

June 9, 2004

Executives See Rise In 'Tying' Loans To Other Fees

**Survey Says Banks Press
Clients to Expand Services;
Fed Is Weighing New Rules**

By JATHON SAPSFORD
 Staff Reporter of THE WALL STREET JOURNAL
June 9, 2004; Page A1

Corporate-finance officers say banks are increasingly squeezing lucrative fees out of them by conditioning loans on the purchase of other services, a new survey shows. It's a murky and sometimes-illegal practice that has corporate-finance officers clamoring for regulators to clamp down.


The survey, to be released today, shows that 96% of the corporate-finance executives at large companies who responded said they had been pressured by lenders to buy underwriting, merger advice and other services from a bank in exchange for loans. Nearly two thirds of the surveyed chief financial officers and treasurers at large companies -- those with revenue of \$1 billion or more -- said a bank had denied credit or raised loan prices because the finance executives didn't buy other services. Almost half said such pressure had risen in the past year.

The findings "clearly demonstrate that these practices are becoming common in the marketplace," said Jim Kaitz, president of the Association for Financial Professionals, which conducted the survey about the so-called tying of loans to other services. Some attribute the rise in tying to the growing clout and competition in the banking industry that have come with consolidation and the repeal of laws separating the banking and brokerage businesses.

"It is now time for the Federal Reserve and other regulators to provide a clear interpretation of what constitutes illegal tying [and] take steps to improve the oversight and enforcement of antitying restrictions," Mr. Kaitz said.

The association said 370 corporate officers and treasurers participated in its survey, its third on tying in three years. The survey's release was timed, bankers say, to influence a continuing regulatory debate in Washington over tying. The Federal Reserve last summer proposed clarifying antitying rules to make clear what's allowed and what's not. The Fed continues to mull its new guidelines, which are expected soon, as

DOW JONES REPRINTS

 This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers, use the Order Reprints tool at the bottom of any article or visit: www.djreprints.com.

- [See a sample reprint in PDF format.](#)
- [Order a reprint of this article now.](#)

other agencies in Washington argue that tying is neither widespread nor anticompetitive.

Explicit quid pro quo arrangements that condition loans on buying other services have been illegal since the 1970s, when Congress moved to block banks from forcing consumers to buy expensive insurance products in return for loans. But tying can take subtler forms that aren't necessarily illegal, with banks telling corporate customers that loans are just one aspect of a business relationship that needs to include more than marginally profitable loans to be worthwhile.

Bankers say they are merely bundling multiple products to corporate clients, the way grocery stores sell milk, cereal and vegetables to a single customer. But critics say the practice can be anticompetitive, allowing banks to use their dominance of one product -- namely loans -- to force corporate customers to buy other services for which they could otherwise shop around.

The relentless banking-merger wave of the past two decades has concentrated much of the nation's lending capabilities in a few huge commercial banks -- including **Citigroup Inc.**, **J.P. Morgan Chase & Co.** and **Bank of America Corp.** These institutions have a powerful influence over vast swaths of economic life, including credit cards, mortgages and, increasingly, asset management.

Bankers long have argued that consolidation strengthens the financial system because large institutions can withstand inevitable economic shocks. Banks also contend that corporate borrowers often initiate tying arrangements, telling banks that they won't get other juicy business deals unless they cough up more loans.

Corporate financial officers are reluctant to criticize their bankers publicly. But the survey by the Association for Financial Professionals offers a rare glimpse of how some corporations regard the way banks wield their lending power. The survey doesn't name financial institutions or corporations involved in tying relationships, and its respondents were promised anonymity. The association has been operating for 25 years and represents 14,000 corporate treasurers and financial officers at 5,000 companies.

The finance executives say in the survey that tying has grown common in the five years since Congress repealed Depression-era laws that separate the banking and brokerage businesses. The repeal fueled a rush by commercial banks, which had once been limited to such businesses as accepting deposits and making loans, into businesses long dominated by Wall Street firms, including securities underwriting and merger advice.

That pits commercial banks against Wall Street investment banks like **Goldman Sachs Group**, **Merrill Lynch & Co.** and **Morgan Stanley**. The Wall Street firms also engage in a limited amount of lending, but antitying laws don't apply to them.

But commercial banks lend more to corporations, and that business, along with the power it brings, has become increasingly concentrated. The three biggest commercial banks -- Citigroup, J.P. Morgan Chase and Bank of America -- now arrange more than half of the most common corporate credit lines for big companies.

Critics of tying say that it's no mistake that those same three banks' share of stock underwriting -- a principal source of revenue for Wall Street firms -- rose to 22% in 2003, up from 12% in 2000, according to market-research firm Thomson Financial.

"Tying is another sign of the risks involved in consolidation," said Isaac B. Lustgarten, a partner at Wall Street law firm Arnold & Porter. "Institutions can get themselves into trouble when they play too many roles."

Of the executives surveyed by the Association for Financial Professionals, more than 50% of those from large companies complained that they have no way to please their bank's demand for maintaining a profitable relationship without offering securities-underwriting or merger-advisory business, the most lucrative financial service a bank can perform for a corporate customers. That number, association officials say, suggests that banks are tying these services to the provision of the loan.

"Commercial banks frequently make access to credit contingent upon the purchase of other financial services, despite regulatory assertions to the contrary," the survey concludes.

Banks, for their part, complain that federal banking laws and regulatory policies pull them in opposite directions. On the one hand, the law doesn't prohibit banks from bundling services they sell, and regulators have encouraged banks to diversify into other business for greater profitability and overall financial-sector health. Yet federal law explicitly bars banks from lending on the "condition or requirement" that customers buy something else, with limited exceptions.

"Banks absolutely should be able to decline to lend if the overall relationship is not sufficiently lucrative," says Meredith Coffey, senior vice president at market-research company the Loan Pricing Corp. But "at what point does coercive behavior emerge?" she asks.

"Everyone who has looked at this has found that relationship banking is simply part of commerce," says Beth Climo, a top official with the American Banking Association. "Nobody has found much evidence of illegal tying."

Indeed, the Justice Department and the Office of the Comptroller of the Currency -- one of the nation's top banking regulators -- have expressed little concern about tying. The OCC has said it sees no evidence of widespread illegal tying by the banks it regulates. The Justice Department has argued that tying can be a good thing because it allows large and savvy borrowers to play one bank off another for the best package deal.

"Although tying arrangements can be anticompetitive, overly restrictive laws can also impede legitimate competition," top Justice Department officials said in a Nov. 7 letter to the Federal Reserve.

The General Accounting Office studied the issue last year and also found little evidence of widespread illegal tying, but it said that the nature of banking negotiations made "documentary evidence" very difficult to find. It also reported that neither the Fed nor the OCC reviewed individual transactions or interviewed customers about possible tying activities, according to officials with the Association for Financial Professionals.

Write to Jathon Sapsford at jathon.sapsford@wsj.com¹