

A BILL FOR AN ACT

To further amend title 29 of the Code of the Federated States of Micronesia, as amended, by amending sections 102, 201, 601, 603, 605, 613, 617, 619, 621, 701, 702, 801, and 802, thereof and by enacting a new section 106 and a new chapter 9 to incorporate the requirements imposed on FDIC-insured banks by the proposed amendments to the Compact of Free Association, to enact laws governing treatment of inactive and dormant bank accounts, to make certain other necessary changes, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1           Section 1.   Section 102 of title 29 of the Code of the  
2 Federated States of Micronesia, as amended by Public Law No. 12-  
3 57, is hereby further amended to read as follows:

4                   "Section 102.   Definitions.   As used in this title,  
5                   unless it is otherwise provided or the context requires  
6                   a different construction, application, or meaning:

7                   (1) 'Agency' means a place of business where  
8                   transactions are effected with customers on behalf of a  
9                   branch or main office of a bank, but the accounting  
10                  records for such transactions are maintained at the  
11                  branch or main office; includes a remote service  
12                  facility.

13                  (2) 'Bank' means any person or body of persons or a  
14                  corporation authorized by law to engage in the banking  
15                  business, and to accept from the public deposits which  
16                  are withdrawable and transferable by check or other  
17                  means of payment transfer.   'Bank' includes a savings

1           and loan association but does not include a credit  
2           union.

3           (3) 'Banking business' means the business of accepting  
4           deposits of money from the public, withdrawable or  
5           payable on demand or after a fixed period or after  
6           notice, or any similar operation through the frequent  
7           sale or placement of notes or other securities, and the  
8           use of such funds either in whole or part for loans,  
9           investments or any other operation either authorized by  
10          law or considered a generally accepted banking practice,  
11          for the account and at the risk of the person doing such  
12          business.

13          (4) 'Banking Board' means the Board established  
14          pursuant to section 201 of this title.

15          (5) 'Banking Commissioner' means the Banking  
16          Commissioner appointed pursuant to section 206 of this  
17          title.

18          (6) 'Branch' means an office of a bank where banking  
19          business is transacted and at which accounting records  
20          are maintained.

21          (7) 'Demand deposit' means any deposit which is  
22          repayable by its terms not more than three days after  
23          the time it is made.

24          (8) 'Deposits' means money or other property  
25          transferred or assigned to any person pursuant to an

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1 agreement, expressed or implied, that the person shall  
2 repay such moneys upon demand (whether in person or by  
3 written order) or after a fixed or determinable period  
4 of time. Money loaned to a bank which is to be repaid  
5 not sooner than five years from the date of loan, and  
6 pursuant to a loan agreement under which the obligation  
7 to repay is subordinate to the rights of depositors,  
8 shall not be deemed to be a deposit. Money transferred  
9 to a credit union as a purchase of its shares shall not  
10 be deemed to be a deposit.

11 (9) 'Domestic bank' means a bank organized under the  
12 provisions of chapter 3 of this title.

13 (10) 'FDB' means a Domestic bank that is insured by the  
14 Federal Deposit Insurance Corporation.

15 (11) 'FDI Act' means the United States' Federal Deposit  
16 Insurance Act codified at 12 U.S.C. 1811-1831.

17 [~~(10)~~] (12) 'Foreign bank' means a corporation or other  
18 financial institution organized for the purpose of  
19 engaging in the banking business under the laws of a  
20 foreign country, operating a bank in its home territory,  
21 State, or country.

22 (13) 'IAP' or 'institution-affiliated party' means:

23 (a) any director, officer, employee, or  
24 controlling stockholder of, or agent for, an FDB;

25 (b) any other person who has filed or is required

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1 to file a change-in-control notice with the appropriate  
2 U.S. Federal banking agency under section 7(j) of the  
3 FDI Act;

4 (c) any shareholder (other than a bank holding  
5 company), consultant, joint venture partner, and any  
6 other person as determined by the appropriate U.S.  
7 Federal banking agency (by regulation or case-by-case)  
8 who participates in the conduct of the affairs of a FDB;

9 (d) any independent contractor (including any  
10 attorney, appraiser, or accountant) who knowingly or  
11 recklessly participates in -

12 (i) any violation of any law or regulation;

13 (ii) any breach of fiduciary duty; or

14 (iii) any unsafe or unsound practice, which  
15 caused or is likely to cause more than a minimal  
16 financial loss to, or a significant adverse affect on,  
17 the FDB.

18 [~~(11)~~] (14) 'Legal reserve' means the sum which  
19 every domestic bank and foreign bank shall at all times  
20 have available for the payment of their deposit  
21 liabilities pursuant to the provisions of this title.

22 [~~(12)~~] (15) 'Paid-in capital, surplus, and undistributed  
23 profits' means, in the case of a foreign bank, the  
24 aggregate paid-in capital, surplus, and undistributed  
25 profits of such bank and not merely that allocated to,

1 located in, or arising out of its operations in the  
2 Federated States of Micronesia.

3 ~~[(13)]~~ (16) 'Person' includes individuals, corporations,  
4 partnerships, and any other business entity.

5 ~~[(14)]~~ (17) 'Public Auditor' means the Public Auditor  
6 appointed by the President of the Federated States of  
7 Micronesia with the advice and consent of the Congress  
8 pursuant to the Constitution.

9 ~~[(15)]~~ (18) 'Registrar of Corporations' means the  
10 Registrar of Corporations of the National Government of  
11 the Federated States of Micronesia.

12 ~~[(16)]~~ (19) 'Related person' with respect to any person  
13 means his spouse, child, parents, brothers, sisters, or  
14 any partnership, corporation, or firm in which he owns  
15 more than a ten percent interest.

16 (20) 'Secretary of Finance' means the Secretary of the  
17 Department of Finance and Administration of the  
18 Federated States of Micronesia."

19 Section 2. Title 29 of the Code of the Federated States of  
20 Micronesia is hereby amended by adding a new section 106 to read  
21 as follows:

22 "Section 106. Banking Practices - Dormant and Inactive  
23 Accounts.

24 (1) In the event there has been no activity of  
25 deposits or withdrawals in a savings account and not

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1           contact has been made with the account holder of such  
2           savings account for at least five (5) years, the account  
3           shall be deemed a 'dormant account' and the bank in  
4           which such account is kept shall act to close the  
5           dormant account in accordance with the procedures set  
6           forth below in this section.

7           (2) In the event there has been not activity of  
8           deposits or withdrawals n a checking account and not  
9           contact has been made with the account holder of such  
10          checking account for at least two (2) years, the account  
11          shall be deemed a 'dormant account' and the bank in  
12          which such account is kept shall act to close the  
13          inactive account in accordance with the procedures set  
14          forth below in this section.

15          (3) Dormant accounts shall be identified annually by  
16          each bank during the month of October.

17          (4) Upon identification of a dormant account, the bank  
18          shall send written notice to the depositor at the  
19          depositor's last known address, informing the depositor  
20          that the depositor's account will be closed and the  
21          funds therein transferred to the Secretary of Finance if  
22          the depositor does not claim the funds in the dormant  
23          account by December 31 of the calendar year.

24          (5) Between November 1 and November 15 and between  
25          December 1 and December 15 of each year, each bank shall

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1 publish a 'Notice of Inactive Bank Account', which shall  
2 contain:

3 (a) the names, in alphabetical order, and last  
4 known addresses of depositors of dormant accounts; and

5 (b) a statement that, if not claimed, such funds  
6 shall be transferred to the Secretary of Finance during  
7 the month of January of the following year. The Notice  
8 of Inactive Bank Accounts shall be published in a  
9 newspaper of general circulation or by the other means  
10 as determined by the Banking Board.

11 (6) During the month of January of the calendar year  
12 immediately following the notification and publication  
13 required by subsections (4) and (5) above, each bank  
14 shall transfer to the Secretary of Finance, for the  
15 account of the depositor, the full balance of each  
16 dormant account, provide however, that the bank may  
17 deduct therefrom all sums or costs due the bank,  
18 including a proportional share of the cost of  
19 publication or other notice required by this section.

20 (7) Except as provided for in this section, no bank  
21 shall assess any fee against any inactive or dormant  
22 account for reasons of inactivity.

23 (8) In the event that a bank holds, for three (3)  
24 years or more, unidentified deposits or loan payments,  
25 the owner or payor of which cannot be determined by the

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1           bank, the bank shall transfer such funds to the  
2           Secretary of Finance for the account of the depositor or  
3           payor, in the event such depositor or payor is  
4           determined at a later date.

5           (9) Upon receiving sums of money pursuant to this  
6           section, the Secretary of Finance shall furnish the  
7           transferring bank with a receipt for such transferred  
8           funds and shall deposit such sums into a custodial  
9           interest bearing account separate and apart from the  
10          General Fund of the FSM National Government and shall  
11          not be paid to the owner of the funds.

12          (10) Upon completion of the transfer of sums of the  
13          Secretary of Finance, the transferring bank shall be  
14          discharged of all liabilities to the owner, depositor,  
15          or payor of such funds.

16          (11) The Secretary of Finance shall be responsible for  
17          maintaining accurate records of funds received pursuant  
18          to this section in accordance wit any regulations  
19          adopted by the Banking Board.

20          (12) At any time within twenty (20) years of the date  
21          of transfer of funds to the Secretary of Finance  
22          pursuant to this section, such funds may be claimed by  
23          their rightful owner or owners by furnishing proof of  
24          his, her or their right to such funds, which proof is  
25          deemed satisfactory to the Secretary of Finance.

1           (13) All funds transferred to the Secretary of finance  
2           pursuant to this section shall escheat to the National  
3           Government of the Federated States of Micronesia twenty  
4           (20) years following the date of such transfer.

5           (14) Each bank shall hold the FSM National Government  
6           harmless for any liability incurred due to the handling  
7           of an account the bank. The FSM National Government  
8           shall not be liable for any transaction on an account  
9           made by any bank, including the transfer of the balance  
10           of the account to the Secretary of Finance pursuant to  
11           this section.

12           (15) The Banking Board may adopt such rules and  
13           regulations as may be necessary to implement the  
14           provisions of this section."

15           Section 3. Section 201 of title 29 of the Code of the  
16 Federated States of Micronesia, as amended by Public Law No. 9-  
17 130, is hereby further amended to read as follows:

18           Section 201. Creation.

19           (1) There is hereby established a Banking Board  
20           which shall be composed of three members appointed by  
21           the President with the advice and consent of the  
22           Congress of the Federated States of Micronesia.

23           (2) All appointments shall be for a term of four  
24           years,  
25           provided however, that, unless otherwise provided by the

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1           President, all rights and powers of a Banking Board  
2           member shall be maintained by each member until the date  
3           of the first meeting of the Banking Board following the  
4           appointment of such member's successor. Banking Board  
5           ~~[and]~~ members shall be eligible for reappointment.

6           (3) The Chairman of the Banking Board shall be  
7           appointed by the President from among the members  
8           appointed pursuant to subsection (1) of this section."

9           Section 4. Section 601 of title 29 of the Code of the  
10          Federated States of Micronesia, as amended by Public Laws Nos. 9-  
11          130 and 12-57, is hereby further amended to read as follows:

12           "Section 601. Regulation and supervision of banks [by  
13           ~~Banking Board]~~ - General policies.

14           (1) All domestic banks and, to the extent of and with  
15           respect to business done at any branches established in  
16           the Federated States of Micronesia, all foreign banks  
17           doing business in the Federated States of Micronesia  
18           shall be regulated and supervised by the Banking Board  
19           in such manner as to secure the safe and sound conduct  
20           of such business, to prevent unsound practices, and to  
21           maintain the public confidence in such business and  
22           protect the public interest and the interests of  
23           depositors [~~, creditors, and stockholders]~~.

24           (2) In determining if a Bank is carrying on its  
25           business in a prudent manner, the Banking Board will

1 have regard to the following:

2 (a) capital adequacy in relation to the size and  
3 nature of the business;

4 (b) asset concentration and risk exposure;

5 (c) separation of Banking Business from other  
6 business and from other interests of any person owning  
7 or controlling the Bank;

8 (d) adequacy of liquidity in relation to  
9 liabilities;

10 (e) asset quality and adequacy of provisions for  
11 losses;

12 (f) internal controls, risk management and  
13 accounting systems;

14 (g) adequacy of governance arrangements  
15 (including Directors and senior management) in relation  
16 to the nature and scale of the business; and

17 (h) such other matters as the Banking Board  
18 considers relevant.

19 (3) Every foreign bank licensed pursuant to section

20 501

21 of this title shall, with the concurrence of the Banking  
22 Commissioner, designate the branch in the Federated  
23 States of Micronesia which may be used as the channel of  
24 communication between the Banking Board and the Bank  
25 with respect to the application of this title to its

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1 business throughout the Federated States of Micronesia.  
2 Such branch shall be responsible for the timely  
3 provision of reports and information by other branches  
4 requested under this title. The head office of a  
5 domestic bank shall be the channel of communication  
6 between the Banking Board and its branches, and shall be  
7 responsible for the timely provision of reports and  
8 information by other branches requested under this  
9 title.

10 (4) All FDBs shall comply with all existing and future  
11 banking and banking-related laws, rules and regulations  
12 of the United States relating to supervision,  
13 regulatory, and resolution and receivership matters,  
14 except any portions of such laws, rules and regulations  
15 that conflict with sections 4 or 5 of Article XIII of  
16 the FSM Constitution."

17 Section 5. Section 603 of title 29 of the Code of the  
18 Federated States of Micronesia, as amended by Public Law No. 9-  
19 130, is hereby further amended to read as follows:

20 "Section 603. Examination of banks - Authority;  
21 Testimony; Document Production; Fees.

22 (1) The Banking Commissioner may examine, or cause to  
23 be examined; every domestic or foreign bank for the  
24 purpose of ascertaining whether it has complied with  
25 this title and other applicable laws and for such other

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1 purposes and such other matters as the Banking Board may  
2 prescribe.

3 (2) The Banking Commissioner and every examiner  
4 appointed by him may administer an oath to any person  
5 whose testimony may be required on the examination of  
6 any bank and summon and compel the appearance and  
7 attendance of any person for the purpose of the  
8 examination.

9 (3) As part of any examination, the Banking  
10 Commissioner may also require the production of books,  
11 records or other documents in whatever form.

12 [~~(3)~~](4) As an examination fee, each bank so examined shall  
13 pay the total cost of such examination, and the sum so  
14 paid shall be deposited into the General Fund of the  
15 Federated States of Micronesia."

16 Section 6. Section 605 of title 29 of the Code of the  
17 Federated States of Micronesia, as amended by Public Law No. 9-  
18 130, is hereby further amended to read as follows:

19 "Section 605. Special reports.

20 (1) The Banking Commissioner may request from the  
21 banks special reports.

22 (2) The Banking Commissioner may, from time to time,  
23 by notice in writing, require any domestic or foreign  
24 bank to submit such reports and returns as he may  
25 require for the purposes of the administration and

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1 enforcement of the provisions of this title and any  
2 regulations made thereunder.

3 (3) Any bank notified in writing under subsection (2)  
4 of this section shall comply with accurate and timely  
5 submissions or be subject to a penalty imposed by the  
6 Banking Board in an amount not to exceed \$50 per day  
7 until the correct information has been provided to the  
8 satisfaction of the Banking Commissioner.

9 (4) During the first five years of operations in the  
10 Federated States of Micronesia by any domestic bank, the  
11 Banking Commissioner shall call for special reports of  
12 its condition not less frequently than each calendar  
13 quarter."

14 Section 7. Section 613 of title 29 of the Code of the  
15 Federated States of Micronesia, as amended by Public Law No. 12-  
16 57, is hereby further amended to read as follows:

17 "Section 613. Limitations on loans - Related persons.

18 (1) Except as herein provided, no domestic bank shall  
19 make any extension of credit to any of its officers,  
20 directors, agents, [~~or~~] employees, or holders of more  
21 than three percent (3%) of the outstanding stock of the  
22 bank, or to any related person, either directly or  
23 indirectly, except upon the written application of such  
24 person or related person stating the line of credit  
25 applied for, terms and security, if any, offered

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1           therefor to the board of directors or to the loan or  
2           executive committee of the board, and then only with the  
3           written approval of a majority of the board or a  
4           majority of the loan committee of the bank (excluding  
5           the person seeking the credit) before the loan is made;  
6           and the approval of the loan as allowed by the board or  
7           the loan committee of the bank shall be made a part of  
8           the minutes of the next directors' meeting of the bank.

9           (2) Loans may be made to any officer, director, agent,  
10          ~~[or]~~ employee, or shareholder of any domestic bank or  
11          any related person, without such application and  
12          approval, in amounts not in excess of \$5,000 in  
13          aggregate principal owing by any such individual and  
14          related person at any one time.

15          (3) Extensions of credit may only be made pursuant to  
16          subsections (1) and (2) of this section if they are made  
17          on substantially the same terms, including interest  
18          rates and collateral, as those prevailing at the time  
19          for comparable transactions by the bank with members of  
20          the general public; PROVIDED however, that a bank may  
21          offer preferential terms to employees under an  
22          internally established employee benefit program."

23          Section 8. Section 617 of title 29 of the Code of the  
24          Federated States of Micronesia is hereby amended to read as  
25          follows:

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1           "Section 617. [~~Disclosure of grounds for denial of~~  
2           ~~requests for extension of credit~~] Applications for  
3           credit - denials and records. Each bank must provide an  
4           applicant with a written explanation of the basis on  
5           which a decision is made to deny a loan application,  
6           credit card application, or other request for extension  
7           of credit within thirty (30) days from the date of  
8           receipt of such applications by the bank. Each bank  
9           shall keep records of all applications for credit  
10          received and denials and written explanations given in  
11          the manner determined by the Banking Commissioner."

12          Section 9. Sections 619 of title 29 of the Code of the  
13 Federated States of Micronesia is hereby amended to read as  
14 follows:

15          "Section 619. Acceptance of deposits - Minimum capital  
16          requirements. No domestic bank may accept deposits at  
17          any time that its paid-in capital, surplus, and  
18          undivided profits [~~is~~] are less than \$~~[500,000]~~ 1,000,000  
19          in the aggregate."

20          Section 10. Section 621 of title 29 of the Code of the  
21 Federated States of Micronesia is hereby amended to read as  
22 follows:

23          "Section 621. Bank stock - Ownership limitations. No  
24          person or group of related persons (including entities  
25          that are affiliated as parent or subsidiary companies or

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1           are otherwise under common control) may acquire [~~twenty-~~  
2           ~~five~~] ten percent or more of the stock of a domestic  
3           bank without the prior approval of the Banking Board."

4           Section 11. Section 701 of title 29 of the Code of the  
5 Federated States of Micronesia, as amended by Public Law No. 12-  
6 57, is hereby further amended to read as follows:

7           "Section 701. This section shall apply when the Banking  
8           Board has determined that a Bank licensed under this  
9           title:

10                   (a) is following unsafe or unsound practices in  
11           the conduct of its business that if continued may  
12           jeopardize its obligations to its depositors, or  
13           adversely affect the operation or stability of the  
14           banking system of the FSM; or

15                   (b) has contravened or failed to comply with the  
16           terms and conditions of its license or the provisions of  
17           this title.

18           (2) When a Bank is engaged in practices described in  
19           subsection (1) of this section, the Banking Board  
20           ~~shall~~:

21                   (a) shall issue a directive to such Bank to cease  
22           and desist from such practice, contravention or non-  
23           compliance or to take such other action as the Banking  
24           Board determines is necessary;

25                   (b) shall issue a directive to such Bank to take

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1           such action (including action to replace or strengthen  
2           ~~[management]~~ officers or directors) as may be specified  
3           in such directive in order to correct the conditions  
4           resulting from such practice, contravention or non-  
5           compliance; and

6                       (c) may appoint a qualified person to advise the  
7           bank on the proper conduct of its business and measures  
8           to be taken to rectify its situation; the remuneration  
9           to be paid to such advisor shall be fixed by the Banking  
10          Board and paid by the Bank."

11          Section 12. Section 702 of title 29 of the Code of the  
12          Federated States of Micronesia, as amended by Public Law No. 12-  
13          57, is hereby further amended to read as follows:

14               "Section 702. ~~[Penalty for failure to comply with~~  
15               ~~section 701 of this title]~~ Enforcement of directives.

16               (1) The Banking Commissioner shall promptly and fully  
17               enforce all FDIC directives and orders against or  
18               involving any FDB or any IAP, except to the extent that  
19               such directives or orders conflict with the Constitution  
20               of the FSM.

21               (2) If a Bank to which section 701 of this title has  
22               been applied fails to comply promptly ~~[within a~~  
23               ~~reasonable time]~~ with [a] any directive or order of the  
24               FDIC or Banking Commissioner, such failure shall  
25               constitute grounds for an application under section 801

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1 of this title."

2 Section 13. Section 801 of title 29 of the Code of the  
3 Federated States of Micronesia, as amended by Public Law No. 9-  
4 130, is hereby further amended to read as follows:

5 "Section 801. Receivership - Application by Banking  
6 Commissioner. If, in consequence of an examination or  
7 report made by an examiner, or otherwise, the Banking  
8 Board should have reason to believe that a domestic bank  
9 or domestically-licensed foreign bank is [~~not in sound~~  
10 ~~financial condition to continue doing business~~] in an  
11 unsafe or unsound condition or is engaging in unsafe or  
12 unsound practices; or that its affairs are being  
13 conducted in such a manner that the public or the  
14 persons or entities having securities or funds under its  
15 custody are in danger of being defrauded; or if any such  
16 bank shall violate its charter or any law relative  
17 thereto, or this title in any material respect; or if it  
18 becomes insolvent, then, subject to subsections 802(4)  
19 and (5) below, the Banking Commissioner [~~shall~~] may  
20 apply to the Trial Division of the Supreme Court of the  
21 Federated States of Micronesia for the appointment of a  
22 receiver to take charge of and wind up the affairs of  
23 such bank."

24 Section 14. Section 802 of title 29 of the Code of the  
25 Federated States of Micronesia, as amended by Public Law No. 9-

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1 130, is hereby amended to read as follows:

2 "Section 802. Receivership - Appointment and duties of  
3 receiver.

4 (1) If the Court, after hearing all parties concerned,  
5 determines that the facts alleged by the Banking  
6 Commissioner are supported by the evidence, except in  
7 the event that the FDIC has appointed itself receiver  
8 pursuant to subsections (4) or (5) of this section, the  
9 Court [~~it~~] shall appoint a receiver.

10 (2) Upon his appointment the receiver shall, under the  
11 direction of the Banking Commissioner, take possession  
12 of the assets and liabilities, books, records, papers,  
13 and files of every description belonging to the bank;  
14 and collect all loans, fees, and claims of the bank; and  
15 see to the payment of its obligations and debts, and to  
16 the necessary expenses of receivership.

17 (3) The receiver shall proceed to liquidate the  
18 affairs of the bank as soon as possible, and to this end  
19 may sell the personal and real property and other assets  
20 of the bank, but subject to the approval of the Banking  
21 Commissioner. The receiver shall continue to perform  
22 his duties in the manner prescribed herein until the  
23 bank or foreign bank is fully liquidated."

24 (4) The FDIC shall have the right to appoint itself  
25 receiver of a FDB if the Board of Directors of the FDIC

1 determines that:

2 (a) the FDB's assets are less than the FDB's  
3 obligations to its creditors and others, including  
4 members of the FDB;

5 (b) the assets or earnings of the FDB have been  
6 substantially dissipated due to any violation of any  
7 statute or regulation or any unsafe or unsound practice;

8 (c) there exists any unsafe or unsound condition  
9 for the FDB to transact business;

10 (d) the FDB has willfully violated any cease-and-  
11 desist order that has become final;

12 (e) the FDB has engaged in any concealment of any  
13 of the FDB's books, papers, records or assets, or any  
14 refusal to submit the FDB's books, papers, records or  
15 affairs for inspection to any examiner or any lawful  
16 agent of the appropriate U.S. Federal banking agency;

17 (f) the FDB is likely to be unable to pay its  
18 obligations or meet its depositor' demands in the normal  
19 course of business;

20 (g) the FDB has incurred or is likely to incur  
21 losses that will deplete all or substantially all of its  
22 capital, and there is no reasonable prospect for the  
23 institution to become adequately capitalized without  
24 U.S. Federal assistance;

25 (h) the FDB has violated any law or regulation or

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1           has engaged in any unsafe or unsound practice or there  
2           exists any unsafe or unsound condition that is likely to  
3           cause insolvency or substantial dissipation of assets or  
4           earnings, weaken the FDB's depositors of the deposit  
5           insurance funds;

6                   (i) the FDB, by resolution of its board of  
7           directors or its shareholders or members, consent to the  
8           appointment;

9                   (j) the FDB has ceased to be an insured  
10           institution;

11                   (k) the FDB is undercapitalized (as defined in  
12           section 38(b) of the FDI Act), and (i) has no reasonable  
13           prospect of becoming adequately capitalized, (ii) fails  
14           to become adequately capitalized when required to do so  
15           (per section 38(f)(2)(A) of the FDI Act), (iii) fails to  
16           submit a capital restoration plan acceptable to that  
17           agency within the time prescribed under section  
18           38(e)(2)(D) of the FDI Act, or (iv) materially fails to  
19           implement a capital restoration plan submitted and  
20           accepted under section 38(e)(2) of the FDI Act;

21                   (l) the FDB is critically undercapitalized (as  
22           defined in the FDI Act) or otherwise has substantially  
23           insufficient capital;

24                   (m) the U.S. Attorney General notifies the  
25           appropriate U.S. Federal banking agency or the FDIC in

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1 writing that the FDB has been found guilty of a criminal  
2 offense under section 1956 or 1957 of title 18 of the  
3 United States Code or section 5322 or 5324 of title 31  
4 of the United States Code, which deal with money  
5 laundering offenses;

6 (n) the appointment is necessary to reduce the  
7 risk that the deposit insurance fund would incur a loss  
8 with respect to the insured depository institution; or

9 (o) the appointment is necessary to reduce any  
10 loss that the deposit insurance fund is expected to  
11 incur with respect to that institution.

12 (5) Upon closure of a FDB for any reason, the FDIC  
13 shall become the receiver of the FDB on the date of the  
14 closing unless the FDIC notifies the Banking  
15 Commissioner in writing that it will not serve as  
16 receiver.

17 (6) A closed FDB shall pay the receiver's  
18 administrative expenses prior to the payment of any  
19 other claims of unsecured creditors. The subrogated  
20 claim of the FDIC as insurer of deposits shall have  
21 priority over the payment of any claims of general  
22 unsecured creditors of the FDB, other than the  
23 receiver's administrative expenses.

24 (7) No person alleging a claim against a FDB in  
25 receivership shall be permitted to bring an action in a

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1           court of law or other forum (including any action that  
2           existed against the FDB prior to its failure) until such  
3           person has permitted the receiver a reasonable period to  
4           review such claim.

5           (8) No claim against a receiver arising prior to the  
6           failure of the FDB shall be valid unless it appears in  
7           the FDB's records.

8           (9) No claim against the receiver for its actions in  
9           liquidating the FDB shall prevail unless the plaintiff  
10          proves by clear and convincing evidence that the  
11          receiver acted in willful disregard of the law.

12          (10) No court or administrative agency shall enjoin the  
13          operations of the receivership.

14          (11) Officers, directors and other professionals shall  
15          be liable to the receiver for any damages caused to the  
16          failed FDB.

17          (12) The receiver shall not be required to perform any  
18          executory contract that had been entered into by the FDB  
19          prior to its failure.

20          (13) Litigation between the receiver and the creditors  
21          or debtors of the FDB shall not be commenced until the  
22          receiver has conducted after a complete administrative  
23          review of the claim.

24          (14) All suits of a civil nature to which the FDIC as  
25          receiver is a party must be brought in the U.S. District

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1           Court for the District of Guam or in the another United  
2           States District Court agreed upon by the receiver and  
3           the litigant(s).

4           (15) The FDIC may solicit a special master, which shall  
5           be designated by the United States District Court for  
6           the District of Guam at its discretion, to reduce  
7           litigants' travel obligations by conduction hearings and  
8           gathering evidence in the FSM."

9           Section 15. Title 29 of the Code of the Federated States of  
10          Micronesia is hereby amended by enacting a new chapter 9 entitled  
11          "FDIC Proceedings".

12          Section 16. Title 29 of the Code of the Federated States of  
13          Micronesia is hereby amended by enacting a new section 901 to read  
14          as follows:

15                 "Section 901. Jurisdiction. FDBs and IAPs that are  
16                 subject to, or involved in, any final or temporary order  
17                 or directive shall be subject to suit by the FDIC in the  
18                 United States District Court for the District of Guam  
19                 or, if warranted by the circumstances in another  
20                 appropriate United States District Court."

21          Section 17. Title 29 of the Code of the Federated States of  
22          Micronesia is hereby amended by enacting a new section 902 to read  
23          as follows:

24                 "Section 902. Venue. Any and all proceedings against  
25                 any FDBs arising out of or relating to alleged non-

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1           compliance with the FDI Act or the FDIC regulations  
2           shall be held in the State of Pohnpei, unless the  
3           parties thereto agree to hold the proceedings in another  
4           location, or unless an Administrative Law Judge finds  
5           good cause to hold the hearing in another location."

6           Section 18. Title 29 of the Code the Federated States of  
7 Micronesia is hereby amended by enacting a new section 903 to read  
8 as follows:

9           "Section 903. Appeals.

10           (1) After exhausting any available administrative  
11           remedies, a FDB or affected IAP may appeal a temporary  
12           administrative order or interim appealable  
13           administrative order to the United States District Court  
14           for the District of Guam or, if warranted by the  
15           circumstances, to another appropriate United States  
16           District Court.

17           (2) A FDB or affected IAP may appeal a final order or  
18           directive to the United States Court of Appeals for the  
19           Ninth Circuit or to the United States Court of Appeals  
20           for the District of Columbia Circuit."

21           Section 19. Title 29 of the Code of the Federated States of  
22 Micronesia is hereby amended by enacting a new section 904 to read  
23 as follows:

24           "Section 904. Full faith and credit. The FSM  
25           government and FSM national, state and municipal courts

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1           shall give full faith and credit to final and temporary  
2           orders and directives of the FDIC or any United States  
3           banking or regulatory agency or any United States court  
4           arising out of or relating to a violation by any FDB or  
5           IAP of the FDI Act or any FDIC regulation. All such  
6           final and temporary orders shall be enforced by the FSM  
7           in summary proceedings. The FSM, including the  
8           Department of Justice, courts and agencies of the FSM,  
9           shall cooperate fully in the enforcement of all such  
10           final and temporary orders and directives."

11           Section 20. Title 29 of the Code of the Federated States of  
12 Micronesia is hereby amended by enacting a new section 905 to read  
13 as follows:

14           "Section 905. Continued involvement prohibited.  
15           Participation in the conduct of the affairs of a FDB  
16           shall be prohibited by any IAP, person or party who:  
17           (1) is subject to a final or temporary order of  
18           suspension, removal, or prohibition issued by the FDIC,  
19           other United States banking or regulatory agency, or  
20           United States court; and/or  
21           (2) has been convicted of, or has agreed to enter a  
22           pre-trial diversion of similar program, in connection  
23           with the prosecution for an offense of the type covered  
24           by section 19 of the FDI Act, including any conviction  
25           and/or diversion that takes place in the FSM or in any

1           other nation or jurisdiction."

2           Section 21. This act shall become law upon approval by the  
3 President of the Federated States of Micronesia or upon its  
4 becoming law without such approval.

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6 Date: 10/30/03

Introduced by: /s/ Henry C. Asugar

Henry C. Asugar  
(by request)

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