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BANK HOLDING COMPANY ACT OF 1955

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Mr. ROBERTSON, from the Committee on Banking and Currency, submitted the following

REPORT

[To accompany S. 2577]

The Committee on Banking and Currency, to whom was referred the bill (S. 2577) to define bank holding companies, control their future expansion, and require divestment of their nonbanking interests, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

GENERAL STATEMENT

In the opinion of your committee, public welfare requires the enactment of legislation providing Federal regulation of the growth of bank holding companies and the type of assets it is appropriate for such companies to control. In general, the philosophy of this bill is that bank holding companies ought to confine their activities to the management and control of banks and that such activities should be conducted in a manner consistent with the public interest. Your committee believes that bank holding companies ought not to manage or control nonbanking assets having no close relationship to banking.

It is not the committee's contention that bank holding companies are evil of themselves. However, because of the importance of the banking system to the national economy, adequate safeguards should be provided against undue concentration of control of banking activities. The dangers accompanying monopoly in this field are particularly undesirable in view of the significant part played by banking in our present national economy. The extensive use of bank checking accounts in modern commerce exerts an influence on the value of money, which the Constitution empowers the Congress to regulate. Moreover, banking activities are carried on to a large extent by the use of depositors' funds rather than by the use of equity capital subscribed by bank shareholders.

Considerable care has been taken to provide regulatory control over individual banks by Federal and State authorities. Yet there is at present only a very limited control over the activities of bank holding companies that manage or control banks. The Banking Act of 1933 (commonly referred to as the Glass-Steagall Act) provides a measure of control through the Board of Governors of the Federal Reserve System, but only (1) if one bank in the holding-company group concerned is a member of the Federal Reserve System, and (2) if the holding company wishes to vote the stock it owns in such a bank. Under those limited conditions, such a bank holding company must apply to the Federal Reserve Board for a voting permit and submit itself and its subsidiaries to examination. It should be noted that under the present law, the bank holding company can remove itself from Federal Reserve Board control by abstaining from voting the shares of the member banks it owns.

As of December 31, 1954, only 18 holding company affiliate bank groups in the United States had obtained voting permits from the Federal Reserve Board. Based on information readily available to it, the Board estimates there are 46 bank holding companies in the United States that would be subjected to regulation by the Board under the terms of this bill, based upon the ownership by the company of 25 percent or more of the shares of each of two or more banks.

Testifying before your committee for the Board of Governors of the Federal Reserve System, Chairman William McChesney Martin, Jr., stated:

> Existing provisions of law, originally enacted in the Banking Act of 1933, have proved entirely inadequate to deal with the special problems presented by bank holding companies. It has been, and still is, the Board's view that additional legislation is essential to deal effectively with these problems.

Chairman Martin noted that the principal problems in the bank holding company field arise from two circumstances:

(1) The unrestricted ability of a bank holding company group to add to the number of its banking units, making possible the concentration of commercial bank facilities in a particular area under a single control and management; and

(2) The combination under single control of both banking and nonbanking enterprises, permitting departure from the principle that banking institutions should not engage in business wholly unrelated to banking. Such a combination involves the lending of depositors' money, whereas other types of business enterprise, not connected with banking, do not involve this element of trusteeship.

Your committee is of the opinion that this bill will enable the Federal Government to cope more adequately with both of these problems. Like H. R. 6227, the bank holding bill passed by the House of Representatives, this bill empowers a regulatory agency to pass upon the application of a bank holding company for the acquisition of a substantial number of voting shares in one or more additional banks. The bill also follows the principle laid down in H. R. 6227 that bank holding companies must divest themselves, within a specified period, of nonbanking assets not closely related to banking activities. Thus, under the bill, the growth of bank holding companies in the banking field would be regulated but not prohibited. However, bank holding companies would no longer be authorized to manage or control nonbanking assets unrelated to the banking business.

History

The inadequacy of current Federal legislation in the bank holding company field has led to repeated attempts to pass adequate legislation. In 1938, in a special message to Congress (S. Doc. 173, 75th Cong., 3d sess.), the President urged that the Congress enact legislation that would effectively control the operation of bank holding companies; prevent holding companies from acquiring control of any more banks, directly or indirectly; prevent banks controlled by holding companies from establishing any more branches; and make it illegal for a holding company or any corporation or enterprise in which it is financially interested to borrow from or sell securities to a bank in which it holds stock.

On January 5, 1938, Senator Glass and Senator McAdoo introduced S. 3573, a bill to provide for the regulation of bank holding companies and affiliates, and for other purposes. This bill was referred to this committee; in turn it was referred to the committee's Subcommittee on Monetary Policy, Banking, and Deposit Insurance. If enacted into law, this bill would have carried out the recommendations made by the President in his special message. However, the bill progressed no further after it was referred to the subcommittee.

On January 14, 1941, Senator Glass introduced, by request, S. 310, during the 1st session of the 77th Congress. This bill was likewise referred to the committee's Subcommittee on Monetary Policy, Banking, and Deposit Insurance, but no further action appears to have been taken on it.

During the 1st session of the 79th Congress, Senator Wagner introduced S. 792 on March 26, 1945. A companion bill (H. R. 2776) was also introduced in the House of Representatives. No further action was taken by the committee on either of these measures.

However, during the 1st session of the 80th Congress, Senator Tobey, on March 10, 1947, introduced S. 829. Hearings were held on this measure on May 26, June 2, and June 11, 1947. Following the hearings a committee print designated "2" was prepared at the direction of Senator Tobey on June 13, 1947. This committee on June 19 reported favorably to the Senate a bill to regulate bank holding companies. Senate Report 300 accompanied this bill. The companion bill in the House of Representatives bore bill number H. R. 3351. Amendments to the Senate bill were offered by Senator Buck of this committee on February 3 and March 9, 1948. The proposed legislation progressed no further during the 80th Congress.

During the 1st session of the 81st Congress, on July 22, 1949, Senator Robertson introduced, for himself and Senator Maybank, S. 2318. This bill was the same as S. 829, introduced in the 80th Congress. Hearings were held on S. 2318 on March 1, 2, 3, 15, 16, 17, and 21 in 1950, before the committee's Subcommittee on Federal Reserve Matters. Following these hearings, Senator Robertson introduced S. 3547 on March 5, 1950. Five days later five amendments were offered to S. 3547 by Senator Douglas, for himself and Senator Tobey. No further action was taken on the proposed legislation by the committee during the 81st Congress.

Proposed legislation in this field was next referred to the committee during the first session of the 83d Congress. On January 7, 1953, Senator Robertson introduced S. 76. On February 27 of that year,

Senator Capehart introduced, by request, S. 1118. Hearings on both bills were held by the committee on June 10, 11, and 12 and July 21 and 22 in 1953. Further hearings on both bills were held by the committee on June 21, 22, and 23 in 1954. During the hearings a third proposed piece of legislation was prepared as a committee print. This was also considered by the committee during the hearings held on the two bills previously mentioned. No further action was taken on the proposed legislation during the 83d Congress.

During the present Congress, Senator Capehart, for himself and Senators Beall, Douglas, Fulbright, Payne, Sparkman, and Frear, on February 1, 1955, introduced S. 880. A similar bill, H. R. 2674, was introduced in the House of Representatives. Hearings on H. R. 2674 were held by the House Committee on Banking and Currency on February 28 and March 1, 2, 3, 4, 7, 8, and 9 in 1955. Following these hearings, H. R. 6227 was introduced in the House, superseding H. R. 2674. On May 20, 1955, the House Committee on Banking and Currency favorably reported H. R. 6227, without amendment. House Report 609 accompanied the bill. After debate, H. R. 6227 was amended and passed by the House on June 14, 1955.

On June 28, 1955, Senator Robertson introduced S. 2350. On July 5, 6, 7, 11, 12, and 14, 1955, the committee's Subcommittee on Banking held hearings on S. 880, S. 2350, and H. R. 6227, as passed by the House of Representatives. Following the hearings, the subcommittee met in executive session and after thorough discussion agreed upon a compromise bill (S. 2577), which Senator Robertson, for himself and Senators Bricker and Bennett, introduced on July 19, 1955. In executive session on July 21, 1955, the committee ordered this bill reported favorably to the Senate, after adopting a comparatively minor amendment.

As is evident from the foregoing, this committee has had proposed legislation on this subject matter before it during most of the past 17 years. Ample opportunity has been afforded for interested persons to express views on legislation. Over the years it has been possible to narrow the area of difference in the views of proponents of legislation of this nature. The committee is of the opinion that the bill now favorably reported to the Senate represents adequate and fair legislation to regulate the future expansion of bank holding companies and requires divestment of their nonbanking interests.

It also contains adequate safeguards against "upstream lending" and "horizontal lending" in the bank holding company structure. While it is true that banks within a bank holding company system are subject to Federal or State supervisory authority (and sometimes both), fear has been expressed that, improperly but within the present law, a bank holding company may take undue advantage of one or more banks in its system. This it might do by discounting commercial paper at the bank with a resulting profit to the bank holding company itself but at an unwarranted risk to the bank and its shareholders. No widespread abuse of this nature has been brought to the attention of your committee, but the provision in the bill prohibiting upstream lending should adequately prevent the possibility of any such abuse. This provision, in part at least, is in accordance with the recommendations of Mr. H. Earl Cook, Chairman of the Federal Deposit Insurance Corporation who testified against permitting either upstream or downstream dealing.

The bill's requirement for divestment of nonbanking assets will help to keep bank ventures in a field of their own. The committee was informed of the danger to a bank within a bank holding company controlling nonbanking assets, should the company unduly favor its nonbanking operations by requiring the bank's customers to make use of such nonbanking enterprises as a condition to doing business with the bank. The bill's divestment provisions should prevent this fear from becoming a reality.

Definition of Bank Holding Company

The committee is satisfied that legislation in the bank holding field will be adequate if it applies to any company controlling two or more banks. In order to accomplish this result, the bill defines a bank holding company as one meeting any of the three following tests:

(1) A company which directly or indirectly owns, controls, or holds with power to vote 25 percent or more of the voting shares of each of two or more banks or of a bank holding company;

(2) A company which controls the election of the majority of the directors of each of two or more banks; or

(3) A company for the benefit of whose shareholders or members 25 percent or more of the voting shares of each of two or more banks or a bank holding company is held by trustees.

The bill also includes in its scope any successor to a bank holding company where the relationship between the successor and the bank holding company is such that the successor's acquisition of bank shares from the company causes no substantial change in control of the bank or beneficial ownership of shares.

Section 3 (a) of the bill expressly excludes from the definition of bank holding company the following:

(1) A bank controlling shares in a fiduciary capacity, unless the shares are held for the profit of the bank's shareholders;

(2) A company registered under the Investment Company Act of 1940 prior to May 15, 1955, and its affiliates, unless the company or any affiliate, as the case may be, directly owns 25 percent or more of the voting shares of each of two or more banks;

(3) A company engaged in bona fide underwriting of securities held only for a period of time permitting their sale on a reasonable basis; and

(4) A company formed for the sole purpose for participating in a proxy solicitation which acquired control of voting rights during the course of such solicitation.

The exemption for shares held in a fiduciary capacity is necessary to enable banks to carry on a normal trust business. The exemption for companies registered under the Investment Company Act of 1940 is included in the bill on the theory that any such company is adequately supervised by the Securities and Exchange Commission, which administers that act. Among the purposes listed in that act are the mitigation of undue concentration of the control of investment companies through pyramiding or inequitable methods of control, the mitigation of inequitable distribution of such companies, and the mitigation of irresponsible management of such companies. Your committee believes that SEC regulation in such cases is closely akin to the purposes of this bill and that it is therefore unnecessary

to require a registrant under the Investment Company Act of 1940 to be subjected to the additional regulatory authority granted to the Board of Governors of the Federal Reserve System by this bill. It will not be possible however, for a bank holding company to evade regulations under the proposed legislation by registering as an investment company since this exception applies only to a bank holding company registered under the Investment Company Act of 1940 prior to May 15, 1955, which does not directly own 25 percent or more of the voting shares of each of two or more banks. An affiliated company of such a company, within the meaning of the Investment Company Act of 1940, is also exempted from the definition of a bank holding company under this bill unless the affiliate directly owns 25 percent or more of the voting shares of two or more banks.

The exemption of a company engaged in the underwriting of securities is included in the bill because of the possibility that such a company might happen to acquire title, in the course of its normal underwriting business, to 25 percent or more of the voting shares of each of two or more banks. Should this transpire, it should be noted that the company must dispose of such shares within a period of time adequate to permit their sale upon a reasonable basis, in order to continue to receive the benefits of exemption from the definition of a bank holding company.

The remaining exemption from the definition of bank holding company is included to allow formation of a bona fide stockholders' committee or a similar organization for the sole purpose of soliciting proxies in order to gain control of voting rights of shares. Your committee is of the opinion that such an exemption is justified in order to prevent undue interference with proxy contests. It was pointed out that if in the course of such a contest, a company so formed acquires control of the voting rights of 25 percent or more of the voting shares of each of two or more banks, it might well find itself included within the definition of a bank holding company in this bill in the absence of a specific exemption. The provision is intended to provide an exemption only for qualified companies during the course of the proxy contest. The exemption is not intended to carry over for the benefit of any such company following the termination of the proxy contest.

DEFINITION OF COMPANY

Under the bill, only a "company" as defined in the bill can become a bank holding company. Company is expressly defined to mean any corporation, business trust, association, or similar organization. It will be noted that an individual, as such, is not included in this definition. Moreover, the definition expressly excludes: (1) any corporation the majority of whose shares are owned by the United States or any State; (2) any corporation or community chest, fund, or foundation, organized or operated exclusively as a religious, charitable, or educational organization, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation; and (3) any partnership.

The first exclusion is provided on the theory that any corporation the majority of whose shares are owned by the United States or any

State is subject to the control of either the United States or of the State owning such shares. The exclusion of religious and other charitable organizations is similar to that granted to such organizations under the Internal Revenue Code. The committee's attention was invited to at least one case where a bona fide religious organization controls two or more banks as well as nonbanking interests as an incident to its main purpose. In the opinion of the committee, even though these incidental business activities are organized for the primary purpose of profit, the very nature of the religious organization itself precludes the possibility of violating the spirit of this bill.

The third exemption from the definition of "company" is granted to any partnership because the attributes of a partnership are similar to those presented by an individual in the sense that neither has perpetual duration. As the individual's personal control of business activities ceases with his death, any business control exercised by a partnership will likewise terminate upon the death of either partner. Usualy, the death of an individual who controls banks is accompanied by a diffusion of ownership of such banks.

By way of contrast, corporations and similar organizations may have perpetual existence. The death of any individual member of a corporation has no effect upon continued control of banks by the corporation. This bill is designed to bring under control those types of entities that may be used as media for acquiring and maintaining in perpetuity management and control of bank shares or assets.

The exemptions previously mentioned in this report are the only ones given by this bill from the definitions of company and bank holding company. All other such organizations are required by the bill to subject themselves to such regulation as the bill prescribes as a condition to growth by means of bank share or asset acquisition.

Your committee did not deem it necessary to include within the scope of this bill any company which manages or controls no more than a single bank. It is possible to conjure up visions of monopolistic control of banking in a given area through ownership of a single bank with many and widespread branches. However, in the opinion of your committee, no present danger of such control through the bank holding company device threatens to a degree sufficient to warrant inclusion of such a company within the scope of this bill. Should legislation of that nature prove desirable in the future, the Congress is free to act upon a showing of need for such a law.

Other Definitions

This bill defines banks to include both National banks and State banks, savings banks, and trust companies. It excludes, however, organizations that do no business in the United States and those organized for foreign or international banking under section 25 (a) of the Federal Reserve Act. A District bank is defined as a State bank organized or operating under the laws of the District of Columbia. A State member bank is defined to mean a State bank which is a member of the Federal Reserve System.

The bill defines a subsidiary of a bank holding company in terms of a company owned or controlled by a bank holding company under the same general tests as laid down for ownership or control exercised by a bank holding company.

A successor is defined as a company acquiring bank shares from a bank holding company with no resulting substantial change in bank beneficial ownership or control. The Federal Reserve Board is empowered to define successor in more detail by regulation in order to prevent evasion of the purposes of this bill.

The committee is of the opinion that the definitions in this bill will adequately cover the organizations which should be included in the scope of this bill without unnecessarily encompassing organizations that need not be included in order to accomplish the purposes of the bill.

Acquiring Bank Shares or Assets

The bill makes it unlawful for a company to become a bank holding company without prior approval by the Federal Reserve Board. It also makes it unlawful, without like approval, for a bank holding company to acquire bank stocks or assets as noted in the bill or to merge or consolidate with another bank holding company. Federal Reserve Board approval is required if after the proposed acquisition of voting shares of a bank, the bank holding company will own or control, directly or indirectly, more than 5 percent of the bank's voting shares. Like approval is required if a bank holding company (or one of its nonbank subsidiaries) wishes to acquire substantially all of a bank's assets. Acquisition of assets, as well as acquisition of stock, may be used to gain practical control of a bank's operations, especially at its existing site of operations. In order to encourage competitive banking and discourage monopoly of banking, this bill provides regulatory control over both types of acquisition.

For the same reasons, the committee deems it advisable to provide for regulatory control over the merger or consolidation of bank holding companies.

In three types of transactions the committee considered it unnecessary to require Federal Reserve Board approval of the acquisition of bank shares or assets by a bank holding company. It therefore granted exemptions from this requirement—

(1) if a bank which is a bank holding company acquires bank shares in a fiduciary capacity (unless such shares are held for the benefit of the bank's shareholders);

(2) if a bank which is a bank holding company acquires bank shares in the regular course of securing or collecting a debt earlier contracted in good faith (but such shares must be disposed of within 2 years after acquisition); and

(3) if any bank holding company acquires additional shares of a bank as to which it already owns or controls a majority of the voting shares.

The first exemption listed is required to permit the conduct of trust business. The second is required to allow the conduct of normal bank-lending operations. The third exemption is granted because little if any benefit to the public could be achieved by denying a bank holding company the privilege of entrenching more strongly its existing majority control of a given bank.

Decision on Application

The bill contemplates that any Federal Reserve Board approval required under its provisions will be sought by application to the

Board. Some advocates of bank holding company control legislation thought that the bank supervisory authorities (State or Federal Comptroller of the Currency, as the case might be) ought to be given the right to decline such an application, regardless of the opinion of the Federal Reserve Board. Other advocates of such legislation urged that the power of decision be placed in the Federal Reserve Board, with the bank supervisory authorities playing only an informal consulting role. This bill represents a compromise between those two positions. It affords the bank supervisory authorities an opportunity to file with the Federal Reserve Board a formal recommendation that the application be denied. But it also provides that if such a recommendation is made, the Federal Reserve Board must provide a hearing of record after due notice at which the testimony of all interested parties may be received, including, of course, the applicant and the disapproving bank supervisory authority. After this hearing on the merits of the application has been held, the Federal Reserve Board is required to grant or deny the application by formal order. The bill then affords any party aggrieved by the order the right to a judicial review of the order by an appropriate Federal court of appeals. In such a review, the Federal Reserve Board's findings of facts are conclusive, if supported by substantial evidence.

This procedure, it appears to your committee, should afford opportunity for developing the true merits of an application upon due consideration of the facts, in instances where the bank supervisory authority involved expresses written disapproval of the application. It also assures adequate recourse to court proceedings for an aggrieved party.

At the same time, it leaves the Federal Reserve Board free to proceed in a more informal manner in handling an application as to which the appropriate bank supervisory authority expresses no written disapproval.

Application Procedure

In particular, the bill requires that upon receipt of an application for acquisition of bank shares or assets or for merger or consolidation of bank holding companies, the Federal Reserve Board shall give notice to the appropriate bank supervisory authority. If the applicant or the bank whose shares or assets are sought to be acquired is a national bank or a district bank, notice must be given to the Comptroller of the Currency. If the applicant or the bank whose shares or assets are sought to be acquired is a State bank, notice must be given to the appropriate State supervisory authority in the interested State or States. Thirty days are allowed for any notified authority to submit recommendations to the Federal Reserve Board. If within that period, any such notified authority disapproves in writing the application, the Federal Reserve Board must so notify the applicant in writing. Within 3 days after giving such notice, the Federal Reserve Board must give written notification to the applicant and each disapproving authority of the date fixed for commencement of a hearing on the application. The hearing must begin from 10 to 30 days after the Board has given the applicant written notice of the disapproving action by the appropriate supervisory authority. While the duration of the hearing is within the discretion of the Federal Reserve Board, it must last long enough to give all interested parties a reasonable opportunity to testify. Only after the conclusion of the hearing

may the Federal Reserve Board grant or deny the application. This action is to be taken on the basis of the record made at the hearing.

In acting upon any application for acquisition, merger, or consolidation, the Federal Reserve Board is required by the bill to consider these factors:

(1) the financial history and condition of each company or bank concerned in the application;

(2) the prospects of each;

(3) the character of the management of each;

(4) the convenience, needs and welfare of both the communities and the area concerned; and

(5) whether the effect of the acquisition, merger, or consolidation would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the banking field.

It is upon the basis of these factors that the Federal Reserve Board is to measure whether each application should be granted or denied in the public interest. It will be noted that these factors extend beyond the nature of those primary in importance to bank supervisory authorities in the exercise of their supervisory powers. In most instances, safety of the depositor's funds and adequate banking service to the public in the area where the bank operates are uppermost in the consideration of such bank supervisory authorities. The factors required to be taken into consideration by the Federal Reserve Board under this bill also require contemplation of the prevention of undue concentration of control in the banking field to the detriment of public interest and the encouragement of competition in banking. It is the lack of any effective requirement of this nature in present Federal laws which has led your committee to the conviction that legislation such as that contained in this bill is needed. Under its provisions, the expansion of bank holding companies in the banking field would not be prohibited, but would be regulated in the public interest.

In view of the adequate opportunity for expression of opinion on an application accorded to the Comptroller of the Currency and the State bank supervisory authorities in appropriate cases by the bill, the committee deems it unnecessary and inadvisable to insert in the bill any arbitrary prohibition against the expansion of bank holding companies across State lines. Let any application for such expansion be decided on its merits in accordance with the procedure outlined in this bill. The committee received testimony indicating the public benefits which have flowed from the interstate structure of some bank holding companies. Like bank holding companies in general, interstate bank holding companies are not evil of themselves. The provisions of this bill, in the opinion of your committee, provide adequate safeguards so that the maintenance or expansion of such bank holding companies can be regulated in the public interest.

The same reasoning led the committee to believe that the bill should contain no provision leaving solely to State control determination of the question as to whether a bank holding company can acquire an interest in a national bank. If our dual banking system is to operate as a truly dual system, the Federal authorities ought not to surrender their supervisory authority over national banks to State

decision. This is not to say the Federal authorities ought not to consider carefully the views of State authorities regarding the management and control of national banks, but the ultimate determination of public interest in the national bank system should rest with the appropriate Federal authorities. Within broad areas, banks themselves retain the choice of whether they shall operate as State or National institutions.

In any event, another provision of this bill expressly preserves to the States a right to be more restrictive regarding the formation or operation of bank holding companies within their respective borders than the Federal authorities can be or are under this bill. Under such a grant of authority, each State may, within the limits of its proper jurisdictional authority, be more severe on bank holding companies as a class than (1) this bill empowers the Federal authorities to be or (2) such Federal authorities actually are in their administration of the provisions of this bill. In the opinion of the committee, this provision adequately safeguards States' rights as to bank holding companies.

The committee decided against inclusion of a provision in the bill that would automatically apply State laws concerning branch banking to bank holding company operations. The purposes of branch banking laws are not identical with the purpose of this bill to control bank holding companies. Moreover, branch banking is mostly conducted by the use of depositors' funds, thus making the protection of these funds of prime importance. Bank holding companies, however, as such have no depositors. For operating funds they have recourse to equity capital supplied by their shareholders. It is believed the bill contains adequate provisions to regulate bank holding company operations without an arbitrary tiein with branch banking laws.

No pretense is made that this bill will regulate all forms of centralized control of financial institutions. As previously noted, it does not include chain banking, where several banks are controlled by a single individual. Nor does it attempt to regulate centralized control of such financial institutions as savings and loan associations or insurance companies. It has been designed to provide appropriate regulation of centralized control of banking institutions by bank holding companies as defined in the bill.

Divestment of Nonbanking Assets

The bill prohibits a bank holding company from acquiring, after the passage of this bill, ownership or control of any voting shares of any company which is not a bank. It also provides that existing bank holding companies cannot retain ownership or control, for more than 2 years after the date of passage of this bill, of any voting shares of a company which is not related to banking. Nor can any such company engage in a business other than banking or managing or controlling banks or furnishing or performing services for any bank of which it owns or controls 25 percent or more of the voting shares. Upon application by a bank holding company, the Federal Reserve Board is authorized to extend the 2-year deadline for periods of not more than 1 year at a time, provided that in no event can the extensions extend the total divestment period to longer than 5 years after

the date of enactment of the bill, or 5 years after the date upon which a company becomes a bank holding company, whichever is later. Appropriate exceptions are made in the bill in order to enable bank holding companies to retain ownership and control of nonbanking assets in cases where such retention will not violate the purposes of the bill. Seven classes of such exemptions are provided as follows:

(1) Shares owned or acquired by a bank holding company in a company engaged solely in holding or operating properties used primarily by a bank in the bank holding company system or acquired for future use of such bank in its operations; and shares owned or acquired by a bank holding company in any company engaged solely in conducting a safe deposit business or serving the holding company and banks in the holding company system with respect to such functions as audits, appraisals, investment counsel, or the liquidation of assets acquired from the bank holding company and the banks within the bank holding company system;

(2) Shares acquired by a bank holding company that is a bank or any of its banking subsidiaries in satisfaction of a debt previously contracted in good faith (in which event such shares must be disposed of within 2 years after their acquisition or 2 years after the passage of this bill, whichever is later);

(3) Shares acquired by a bank holding company from any of its subsidiaries by virtue of action initiated by any examining Federal or State authority (but such shares must be disposed of within 2 years after their acquisition or 2 years after the passage of this bill, whichever is later);

(4) Shares held or acquired in a fiduciary capacity by a bank holding company that is a bank or shares eligible for investment by national banks;

(5) Shares of any company that do not represent more than 5 percent of the company's outstanding voting securities and that do not have a value greater than 5 percent of the total asset value of the bank holding company;

(6) Shares of any company whose activities of a financial, fiduciary, or insurance nature are determined by the Federal Reserve Board to be so closely related to the banking business as to constitute a proper incident to that business, and to make unnecessary the divestment of such shares in order to carry out the purposes of the bill; or

(7) Any bank holding company which is a labor, agricultural, or horticultural organization.

It seems obvious that the foregoing exemptions with reference to bank premises, safe-deposit businesses, bank-servicing organizations, collection of debts, involuntary acquisition of shares, and acquisition of shares in a fiduciary capacity, or permissible investments for national banks, are all appropriate in order to enable a bank holding company to carry on operations closely related to banking. The same reasoning dictates the inclusion of exemption (5). Moreover, control of no more than 5 percent of the voting securities of a company is not deemed adequate for effective control of that company. It should be further noted that no bank holding company can enjoy the benefits of this exemption if its investment in the shares of the company exceed 5 percent of the total asset value of the bank holding company.

Exemption (6) has been included by the committee as a necessary provision to enable the administering authority under this bill to permit the retention by a bank holding company of activities found to be closely related to banking. It should be noted that the Board is required to make its determination after due notice and hearing and on the basis of the record made at the hearing. The Federal Reserve Board's action is required to be taken in the form of an order, as to which any aggrieved party can obtain a review in the appropriate court of appeals. In the opinion of your committee, certain activities of a financial, fiduciary, or insurance nature are obviously so closely related to banking as to require no divestment by a bank holding company. For example, the operation of a credit life-insurance program in connection with bank loans is clearly within the scope of banking operations as presently conducted. So is the operation of an insurance program under which the insurance proceeds retire the outstanding balance of the mortgage upon the death of the mortgagor in cases where the bank holds the mortgage. However, there are many other activities of a financial, fiduciary, or insurance nature which cannot be determined to be closely related to banking without a careful examination of the particular type of business carried on under such activity. For this reason your committee deems it advisable to provide a forum before an appropriate Federal authority in which decisions concerning the relationship of such activities to banking can be determined in each case on its merits.

Exemption (7) concerning labor, agricultural and horticultural organizations is closely akin to the similar exemption from Federal income taxes granted to such organizations. In order to be entitled to the exemption under this bill, no net income derived by any such organization can inure to the benefit of any individual. Such organizations must be formed primarily for the betterment of the working conditions of their members, in the case of labor organizations, and for the improvement in grade of agricultural or horticultural products in the case of agricultural or horticultural organizations. As in the case of the Federal income tax exemption, such agricultural and horticultural organizations as county fairs, quasi-public in nature, that are designed to encourage better products through a system of awards, would qualify for exemption under this bill. However, the growing of agricultural or horticultural products for profit by an agricultural or horticultural organization would not entitle such organization to the benefits of exemption from the divestment features of this bill.

The seven specific classes of exemption from the divestment requirements of the bill do not excuse those exempted from compliance with the remaining provisions of the bill. Such exempted organizations or companies will be required to register under the bill with the Federal Reserve Board and to obtain the approval of that Board in the event the organization or company wishes to acquire additional voting shares or assets of any bank, if such approval is otherwise required under the bill for bank holding companies.

Your committee holds the opinion that bank holding companies should confine their activities to the control and management of banks and activities closely related to banking. They should not combine management and control of banking activities with manage-

ment and control of nonbanking activities. The divestment requirements in this bill are designed to remove the danger that a bank holding company might misuse or abuse the resources of a bank it controls in order to gain an advantage in the operation of the nonbanking activities it controls.

The committee gave consideration to a suggestion that present bank holding companies be allowed to retain their existing nonbanking assets and that the bill merely prohibit such companies from acquiring additional nonbanking assets. However, the committee believes that to adopt this course of action would give an unfair competitive advantage to existing bank holding companies over bank holding companies which might be formed in the future consistent with the provisions of this bill. Your committee believes that in general all bank holding companies should be required to observe the same ground rules concerning formation and operation, insofar as Federal legislation is concerned.

ADMINISTRATION

This bill centralizes Federal administrative control under the bill in the Board of Governors of the Federal Reserve System. It requires that each bank holding company, as defined in the bill, register with the Board within 180 days after the passage of the bill, or within 180 days after becoming a bank holding company, whichever is later. Registration forms prescribed by the Federal Reserve Board are to require information deemed appropriate by the Board with respect to the financial history and condition of the registering bank holding company and the banks it controls, information concerning the operation and management of such company and banks, the relationships of such company with banks and other organizations, and similar matters appropriate to carry out the purposes of the bill. Discretion is given to the Board to extend the time within which a bank holding company must register and file the required information.

The Federal Reserve Board is granted authority to issue appropriate regulations and orders in order to carry out the purposes of the bill and to prevent evasion of its provisions. The Federal Reserve Board is also empowered to require reports under oath so that it may be informed as to compliance with the provisions of the bill and regulations and orders issued in accordance with its provisions. The Board is expressly authorized to make examinations of each bank holding company and each of its subsidiaries at the expense of the holding company. In order to prevent unnecessary duplication, the bill requires the Board, in administering the provisions of the bill, as far as possible, to make use of examination reports made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority.

The bill further requires the Board to submit to the Congress, within 2 years after the passage of the bill, a report of the results of the administration of the provisions of the bill, stating any substantial difficulties encountered and any recommendations for changes in the law which the Board deems advisable. Following the date of submission of the original report, the Federal Reserve Board is required thereafter to submit an annual report of the same nature. In view of the complexities which may be encountered in untangling the operations of bank holding companies in order to comply with the

provisions of the bill, your committee is of the opinion that the Board should be allowed a 2-year period within which to prepare and submit its report to the Congress.

Prohibition of Upstream or Horizontal Borrowing

Your committee received testimony to the effect that one of the dangers inherent in the bank holding company system is that the parent company may take undue advantage of the resources of its subsidiary banks. To prevent that situation from arising, the bill prohibits in general the borrowing of subsidary bank funds by a bank holding company or by another subsidiary in the bank holding company system. The bill does not prohibit the borrowing of funds by any subsidiary in the system from the parent bank holding company. Such downstream financing is one of the beneficial advantages cited to your committee in the use of the bank holding system technique. Downstream financing enables the bank holding company to draw on the equity capital of its shareholders and its own operating funds in order to strengthen the financial condition of any one or more of its subsidiaries. In the past, this has operated not only to the advantage of the bank holding company system itself, but also to the advantage of shareholders and depositors of the subsidiary bank so assisted and the public served by the subsidiary bank.

In particular, the bill makes it unlawful for a bank after the passage of the bill:

(1) To invest its funds in the capital stock, bonds, debentures or other obligations of its parent bank holding company or of any other subsidiary within the bank holding company system;

(2) To accept the capital stock, bonds, debentures or other obligations of its parent bank holding company or of any other subsidiary within the bank holding company system, as collateral security for advances made to any person or any company (except that this does not prohibit the acceptance of such securities as security for previously contracted debts, as long as the collateral is not held by the bank for more than 2 years);

(3) To purchase securities, other assets or obligations, under a repurchase agreement either from its parent bank holding company or from any other subsidiary within the bank holding company system; and

(4) To make any loan, discount or extension of credit to its parent bank holding company or to another subsidiary within the bank holding company system.

The bill makes it clear that its provisions do not prohibit noninterest bearing deposits to be made to the credit of a bank, nor do they prohibit giving immediate credit to a bank on uncollected items received in the ordinary course of business.

The bill provides three classes of exemptions from the provisions concerning borrowing from a subsidiary bank. These provide that the upstream and horizontal borrowing restrictions do not apply:

(1) To the capital stock, bonds, debentures, or other obligations of a company engaged in holding bank properties, a safe deposit business, or a bank servicing business of the nature described in section 4 (c) (1) of the bill;

20366 O—58——52

(2) To any company which became a subsidiary due to a bona fide debt to the bank contracted before it became a subsidiary; or

(3) To any company that became a subsidiary due to the ownership or control of its voting shares by the bank in a fiduciary capacity (unless the shares are held for the benefit of a majority of the bank's stockholders).

Tax Relief for Distributions Made

H. R. 6227, as passed by the House of Representatives, would add a new part VIII to subchapter O of the Internal Revenue Code of 1954. Under this new part, tax relief is accorded to distributions made pursuant to the provisions of this bill within the period prescribed therein. Your committee has adopted the tax provisions contained in the House bill with certain technical changes.

In general, a corporation which comes within the terms of the act as a bank holding company is given its choice of two alternative routes (that is, to remain a bank holding company, or to dispose of its interests in banks).

If the corporation decides to remain a bank holding company subject to the supervision of the Federal Reserve Board, it may distribute any "prohibited property," which the Board certifies is necessary or appropriate to comply with the act, to its shareholders without the recognition of gain by the shareholders on the distribution. For this purpose "prohibited property," in general, means stock, securities and other obligations, or other assets of nonbanking businesses to the extent the bank holding company is required to divest itself of such assets under section 4 (a) of the bill. The term, however, does not include cash, Government bonds, or certain short-term obligations. In the ordinary case cash and cash equivalents, such as Government bonds and short-term obligations, will not come within section 4 (a) of the bill as property which must be disposed of by the bank holding company. It is believed desirable, however, to expressly exclude cash, etc., from the definition of "prohibited property," since a similar exclusion is contained in the comparable provisions of part VI of subchapter O, relating to exchanges in obedience to SEC orders.

With respect to the distributing corporation, the usual provisions of the Internal Revenue Code of 1954 apply. Under these provisions, gain generally is not recognized to the distributing corporation except under unusual circumstances such as the distribution of LIFO inventory, the distribution of property subject to a liability in excess of the adjusted basis, or the distribution of certain installment obligations.

The distribution of "prohibited property" may be made either directly to the shareholders of the corporation which is a bank holding company or may be transferred to a wholly owned subsidiary expressly created for purposes of receiving the prohibited property. The stock of the subsidiary must be immediately distributed to the shareholders of the corporation which is a bank holding company if the distribution is to be made under this bill without the recognition of gain to the shareholders.

If a corporation which qualifies as a bank holding company under the act chooses the second alternative route, it may distribute to its shareholders any bank stock or other property of a kind which causes it to be a bank holding company, without the recognition of gain to

the recipient stockholders. The Board must certify, however, that distribution of property of that kind is necessary or appropriate to effectuate the policies of the bill. In such a case, the corporation may, for example, distribute to its shareholders all of its shares of bank stock without the recognition of gain even though it would be possible to retain shares of stock in one bank without being classified as a bank holding company. Your committee believes that this treatment is necessary because a corporation which is compelled to divest itself of part of its bank stock by reason of the bill may wish to distribute all of its shares of bank stock, so that no possibility will exist that it will be classified as a bank holding company in the future.

Your committee contemplates that the Federal Reserve Board in the discharge of its functions in making certifications that exchanges and distributions are necessary or appropriate to effectuate the purposes of the bill will carefully scrutinize the facts and circumstances in each case to prevent abuses and will cooperate fully with the Treasury Department to this end. Although the time of recognition of gain may be legitimately shifted under the provisions of this part, nothing in these provisions is to be construed or applied in such manner as to permit tax evasion or sham transactions entered into for avoiding tax.

Your committee has restricted the nonrecognition treatment described above the property which was owned on May 15, 1955. This restriction is deemed necessary to prevent corporations from purchasing interests in banks or other property in order that their shareholders may get the benefit of the tax treatment provided in the bill. The restriction would not apply, however, if the property was received in a transaction in which gain was not recognized because of the general rules described above. For example, if prohibited property was distributed by a subsidiary to its parent in a corporate chain without recognition of gain to the parent by reason of these provisions, the parent, in turn, may distribute the property to its own shareholders without recognition of gain under a certification by the Board, even though the property was acquired by the parent after May 15, 1955. Similarly, the May 15, 1955, cutoff date is not applicable where the prohibited property or bank stock (or other similar property) certified by the Board is transferred to a wholly owned subsidiary created for that purpose and the stock of the subsidiary is immediately distributed by the qualified bank holding corporation to its shareholders.

As in the case of the first alternative route, nonrecognition treatment is available whether the bank stock or other similar property certified by the Board is distributed directly to shareholders or whether it is first transferred to a wholly owned subsidiary expressly created for that purpose and the stock of the subsidiary is then immediately distributed to the shareholders of the parent.

To prevent certain tax avoidance possibilities that might otherwise exist, your committee's bill does not extend nonrecognition treatment, under the general rules described above, to any portion of a distribution attributable to a contribution to the capital of any corporation where the contribution is made after May 15, 1955. This restriction applies whether or not the contribution to capital is made by a shareholder of the corporation receiving such contribution. In the case of a contribution to the capital of a bank, however, the limitation does not

apply if it is determined that avoidance of Federal income tax was not a principal purpose of the contribution.

Where the nonrecognition treatment has been extended to "prohibited property" which has been distributed by the corporation which is a bank holding company, a final certification must be obtained from the Board that the corporation has divested itself of all property necessary for compliance with the bill within the statutory period permitted for divestment. If this final certification is not obtained, the transactions previously permitted to be made without recognition of gain are reopened and tax may be imposed in such cases. For this purpose the statute of limitations on assessment of a deficiency resulting solely from the distribution of prohibited property which has been certified by the Board under section 1101 (a) does not expire until 5 years after the corporation gives notification that the period prescribed in section 4 (a) of the bill has expired.

A similar final certification is required where nonrecognition treatment has been originally accorded to the distribution of bank stock or similar property of a kind which the Board has certified as necessary so that the corporation will cease to be a bank holding company. In this case the tax provisions of the bill provide that the Board must give a final certification that the corporation has ceased to be a bank holding company within 2 years after the date of enactment of the bill or 2 years after the date on which the corporation becomes a bank holding company, whichever is later, unless the time has been extended by the Board for 1-year renewals not to exceed 5 years from the date of enactment of the bill or the date on which the corporation becomes a bank holding company, whichever is later. The statutory period for the assessment of a deficiency resulting solely from such distribution is extended in the same manner as in the case of the distribution of prohibited property.

The basis of stock or other property received by a distributee without recognition of gain under the provisions of the bill is determined by allocating the adjusted basis of the stock with respect to which the distribution was made between such stock and the property so distributed. This rule is similar to the general rule for allocation of basis in the case of a stock dividend. The bill provides that the allocation shall be made under regulations provided by the Secretary or his delegate.

Penalties

The bill provides adequate penalties for violation of its provisions, after conviction. In particular, any company convicted of willful violation of any provision of the bill or any regulation or order issued by the Federal Reserve Board pursuant to its provisions is subject to a fine of not more than $1,000 a day for each day during which the violation continues. Any individual convicted of willful participation in a violation of any provision of the bill is subject to a fine of not more than $10,000 or imprisonment for not more than 1 year, or both. Every officer, director, agent and employee of a bank holding company is made subject to the same penalties for false entries in any book, report, or statement of the bank holding company as apply to corresponding officials and employees of member banks of the Federal Reserve System for false entries in any books, reports, or statements of such member banks under section 1005 of title 18 of the United

States Code. This section of the code provides for a maximum fine of $5,000 or a maximum term of imprisonment for not more than 5 years, or both.

Saving Provision

The bill provides that none of its provisions are to be construed as approving any act, action or conduct in violation of existing law. It also provides that nothing in the bill shall constitute a defense to any action, suit, or proceeding pending or later instituted on account of any prohibited antitrust or monopolistic act, action or conduct. In the opinion of your committee, approvals granted and action permitted under the provisions of this bill are not to supersede the provisions of other Federal laws, particularly those designed to control monopoly or break up trusts. For example, the Clayton Act has been judicially determined to apply to banks. Under the provisions of that act, the Federal Reserve Board has an administrative role to play in determining whether banks comply with the requirements of the Clayton Act. Under the provisions of this bill, any action taken by the Federal Reserve Board in accordance with its terms is not to interfere in any manner with the performance by the Board of such functions as may be assigned to it under the Clayton Act.

Conclusion

As previously outlined in this report, your committee has been giving consideration to this matter for several years. In its opinion the present bill, properly administered, will safeguard the interests of the public in the formation and operation of bank holding companies. It represents a compromise designed to meet acceptance of proponents of this type of legislation, while at the same time being fully fair to the companies to which the provisions of the bill will apply. Exemptions from its provisions have been kept to a minimum. Under its terms, the operations of bank holding companies will not be prohibited, but they will be confined to banking activities and regulated in the public interest. In view of the lack of adequate legislation concerning the formation and operation of bank holding companies, your committee strongly urges the passage of this bill. Perfecting amendments may then be considered upon their merits by any subsequent Congress. Proper observance of the Congress' duty to the citizens of this Nation demands the enactment of appropriate legislation in this field.

Section-by-Section Analysis of the Bill

Section 1.—This section provides that this act may be cited as the Bank Holding Company Act of 1955.

Section 2.—This section defines the terms used in the bill.

Subsection (a) defines the term "bank holding company" to mean (1) any company which directly or indirectly owns or controls 25 percent or more of the voting shares of 2 or more banks or of a company which is or becomes a bank holding company by virtue of this act; or (2) any company controlling the election of a majority of the directors or 2 or more banks; or (3) any company for whose shareholders trustees hold 25 percent or more of stock of 2 or more banks or of

bank holding company. A successor to any such bank holding company is deemed to be a bank holding company as of the date the predecessor company became a bank holding company. Excluded from the definition are (*a*) any bank controlling shares in a fiduciary capacity (unless controlled for benefit of the bank's shareholders); (*b*) any company or affiliate registered under Investment Company Act of 1940, prior to May 15, 1955, unless it owns 25 percent of shares of 2 or more banks; (*c*) any company engaged in underwriting securities; and (*d*) any company formed for the purpose of soliciting proxies.

Subsection (b) defines the term "company" to include any corporation, business trust, association, or similar organization. However, (1) any company the majority of the shares of which are owned by the Federal Government or by any State, (2) any nonprofit religious, charitable, or educational organization, and (3) any partnership—are excluded from the definition.

Subsection (c) defines the term "bank" to include any national or State bank, savings bank or trust company, but excludes any organization which does not do business within the United States. The subsection also defines the terms "State member bank" and "district bank."

Subsection (d) defines a "subsidiary" of a specified bank holding company in terms of the tests applicable to a bank holding company.

Subsection (e) defines the term "successor" and gives the Board of Governors of the Federal Reserve System the right by regulation to further define the term "successor" to the extent necessary to prevent evasion of the purposes of the act.

Subsection (f) makes clear that where the term "Board" is used in the act the reference is to the Board of Governors of the Federal Reserve System.

Section 3.—The provisions of this section relate to future acquisitions of bank shares or bank assets by bank holding companies or by companies which thereby would become bank holding companies and to the merger or consolidation of bank holding companies.

Subsection (a) makes it unlawful except with prior Board approval (1) for a company to become a bank holding company; (2) for a bank holding company or subsidiary to acquire more than 5 percent of the voting shares of any bank; (3) for a bank holding company or subsidiary, other than a bank, to acquire substantially all the assets of a bank; or (4) for a bank holding company to merge or consolidate with any other bank holding company. This prohibition does not apply to (*a*) any bank holding company, which is a bank acquiring shares in a fiduciary capacity (unless for benefit of its own shareholders) or in collecting debt (but must divest in 2 years), and (*b*) any bank holding company, which is a bank acquiring additional shares in a bank of which it owns a majority of the voting shares.

Subsection (b) provides that 30 days before approving any acquisition, merger or consolidation, the Board shall notify: (i) Comptroller of the Currency if bank to be acquired is a national or District bank; (ii) State supervisory authority if bank being acquired is a State bank. If such notified authority disapproves it in writing within 30 days, the Board will hold a hearing to grant or deny the application.

Subsection (c) sets forth the standards to be followed by the Board in granting or denying approval including (1) bank holding company's and bank's financial history and conditions; (2) prospects; (3) man-

agement; (4) convenience, needs, and welfare of area concerned; and (5) sound banking, public interest, and bank competition.

Section 4.—This section relates to bank holding company interests in nonbanking organizations and provides for separation of banking and nonbanking interests.

Subsection (a) prohibits a bank holding company from acquiring or retaining voting shares of any nonbank company or engaging in a business other than (1) banking, (2) managing or controlling banks, or (3) furnishing services to or providing services for a subsidiary bank. Divestment of nonbank business is required within 2 years after the date of this act or from date of becoming a bank holding company, whichever is later. The Board may extend this time up to not more than 5 years.

Subsection (b) prohibits a bank holding company after 2 years from date of enactment from (1) making any statement on its shares that they represent shares of any other company except a bank or a bank holding company, or (2) conditioning in any manner ownership, sale, or transfer of its shares upon the ownership, sale or transfer of shares of any other company except a bank or a bank holding company.

Subsection (c) provides appropriate exemptions to the blanket prohibitions on bank holding company investments or activities set forth in subsection (a).

Paragraph (1) exempts investments by a bank holding company in companies obviously incidental to the business of banking, such as holding bank premises, conducting a safe deposit business, or providing services such as auditing, appraisal, and investment counsel, or in liquidating assets acquired from the bank holding company or its subsidiaries.

Paragraph (2) exempts for a 2-year period investments acquired by a bank holding company which is a bank, in satisfaction of a debt previously contracted.

Paragraph (3) exempts for a 2-year period investments acquired by a bank holding company from any subsidiary which is requested to dispose of such investment by a Federal or State examining authority.

Paragraph (4) exempts investments held by a bank (which is a bank holding company) in a fiduciary capacity, and investments eligible for national bank investment under section 5136 of the Revised Statutes.

Paragraph (5) exempts limited general investments of a bank holding company from the investment prohibitions of the act. A bank holding company may own investments in any company provided such investment does not include more than 5 percent of the outstanding voting securities of such company and provided the value of the investment does not exceed 5 percent of the total assets of the holding company.

Paragraph (6) authorizes the Board to exempt shares of any company all the activities of which are of a financial, fiduciary, or insurance nature and are determined to be so closely related to the business of banking as to be a proper incident thereto.

Paragraph (7) exempts any bank holding company which is a labor, agricultural or horticultural organization.

Section 5.—This section sets forth powers and duties with respect to the registration, making of reports and examination of bank holding companies.

Subsection (a) requires bank holding companies to register and file requisite information with the Board within a period of 180 days and grants the Board the right to extend such period.

Subsection (b) authorizes the Board to issue regulations and orders necessary in administration of the act.

Subsection (c) gives the Board authority to require reports from and make examinations of bank holding companies and their subsidiaries. To avoid duplication of effort, use, so far as possible, will be made of examination reports of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or appropriate State bank supervisory authorities.

Subsection (d) requires the Board within 2 years and annually thereafter to report to the Congress on operations under the act and to make any recommendations as to changes in the law which appear desirable to the Board.

Section 6.—This section prohibits a bank subsidiary from investing any of its funds in or lending any of its funds to its parent bank holding company or subsidiaries thereof and the subsidiary bank may not accept the securities of its parent bank holding company or subsidiaries thereof as collateral for any loan except for debts previously contracted. The subsidiary bank may not purchase assets or securities under a repurchase agreement from its parent holding company or from any of the subsidiaries of that holding company. Routine banking transactions between subsidiary banks are not treated as extensions of credit and do not fall within the prohibitions of this section. Also exempted from the self-dealing prohibitions of this section are securities of (1) a company described in section 6 (c) (1) (activities incidental to bank operations), (2) a company the subsidiary status of which arises out of a previously contracted bona fide debt, or (3) a company the subsidiary status of which arises through ownership of securities in a fiduciary capacity, except where such ownership is for the benefit of all or a majority of the stockholders of the bank.

Section 7.—This section makes clear that there is reservation of the rights of any State for exercise of such powers as it has or may hereafter have with respect to banks, bank holding companies, and the subsidiaries thereof in a manner more restrictive than the provisions of this bill.

Section 8.—This section provides penalties for willful violation of the act or any regulations or orders issued by the Board pursuant thereto. Upon conviction a company may be fined $1,000 for each day the violation continues and an individual upon conviction may be subjected to a $10,000 fine or 1 year imprisonment or both. Officers of employees of a bank holding company are made subject to the same penalties for making false entries in books, reports, or statements that are applicable to officers or employees of Federal Reserve member banks ($5,000 fine or 5 years' imprisonment or both).

Section 9.—This section provides that any person aggrieved by an order of the Board may obtain a judicial review of such order in the United States Circuit Court of Appeals. The findings of the Board as to the facts shall be conclusive, if supported by substantial evidence.

Section 10.—This section amends subchapter O of chapter 1 of the Internal Revenue Code of 1954 by adding a new part VIII. This part VIII specifies the extent to which (during a transition period

after the enactment of the bill) gain will not be recognized upon receipt of property by a shareholder of a bank holding company, if such distribution is made pursuant to a certification by the Board of Governors of the Federal Reserve System that such distribution is necessary or appropriate to effectuate the Bank Holding Company Act of 1955. The provisions of the new part VIII are restricted by their own terms to the gain directly attributable to the receipt of property in the distributions specifically described.

The rules contained in part VIII are in addition to the other provisions of subtitle A of the Internal Revenue Code of 1954 (such as provisions relating to the recognition or nonrecognition of gain to a corporation making distributions, the provisions under which tax-free reorganizations may be effectuated, etc.). Many of these other provisions are contained in subchapter C of chapter 1 of such code (relating to corporate distributions and reorganizations). The provisions of part VIII supersede the other provisions of chapter 1 only in the cases qualifying under part VIII, and in those cases only to the extent specific provision is contained in part VIII.

Your committee has adopted the tax provisions contained in the House bill with certain technical changes.

Section 1101 sets forth the conditions for nonrecognition of gain attributable to distributions of property by a qualified bank holding corporation when received by the shareholder with respect to his stock in such corporation. In addition rules are provided as to the date the qualified bank holding corporation must have acquired the property before it can be distributed with no gain recognized to its shareholders as a result of the distribution. This section also prescribes certain conditions which must be fulfilled before any such distributions of property will obtain the nonrecognition of gain benefits of its provisions.

Subsection (a) of section 1101 provides that a distribution of prohibited property by a qualified bank holding corporation with respect to its stock and without the surrender by the shareholder of any stock or securities in such corporation will not result in any gain being recognized on the receipt of such property by the shareholder if the Board has, before the distribution, certified that the distribution of such property is necessary or appropriate to carry out the first sentence of section 6 (a) of the Bank Holding Company Act of 1955. On the date of distribution the distributing corporation must have been a qualified bank holding corporation. The first sentence of section 6 (a) provides in general that it shall be unlawful for any bank holding company, after 2 years from the effective date of the Bank Holding Company Act of 1955, to own any shares or other securities or obligations of any company other than a bank or to engage in any business other than that of banking, or of managing or controlling banks, or of the kind of businesses enumerated in section 6 (c) (1) of the act. However, such section 6 (c) sets forth certain exceptions and permits the holding by a bank holding company of certain types of property.

Subsection (b) of section 1101 applies to a distribution of property by a qualified bank holding corporation, with respect to its stock, to a shareholder without the surrender by the shareholder of stock or securities in such corporation where the Board has before the distribution certified that (1) such property is of a kind which causes such

corporation to be a bank holding company, (2) the disposition of property of that kind is necessary to enable such corporation to cease being a bank holding company, and (3) the distribution is necessary or appropriate to effectuate the policies of the Bank Holding Company Act of 1955. In the case of a distribution falling within subsection (b), no gain to the shareholder upon the receipt of such property is to be recognized. Property which is intended to be covered by subsection (b) of section 1101 is that property or properties which is of a kind which causes a company to be a bank holding company within the provisions of section 3 (a) of the Bank Holding Company Act of 1955. Thus, assuming that all the conditions of this part are met, a qualified bank holding corporation may distribute to its shareholders without the recognition of gain to them upon such distribution, part or all of the voting shares of one or more of the banks the ownership of which voting shares was the basis upon which such corporation is a bank holding company, if the Board makes the certification required by paragraph (2) of subsection (b). Furthermore, if any corporation was held by the Board to be a bank holding company under clause 2 of section 3 (a) of the Bank Holding Company Act, and if such corporation is a qualified bank holding corporation as required by this part, such corporation would be permitted to distribute whatever property it owned upon the basis of which such determination was made by the Board to its shareholders without recognition of the gain on the distribution, if the Board certifies in accord with paragraph (2).

A qualified bank holding corporation which distributes prohibited property with respect to which the Board has certified as required by paragraph (2) of subsection (a), may not have any distributions qualify under subsection (b). If the first distribution under this part falls under subsection (b), no distribution may qualify under subsection (a). It is the intent of these subsections that a qualified bank holding corporation must determine whether it will dispose of prohibited property and remain a bank holding company or whether it will dispose of the property upon the basis of which the corporation is determined to be a bank holding company.

Subsection (c) of section 1101 is a limitation upon the application of subsections (a) and (b). Subparagraph (A) of paragraph (1) of subsection (c) specifically excludes from the application of subsections (a) and (b) of section 1101 any property which a qualified bank holding corporation acquired after May 15, 1955, except to the extent such corporation received such property (even though subsequent to May 15, 1955) and gain was not recognized by reason of subsection (a) or (b), or unless the property was received by the corporation in exchange for all of its stock in an exchange to which paragraph (2) or (3) of subsection (c) applies.

Under subparagraph (B) of paragraph (1), neither subsection (a) nor (b) of section 1101 is applicable to the distribution by a qualified bank holding corporation of property which was acquired by such corporation in a distribution with respect to stock acquired by it after May 15, 1955, unless such stock was acquired by it (1) in a distribution (with respect to stock held by it on May 15, 1955, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b) of section 1101, or (2) in exchange

for all of its stock in an exchange meeting the requirements of section 1101 (c) (2) or (3).

Paragraph (2) of subsection (c) of section 1101 is an exception to the general rule of paragraph (1) of subsection (c) that subsections (a) and (b) do not apply to any property acquired by the distributing corporation after May 15, 1955. Under paragraph (2) if a qualified bank holding corporation exchanges solely property which, under subsection (a), such corporation could distribute directly to its shareholders without the recognition of gain to such shareholders, for all of the stock of a second corporation created and availed of solely for the purpose of receiving such property, and immediately after the exchange, the qualified bank holding corporation distributes all of such stock to its shareholders with respect to its stock, then all of the stock of the second corporation may be distributed to the shareholders of such qualified bank holding corporation without recognition of gain. However, prior to such exchange the Board must certify that the exchange and distribution are necessary or appropriate to effectuate the first sentence of section 6 (a) of the Bank Holding Company Act of 1955.

Paragraph (3) of subsection (c) of section 1101 is another exception to the general rule of paragraph (1) of subsection (c) that subsections (a) and (b) do not apply to any property acquired by the distributing corporation after May 15, 1955. Under paragraph (3) if any qualified bank holding corporation exchanges solely property which, under subsection (b), such corporation could distribute directly to its shareholders without the recognition of gain to such shareholders, for all of the stock of a second corporation created and availed of solely for the purpose of receiving such property and immediately after the exchange, the qualified bank holding corporation distributes all of such stock to its shareholders with respect to its stock, then all of the stock of the second corporation may be distributed to the shareholders of such qualified bank holding corporation without the recognition of gain. However, prior to such exchange the Board must have certified that such property is of a kind which causes such corporation to be a bank holding company, that the disposition of property of that kind is necessary to enable such corporation to cease being a bank holding company, and that the exchange and distribution are necessary or appropriate to effectuate the policies of the Bank Holding Company Act of 1955.

Under subsection (d) of section 1101 the nonrecognition of gain provided by subsection (a) or (b) shall not apply to that portion of any distribution which is attributable to any contribution to capital of any corporation made after May 15, 1955. The portion of any distribution which is attributable to a contribution to capital depends upon the particular facts and circumstances of each case.

The preceding paragraph may be illustrated by the following examples. (1) Assume that corporation A (a qualified bank holding corporation) owns all of the stock of corporation X (such stock being property falling within the provisions of subsec. (a) of sec. 1101). Assume further that corporation A, after May 15, 1955, makes a contribution to the capital of corporation X in the amount of $50,000. Thereafter, corporation A makes a distribution to which subsection (a) of section 1101 applies of the stock of corporation X to the share-

holders of corporation A. Under subsection (d) the nonrecognition of gain provided by subsection (a) does not apply to that portion of the distribution which is attributable to the contribution of capital, that is, $50,000. The amount of the distribution to the extent of the contribution to capital, $50,000, is a distribution subject to the provisions of section 301 of the Internal Revenue Code of 1954. (2) The facts are the same as in example (1) above, except that the value of the portion of the distribution which is attributable to the contribution to capital, at the time of the distribution, is less than $50,000. The value of that portion of the distribution which is attributable to the contribution to capital of $50,000 is a distribution subject to the provisions of section 301 of the Internal Revenue Code of 1954.

Paragraph (2) of subsection (d), however, provides an exception to the rule established in paragraph (1). Paragraph (2) provides that paragraph (1) shall not apply with respect to any contribution to capital of a bank if the Secretary or his delegate determines that the avoidance of Federal income tax was not one of the principal purposes for making such contributions.

Subsection (e) of section 1101 provides that neither subsection (a) nor subsection (b) shall apply with respect to any distribution by a corporation unless the Board makes the certification required by the subsection.

Paragraph (1) of subsection (e) relates to certification with respect to distributions falling within subsection (a). It provides that subsection (a) shall not apply to any such distribution unless the Board certifies that, before the expiration of the period permitted under section 6 (a) of the Bank Holding Company Act of 1955 (including any extensions thereof granted to such corporation under such section 6 (a)), the corporation has disposed of all the property, the disposition of which is necessary or appropriate to effectuate the first sentence of such section 6 (a) (or would have been so necessary or appropriate if the corporation had continued to be a bank holding company). In order that subsection (a) of section 1101 is to apply to distributions of prohibited property by a qualified bank holding corporation, it is essential that such corporation dispose of all of the property which it is required to dispose of by reason of the Bank Holding Company Act of 1955, within the period (including extensions thereof) specified in section 6 (a) of such act. During the period during which such corporation is required to dispose of all such property, distributions of prohibited property are to be considered as being within subsection (a) of section 1101, if other requirements of this part are met. Thus, no gain would be recognized to shareholders on distributions (if such distributions would otherwise qualify for the benefits of this part) during such period. If, at the close of such period, the corporation has disposed of all of the property which it is required to dispose of by the Board and the Board has made the certification required under subsection (e) of section 1101, subsection (a) of section 1101 will apply to distributions of prohibited property. However, if, at the close of such period, the corporation has not disposed of all of the property the disposition of which is necessary or appropriate to effectuate the first sentence of section 6 (a) of the Bank Holding Company Act of 1955, then subsection (a) of section 1101 will not apply to any distributions of prohibited property by the corporation. Thus, in a case where the provisions of subsection (e) (1) are not met, the

tax treatment of any distribution of prohibited property by a qualified bank holding corporation to its shareholders is governed by the provisions of other sections of the Internal Revenue Code of 1954 applicable thereto.

Paragraph (2) of subsection (e) of section 1101 is applicable to distributions falling within subsection (b) of section 1101. Subparagraph (A) provides that subsection (b) shall not apply unless the Board certifies that the corporation has ceased to be a bank holding company before the expiration of the period specified in subparagraph (B). Under the House bill the period specified in paragraph (B) was 2 years after the date of enactment. Your committee has modified subparagraph (B) to provide that the specified period expires 2 years after the enactment of this part or 2 years after the corporation becomes a bank holding company, whichever is later. Under subparagraph (B) of the House bill the Board is authorized on the application of any qualified bank holding corporation to extend such period from time to time with respect to such corporation for not more than 1 year at a time if, in its judgment, such an extension would not be detrimental to the public interest, but such period might not be extended beyond the date 5 years after the date of enactment of this part. Your committee has modified this provision to provide that such period may not in any case be extended beyond the date 5 years after the date of enactment of this part or 5 years after the date on which the corporation becomes a bank holding company, whichever is later. The purpose of your committee's changes is to extend the specified periods in the case of corporations which become bank holding companies after the date of enactment of this part by reason of a distribution under section 1101. This treatment makes the specified periods uniform whether such a corporation chooses to distribute prohibited property or bank stock. In order that subsection (b) of section 1101 is to apply to distributions of property of a kind which causes a qualified bank holding corporation to be a bank holding company and the disposition of which is necessary to enable such corporation to cease being a bank holding company, it is essential that such corporation cease to be a bank holding company within the period (including extensions thereof) specified in subsection (e) (2) of section 1101. During the period during which such corporation disposes of property to enable it to cease being a bank holding company, distributions of such property are to be considered as being within subsection (b) of section 1101, if other requirements of this part are met. Thus, no gain would be recognized to shareholders on such distributions (if such distributions would otherwise qualify for the benefits of this part) during such period. If, at the close of such period specified in subsection (e) (2), the corporation has ceased to be a bank holding company, subsection (b) of section 1101 will apply to distributions of such property. However, if, at the close of such period, the corporation has not ceased being a bank holding company, then subsection (b) of section 1101 will not apply to any distributions of such property by the corporation. Thus, in a case where the provisions of subsection (e) (2) are not met, the tax treatment of any distributions of property of a kind which causes a qualified bank holding corporation to be a bank holding company to its shareholders is governed by the provisions of other sections of the Internal Revenue Code of 1954 applicable thereto.

Section 1102 provides special rules for the application of this part.

Subsection (a) relates to the basis of property acquired in distributions under either subsection (a) or subsection (b) of section 1101. If gain is not recognized by reason of either of such subsections with respect to the receipt of any property, then the basis of such property and of the stock with respect to which it was distributed, shall, in the hands of the distributee, be determined by allocating the adjusted basis of such stock between such property and such stock. Such allocation shall be made under regulations prescribed by the Secretary or his delegate.

Subsection (b) of section 1102 of the House bill provided for the extension of the periods of limitation on the assessment and collection of deficiencies in tax arising from distributions to which subsection (a) or (b) of section 1101 apply. Your committee has revised this provision of the House bill in several respects: (1) it has eliminated the extension of the period under section 6502 relating to collection as unnecessary; (2) it has provided that the extension applies to distributions certified by the Board under subsection (a) or (b) of section 1101 in order to correct a technical defect; (3) it has provided that the notification by the corporation be in such manner and with such accompanying information as prescribed in regulations by the Secretary or his delegate; (4) it has provided for a 5-year period after the notification instead of a 1-year period; and (5) it has provided that the notification can only be made after the expiration of the period prescribed in section 6 (a) of the Bank Holding Company Act or section 1101 (e), whichever is applicable, instead of after a final certification by the Board. Accordingly, under subsection (b) of section 1102 of your committee's bill, the periods of limitation provided in section 6501 (relating to limitations on assessment) shall not expire, with respect to any deficiency (including interest and additions to the tax), resulting solely from the receipt of property by shareholders in a distribution by a qualified bank holding corporation which is certified by the Board under subsection (a) or (b) of section 1101, until 5 years after such corporation notifies the Secretary or his delegate (in such manner and with such accompanying information as the Secretary or his delegate may by regulations prescribe) that the period (including extensions thereof) prescribed in section 6 (a) of the Bank Holding Company Act, or section 1101 (e), whichever is applicable, has expired. Such assessment may be made notwithstanding any provisions of law or rule of law which would otherwise prevent such assessment.

Subsection (c) of section 1102 relates to allocation of earnings and profits. In case of any exchange described in section 1101 (c) (2) or (3), the earnings and profits of the corporation transferring the property shall be properly allocated between such corporation and the corporation receiving such property under regulations prescribed by the Secretary or his delegate.

Subsection (d) relates to itemization of property distributed. The Board is required in any certification under this part to make such specification and itemization of property as may be necessary to carry out the provisions of this part.

Section 1103 sets forth the definitions, for purposes of this part, of "bank holding company," "qualified bank holding corporation," "prohibited property," "nonexempt property," and "Board."

Subsection (a) of this section provides that the term "bank holding company" means a bank holding company as defined by section 3 of the Bank Holding Company Act of 1955.

Subsection (b) of this section defines the term "qualified bank holding corporation." Your committee has made a technical amendment to subsection (b) in order to make it clear that the tax provisions of this part apply to any corporation as defined in section 7701 (a) (3) of the Internal Revenue Code of 1954 if such corporation is a qualified bank holding corporation. In order for a corporation to be a qualified bank holding corporation, and therefore for its shareholders to receive the special tax treatment provided by this part, it must not only be a bank holding company but in addition, it must hold "prohibited property" as defined in subsection (c). For example, if the sole assets of corporation X consist of 25 percent of the voting shares of each of 2 banks, corporation X is not a qualified bank holding corporation.

In addition, to be a qualified bank holding corporation the prohibited property must have been acquired on or before May 15, 1955, by a corporation which is a bank holding company, or must have been acquired in a distribution to it by a qualified bank holding corporation with respect to which gain is not recognized by reason of section 1101 (a). Furthermore, a bank holding company which holds prohibited property acquired by it in exchange for all of its stock in an exchange described in section 1101 (c) (2) is a qualified bank holding corporation.

The preceding paragraph may be illustrated by the following examples. (1) If the sole assets of corporation X on May 15, 1955, consist of cash and 25 percent of the voting shares of each of 2 banks and on May 30, 1955, corporation X purchases nonbanking business assets, corporation X is not a qualified bank holding corporation. (2) The sole assets of corporation Y, on May 15, 1955, consist of 25 percent of the voting shares of each of 2 banks and 4 percent of the outstanding voting securities (the value of which is less than 5 percent of the value of corporation Y's total assets) of corporation Z, a qualified bank holding corporation. Corporation Z distributes nonbanking business assets to corporation Y which are prohibited property in the hands of corporation Y, in a distribution to which section 1101 (a) applies. Corporation Y becomes a qualified bank holding corporation by reason of the distribution by Z. (3) On May 15, 1955, corporation B owns all of the stock of corporation A, a qualified bank holding corporation on such date. Corporation B, a qualified bank holding corporation by virtue of its ownership of the stock of corporation A, transfers such stock to corporation C in an exchange meeting the requirements of section 1101 (c) (2). Corporation C is a qualified bank holding corporation.

Notwithstanding that a corporation meets the requirements of paragraph (1) of subsection (b), such corporation shall not be a qualified bank holding corporation unless it meets the additional requirements of subparagraphs (A), (B), and (C) of paragraph (2).

Subparagraph (A) of paragraph (2) provides that a bank holding company shall not be a qualified bank holding corporation unless such corporation would have been a bank holding company on May 15, 1955, if the Bank Holding Company Act of 1955 had been in effect on such date, or unless such corporation is a bank holding company determined solely by reference to the following: (1) Property

acquired by such corporation on or before May 15, 1955; (2) property acquired by such corporation in a distribution by a qualified bank holding corporation to such corporation wherein gain was not recognized by reason of subsection (a) or (b) of section 1101; and (3) property acquired by such corporation in exchange for all of its stock in an exchange meeting the requirements of section 1101 (c) (2) or (3).

Thus, if on May 15, 1955, the sole assets of corporation X consist of cash and business assets and on May 30, 1955, corporation X acquires 25 percent of the voting shares of each of 2 banks for cash, then, by reason of subparagraph (A) of paragraph (2), corporation X, although a bank holding company, holding prohibited property acquired by it before May 15, 1955, is not a qualified bank holding corporation. An additional example of the application of subparagraph (A) of paragraph (2) is where corporation X is determined, by the Board, after May 15, 1955, to be a bank holding company by reason of clause (2) of section 3 (a) of the Bank Holding Company Act of 1955, solely by reference to (1) property acquired by such corporation on or before May 15, 1955, and (2) property acquired by it from a qualified bank holding corporation in a distribution in which gain to the distributee was not recognized by reason of subsection (a) or (b) of section 1101.

Except as explained in the next paragraph, subparagraph (B) of paragraph (2) provides that a bank holding company shall not be a qualified bank holding corporation by reason of either (1) the acquisition by such bank holding company of prohibited property after May 15, 1955, in a distribution from a qualified bank holding corporation to which section 1101 (a) is applicable or (2) the acquisition by such bank holding company (which company would not have been a bank holding company on May 15, 1955, if the Bank Holding Company Act of 1955 had been in effect on such date) of property described in clause (ii) of subparagraph (A) of paragraph (2). An example of the operation of the foregoing is where, on May 15, 1955, the sole assets of corporation Y consist of cash and 25 percent of the voting shares of each of two banks. On May 30, 1955, corporation Y purchases for cash 50 percent of the stock of corporation Z, a qualified bank holding corporation. Corporation Z distributes business assets to corporation Y in a distribution in which gain to corporation Y with respect to the receipt of such property was not recognized by reason of section 1101 (a). Corporation Y is not a qualified bank holding corporation since such property was acquired by corporation Y in a distribution with respect to stock acquired after May 15, 1955.

A bank holding company may be a qualified bank holding corporation by reason of the property described in the preceding paragraph if such property was acquired in a distribution with respect to stock which was acquired by such company (1) on or before May 15, 1955, (2) in a distribution (with respect to stock held by it on May 15, 1955, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b) of section 1101, or (3) in exchange for all of the stock of the bank holding company in an exchange meeting the requirements of section 1101 (c) (2) or (3).

Subparagraph (C) of paragraph (2) states that a corporation may not be treated as a qualified bank holding corporation unless the

Board certifies that it satisfies the requirements of subsection (b) of section 1103.

Subsection (c) of section 1103 defines the term "prohibited property." Such property is defined as property, other than nonexempt property, the disposition of which, in the case of any bank holding company, would be necessary or appropriate to effectuate the first sentence of section 6 (a) of the Bank Holding Company Act of 1955, if such company continued to be a bank holding company beyond the period (including any extensions thereof) specified in section 6 (a), in the case of distributions under section 1101 (a), or specified in section 1101 (e) (2) (B), in the case of distributions under section 1101 (b). The term "prohibited property" does not include shares, securities, or obligations of any company which are held by a bank holding company to the extent that the ownership by such bank holding company of such property is not prohibited by section 6 of such act by reason of subsection (c) (6) of such section.

Subsection (d) defines the term "nonexempt property," the distribution of which may not be accorded the tax treatment provided by this part.

Subsection (e) of this section states that the term "Board" means the Board of Governors of the Federal Reserve System.

Section 10 (b) amends table of parts of chapter 1, subchapter O of Internal Revenue Code of 1954 by adding "Part VIII. Distributions pursuant to Bank Holding Company Act of 1955."

Section 10 (c) makes these tax provisions in section 10 (a) apply to taxable years ending after the enactment of the act.

Section 11.—This section contains a savings clause to make clear that nothing in this act shall be construed as approving any act, action, or conduct in violation of existing law or constituting a defense in antitrust or monopolistic proceedings.

Section 12.—This section contains the usual separability clause for provisions of the act.

Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

Chapter I—Normal Taxes and Surtaxes

* * * * * * *

SUBCHAPTER O—GAIN OR LOSS ON DISPOSITION OF PROPERTY

Part I. Determination of amount and recognition of gain or loss.
Part II. Basic rules of general application.
Part III. Common nontaxable exchanges.
Part IV. Special rules.
Part V. Changes to effectuate F. C. C. policy.
Part VI. Exchanges in obedience to S. E. C. orders.
Part VII. Wash sales of stock or securities.
Part VIII. Distributions pursuant to Bank Holding Company Act of 1955.

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PART VIII.—DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT OF 1955

SEC. 1101. DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT OF 1955.

(a) DISTRIBUTIONS OF PROHIBITED PROPERTY.—*If*—

(1) *a qualified bank holding corporation distributes (with respect to its stock) prohibited property to a shareholder, without the surrender by such shareholder of stock or securities in such corporation; and*

(2) *the Board has, before the distribution, certified that the distribution of such property is necessary or appropriate to effectuate the first sentence of section 4 (a) of the Bank Holding Company Act of 1955,*

then no gain to the shareholder from the receipt of such property shall be recognized. This subsection shall not apply to any distribution by a corporation which has made any distribution pursuant to subsection (b).

(b) CORPORATION CEASING TO BE A BANK HOLDING COMPANY.—*If*—

(1) *a qualified bank holding corporation distributes (with respect to its stock) property to a shareholder, without the surrender by such shareholder of stock or securities in such corporation; and*

(2) *the Board has, before the distribution, certified that (A) such property is of a kind which causes such corporation to be a bank holding company, (B) the disposition of property of that kind is necessary to enable such corporation to cease being a bank holding company, and (C) the distribution is necessary or appropriate to effectuate the policies of the Bank Holding Company Act of 1955,*

then no gain to the shareholder from the receipt of such property shall be recognized. This subsection shall not apply to any distribution by a corporation which has made any distribution pursuant to subsection (a).

(c) PROPERTY ACQUIRED AFTER MAY 15, 1955.—

(1) IN GENERAL.—*Except as provided in paragraphs (2) and (3), subsection (a) or (b) shall not apply to—*

(A) any property acquired by the distributing corporation after May 15, 1955, unless (i) gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b), or (ii) such property was received by it in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or

(B) any property which was acquired by the distributing corporation in a distribution with respect to stock acquired by such corporation after May 15, 1955, unless such stock was acquired by such corporation (i) in a distribution (with respect to stock held by it on May 15, 1955, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b), or (ii) in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies.

(2) EXCHANGES INVOLVING PROHIBITED PROPERTY.—*If*—

(A) any qualified bank holding corporation exchanges (i) solely property which, under subsection (a), such corporation could distribute directly to its shareholders without the recognition of gain to such shareholders, for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property;

(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock to its shareholders with respect to its stock; and

(C) before such exchange, the Board has certified that the exchange and distribution are necessary or appropriate to effectutate the first sentence of section 4 (a) of the Bank Holding Company Act of 1955,

then paragraph (1) shall not apply with respect to such distribution.

(3) EXCHANGES INVOLVING INTERESTS IN BANKS.—*If*—

(A) any qualified bank holding corporation exchanges (i) solely property which, under subsection (b), such corporation could distribute directly to its shareholders without the recognition of gain to such shareholders, for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property;

(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock to its shareholders with respect to its stock; and

(C) before such exchange, the Board has certified—

(i) that such property is of a kind which causes such corporation to be a bank holding company;

(ii) that the disposition of property of that kind is necessary to enable such corporation to cease being a bank holding company; and

(iii) that the exchange and distribution are necessary or appropriate to effectuate the policies of the Bank Holding Company Act of 1955,

then paragraph (1) shall not apply with respect to such distribution.

(d) CERTAIN CONTRIBUTIONS TO CAPITAL AFTER MAY 15, 1955.—

(1) IN GENERAL.—The nonrecognition of gain provided by subsection (a) or (b) shall not apply to that portion of any distribution which is attributable to any contribution to the capital of any corporation made after May 15, 1955.

(2) SPECIAL RULE FOR CONTRIBUTION TO CAPITAL OF BANKS.—Paragraph (1) shall not apply with respect to any contribution to the capital of a bank, if the Secretary or his delegate determines that the avoidance of Federal income tax was not one of the principal purposes for the making of such contribution.

(e) FINAL CERTIFICATION.—

(1) FOR SUBSECTION (a).—Subsection (a) shall not apply with respect to any distribution by a corporation unless the Board certifies that, before the expiration of the period permitted under section 4 (a) of the Bank Holding Company Act of 1955 (including any extensions thereof granted to such corporation under such section 4 (a)), the corporation has disposed of all the property the disposition of which is necessary or appropriate to effectuate the first sentence of such section 4 (a) (or would have been so necessary or appropriate if the corporation had continued to be a bank holding company).

(2) FOR SUBSECTION (b).—

(A) Subsection (b) shall not apply with respect to any distribution by any corporation unless the Board certifies that, before the expiration of the period specified in subparagraph (B), the corporation has ceased to be a bank holding company.

(B) The period referred to in subparagraph (A) is the period which expires 2 years after the date of the enactment of this part or 2 years after the date on which the corporation becomes a bank holding company, whichever date is later. The Board is authorized, on application by any corporation, to extend such period from time to time with respect to such corporation for not more than 1 year at a time if, in its judgment, such an extension would not be detrimental to the public interest; except that such period may not in any case be extended beyond the date 5 years after the date of the enactment of this part or 5 years after the date on which the corporation becomes a bank holding company, whichever date is later.

SEC. 1102. SPECIAL RULES.

(a) BASIS OF PROPERTY ACQUIRED IN DISTRIBUTIONS.—If, by reason of section 1101, gain is not recognized with respect to the receipt of any property, then the basis of such property and of the stock with respect to which it is distributed shall, in the distributee's hands, be determined by allocating between such property and such stock the adjusted basis of such stock. Such allocation shall be made under regulations prescribed by the Secretary or his delegate.

(b) PERIODS OF LIMITATION.—The periods of limitation provided in section 6501 (relating to limitations on assessment and collections) shall not expire, with respect to any deficiency (including interest and additions to the tax) resulting solely from the receipt of property by shareholders in a distribution by a qualified bank holding corporation which is certified by the Board under subsection (a) or (b) of section 1101, until 5 years after such corporation notifies the Secretary or his delegate (in such manner and with such accompanying information as the Secretary or his delegate may by regulations prescribe) that the period (including extensions thereof) prescribed in section 4 (a) of the Bank Holding Company Act of 1955, or section 1101 (e), whichever is applicable, has expired; and such assessment may be made notwithstanding any provision of law or rule of law which would otherwise prevent such assessment.

(c) ALLOCATION OF EARNINGS AND PROFITS.—In the case of any exchange described in section 1101 (c) (2) or (3), the earnings and profits of the corporation transferring the property shall be properly allocated between such corporation and the corporation receiving such property under regulations prescribed by the Secretary or his delegate.

(d) ITEMIZATION OF PROPERTY.—In any certification under this part, the Board shall make such specification and itemization of property as may be necessary to carry out the provisions of this part.

SEC. 1103. DEFINITIONS.

(a) BANK HOLDING COMPANY.—For purposes of this part, the term "bank holding company" has the meaning assigned to such term by section 2 of the Bank Holding Company Act of 1955.

(b) QUALIFIED BANK HOLDING CORPORATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of this part the term "qualified bank holding corporation" means any corporation (as defined in section 7701 (a) (3)) which is a bank holding company and which holds prohibited property acquired by it—

(A) on or before May 15, 1955,

(B) in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) of section 1101, or

(C) in exchange for all of its stock in an exchange described in section 1101 (c) (2).

(2) LIMITATIONS.—

(A) A bank holding company shall not be a qualified bank holding corporation, unless it would have been a bank holding company on May 15, 1955, if the Bank Holding Company Act of 1955 had been in effect on such date, or unless it is a bank holding company determined solely by referenc to—

(i) property acquired by it on or before May 15, 1955,

(ii) property acquired by it in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, and

(iii) property acquired by it in exchange for all of its stock in an exchange described in section 1101 (c) (2) or (3).

(B) A bank holding company shall not be a qualified bank holding corporation by reason of property described in subparagraph (B) of paragraph (1) or clause (ii) of subparagraph (A) of this paragraph, unless such property was acquired in a distribution with respect to stock, which stock was acquired by such bank holding company—

(i) on or before May 15, 1955,

(ii) in a distribution (with respect to stock held by it on May 15, 1955, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b) of section 1101, or

(iii) in exchange for all of its stock in an exchange described in section 1101 (c) (2) or (3).

(C) A corporation shall be treated as a qualified bank holding corporation only if the Board certifies that it satisfies the foregoing requirements of this subsection.

(c) PROHIBITED PROPERTY.—For purposes of this part, the term "prohibited property" means, in the case of any bank holding company, property (other than nonexempt property) the disposition of which would be necessary or appropriate to effectuate the first sentence of section 4 (a) of the Bank Holding Company Act of 1955 if such company continued to be a bank holding company beyond the period (including any extensions thereof) specified in such section 4 (a) or in section 1101 (e) (2) (B) of this part, as the case may be. The term "prohibited property" does not include shares, securities, or obligations of any company held by a bank holding company to the extent that the prohibitions of section 4 of the Bank Holding Company Act of 1955 do not apply to the ownership by such bank holding company of such property by reason of subsection (c) (5) of such section.

(d) NONEXEMPT PROPERTY.—For purposes of this part, the term "nonexempt property" means—

(1) obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace;

(2) securities issued by or guaranteed as to principal or interest by a government or subdivision thereof or by any instrumentality of a government or subdivision; or

(3) money, and the right to receive money not evidenced by a security or obligation (other than a security of obligation described in paragraph (1) or (2).

(e) BOARD.—For purposes of this part, the term "Board" means the Board of Governors of the Federal Reserve System.

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