor to obtain, a greater percentage of the creditor's or depositor's debt than is given or obtained by another creditor or

depositor of the same class;

(3) Accepted after the universal bank is ordered into receivership by a creditor or depositor having reasonable cause to believe that a preference, as described in subsection (b) of this section, will occur; or

(4) Voidable by the universal bank and the universal bank may recover the property transferred, or its value, from the person to whom it was transferred or from a person who has received it, unless the transferee or recipient was a bona fide holder for value before the date the Commissioner takes possession of the universal bank or the date the universal bank was ordered into receivership or conservatorship.

(b) A preference in a transfer or grant of an interest in the property or assets of a universal bank shall be deemed to occur when:

(1) There is an intent to hinder, delay, or defraud an entity to which, on or after the date that the transfer or grant of interest was made, the universal bank was or became indebted; or

(2) Less than a reasonably equivalent value is obtained by the universal bank in exchange for the transfer or grant of interest if the universal bank was insolvent when the transfer or grant of interest was made or if the universal bank became insolvent as a result of the transfer or grant of interest.

(c) Notwithstanding any other provision of this chapter, the receiver shall not void an otherwise voidable transfer under this section if:

(1) The transfer or lien does not exceed \$1,000 in value;

(2) The transfer or lien was received in good faith by a person who is not a person described in subsection (a)(1) of this section and who gave value in exchange for the transfer or lien; or

(3) The transfer or lien was intended by the universal bank and the transferee or lien holder to be, and in fact substantially was, a contemporaneous exchange for new value given to the universal bank.

(d) A person acting on behalf of the universal bank who knowingly participated in making or implementing a voidable transfer or lien, and each person receiving property or assets, or the benefit of property or assets, of the universal bank as a result of a voidable transfer or lien, shall be personally liable for the property, assets, or benefit received and shall account to the receiver for the benefit of the universal bank.

(June 9, 2001, D.C. Law 13-308, § 221, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.22. MAINTENANCE AND DISPOSAL OF RECORDS BY RECEIVER.

(a) With the approval of the Superior Court, a receiver may dispose of records of the universal bank in receivership that are obsolete and unnecessary to the continued administration of the receivership.

(b) The receiver may retain the records of the universal bank and the receivership for a period of time that the receiver considers appropriate or for a period of time as ordered by the Superior Court.

(c) The receiver may devise a method for the effective, efficient, and economical maintenance of the records of the universal bank and of the receiver's office, including maintaining the records on any medium approved by the Superior Court.

(d) The receiver may use assets of a universal bank to:

(1) Procure services to maintain the records of a liquidated universal bank; or

(2) Pay fees, as established by the Commissioner, to the Commissioner necessary for the Commissioner to procure services to maintain the records of a liquidated universal bank.

(June 9, 2001, D.C. Law 13-308, § 222, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.23. CONSERVATOR; APPOINTMENT; BOND AND SECURITY; QUALIFICATIONS; EXPENSES.

(a) If any of the grounds under § 26-1401.19 authorizing a request for the appointment of a receiver exist

or if the Commissioner determines that it is necessary to conserve the assets of a universal bank for the benefit of the depositors, investors, or other creditors of the bank or for the benefit of the general public, the Commissioner may petition the Superior Court to appoint a conservator for a universal bank.

(b) The Department shall be reimbursed out of the assets of the conservatorship, as expenses, for all sums expended by the Department in connection with the conservatorship.

(c) All expenses of a conservatorship shall be paid out of the assets of the universal bank upon the approval of the Commissioner, shall be a first charge upon the assets of the universal bank, and shall be paid in full before a final distribution or payment of dividends to creditors or shareholders of the universal bank.

(June 9, 2001, D.C. Law 13-308, § 223, 48 DCR 3244; Oct. 26, 2001, D.C. Law 14-42, § 15, 48 DCR 7612; Mar. 2, 2007, D.C. Law 16-191, § 49, 53 DCR 6794.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 14-42 substituted ", as expenses," for ", as expenses" in subsec. (b).

D.C. Law 16-191, in subsec. (a), validated a previously made technical correction.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 15 of Technical Amendments Emergency Act of 2001 (D.C. Act 14-108, August 3, 2001, 48 DCR 7622).

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

Law 14-42, the "Technical Correction Amendment Act of 2001", was introduced in Council and assigned Bill No. 14-216, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 5, 2001, and June 26, 2001, respectively. Signed by the Mayor on July 24, 2001, it was assigned Act No. 14-107 and transmitted to both Houses of Congress for its review. D.C. Law 14-42 became effective on October 26, 2001.

For Law 16-191, see notes following § 26-702.01.

§ 26-1401.24. CONSERVATOR; RIGHTS, POWERS, AND PRIVILEGES.

(a) Subject to the supervision of the Commissioner, the conservator shall take possession of the books, records, and assets of the bank and shall take any action necessary to conserve the assets of the universal bank pending further disposition of the business of the universal bank as provided by law.

(b) Subject to Superior Court approval and under the supervision of the Commissioner, the conservator shall:

- (1) Take possession of the books, records, and assets of the universal bank and collect all debts, dues, and claims belonging to the universal bank;
- (2) Sue, defend, compromise, arbitrate, or otherwise settle claims involving the universal bank;
- (3) Sell real and personal property if necessary to conserve the assets of the bank;
- (4) Exercise all fiduciary functions of the universal bank;
- (5) Pay all administrative expenses of the conservatorship, which expenses shall be a first charge upon the assets of the universal bank and shall be fully paid before a final distribution or payment of dividends to creditors or shareholders;
- (6) Pay the debts of the universal bank if the conservator determines that payment of the debts is in the best interests of the universal bank;
- (7) Have all the powers of the directors, officers, and shareholders of the universal bank as necessary to support an action taken on behalf of the universal bank; and
- (8) Hold title to all the bank's property, contracts, and rights of action.

(c) Subject to Superior Court approval and under the supervision of the Commissioner the conservator may:

- (1) Employ agents, legal counsel, accountants, appraisers, consultants, and other personnel, including, with the prior written approval of the Commissioner, personnel of the Department, that the conservator considers necessary or expedient to assist in the performance of the conservator's duties; provided, that the expense of employing Department personnel shall be an administrative expense of the liquidation that shall be payable to the Department; or
- (2) Exercise any other power and duty authorized by the Superior Court.

(d) Unless otherwise provided by law, a conservator, other than a conservator who is an employee of the Department and acting in his or her official capacity, shall post a bond in an amount to be determined by the Superior Court.

(e) The conservator shall, on a regular basis, report to the Commissioner regarding all matters involving the conservatorship.

(June 9, 2001, D.C. Law 13-308, § 224, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.25. DEPOSITS RECEIVED WHILE UNIVERSAL BANK IN CONSERVATORSHIP.

(a) While a universal bank is in conservatorship, the Commissioner may require the conservator to set aside and make available for withdrawal by depositors or investors and payment to other creditors, ratably, amounts that the Commissioner determines may be used safely and soundly for such withdrawals and payments.

(b) The Commissioner may permit the conservator to receive deposits.

(c) Deposits received while the universal bank is in conservatorship shall not be subject to any limitation on payment or withdrawal. The deposits, and any new assets acquired on account of the deposits, shall be segregated and held for the new deposits and shall not be used to liquidate any indebtedness of the universal bank:

(1) Existing at the time that a conservator was appointed for the universal bank; or

(2) Incurred after a conservator was appointed and was incurred for the purpose of liquidating any indebtedness of the universal bank existing at the time that the conservator was appointed.

(d) Deposits received while the universal bank is in conservatorship shall be kept in cash, invested in direct obligations of the United States, or deposited in depository institutions designated by the Commissioner.

(e) The requirements of subsections (c) and (d) of this section shall remain in effect for 15 days following the date that the conservator returns control of the universal bank to its board of directors, or for such shorter period as the Commissioner may designate.

(f) Before returning control of the universal bank to its board of directors, the conservator shall publish a notice in a paper of general circulation in the District of Columbia in a form approved by the Commissioner, stating the date on which the affairs of the universal bank will be returned to its board of directors and that the provisions of subsection (c) or (d) of this section will not be in effect after 15 days from that date. The conservator shall send a copy of the notice described in the previous sentence to each person who deposited money in the universal bank after the appointment of the conservator and before the time when control of the universal bank is returned to the board of directors.

(June 9, 2001, D.C. Law 13-308, § 225, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.26. AUTHORITY OF CONSERVATOR TO BORROW MONEY; PURPOSE.

(a) With the prior approval of the Commissioner, the conservator of a universal bank may borrow money to aid in the operation, reorganization, or liquidation of the bank, including the payment of liquidating dividends.

(b) With the prior approval of the Commissioner, the conservator may secure money borrowed under subsection (a) of this section by the pledge, hypothecation, or mortgage of the assets of the universal bank.

(June 9, 2001, D.C. Law 13-308, § 226, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.27. TERMINATION OF CONSERVATORSHIP.

(a) If the Commissioner determines that termination of the conservatorship and resumption of the transaction of the universal bank's business by the universal bank can be achieved and maintained in a safe and sound manner and is otherwise in the public interest, the Commissioner may petition the Superior Court to terminate a conservatorship and permit the universal bank to resume the transaction of its business, subject to terms, conditions, restrictions, and limitations as the Commissioner determines are appropriate.

(b) If the Superior Court determines that reasons for the conservatorship no longer exist, the Superior Court may dissolve the conservatorship and terminate any pending proceedings.

(c) If the Commissioner determines that it would be in the public interest, the Commissioner may petition the Superior Court for termination of a conservatorship and appointment of a receiver for the universal bank under § 26-1401.20.

(June 9, 2001, D.C. Law 13-308, § 227, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

SUBCHAPTER VI. MISCELLANEOUS PROVISIONS.

§ 26-1401.28. ARTICLES OF INCORPORATION AND BYLAWS.

A universal bank may operate under the articles of incorporation and bylaws which were in effect before the universal bank's certification as a universal bank or under subsequently amended articles of incorporation and bylaws which are consistent with the provisions and purposes of this chapter.

(June 9, 2001, D.C. Law 13-308, § 228, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.29. ACQUISITIONS, MERGERS AND ASSET PURCHASES.

(a) A universal bank may purchase the assets of, merge with, acquire, or be acquired by, a financial institution, or the holding company of a financial institution, only after a written application to the Commissioner and the written approval of the application by the Commissioner.

(b) An application for approval of the Commissioner under subsection (a) of this section shall be submitted on a form, and accompanied by a fee, prescribed by the Commissioner. In reviewing and approving or disapproving an application under this section, the Commissioner shall apply the standards required by the District of Columbia Banking Code, including the applicant's general plan of business, proposed plan of capital investment in the District, and community development program.

(June 9, 2001, D.C. Law 13-308, § 229, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.30. FEES.

The Commissioner may establish fees for the filing of documents, the processing of applications, and other services provided by the Commissioner or the Department under this chapter.

(June 9, 2001, D.C. Law 13-308, § 230, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

For Law 13-308, see notes following § 26-1401.01.

§ 26-1401.31. RULEMAKING.

The Commissioner may prescribe rules governing the activities of universal banks and implementing this chapter, pursuant to subchapter I of Chapter 5 of Title 2.

(June 9, 2001, D.C. Law 13-308, § 231, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-1401.01.