NORTHWEST BANCORPORATION
MINNEAPOLIS 2, MINN.

J. C. THOMSON
PRESIDENT

July 1, 1947

The Honorable Marriner S. Eccles, Chairman
Board of Governors of the Federal Reserve System
Washington, D. C.

Dear Marriner:

Enclosed is a memorandum dated July 1, 1947, prepared by Mr. Faegre, which points out the amendments to the Bank Holding Company Bill which were made by the Senate Committee on Banking and Currency and are shown in Committee Print No. 2 of that bill dated June 13, 1947, a copy of which is also enclosed herewith.

It will be recalled that Mr. Eccles, Chairman of the Federal Reserve Board, inquired regarding the general attitude of the bank holding companies respecting the original bill and that representatives of holding companies in response to such inquiry conferred with him. To enable further response to be made to Mr. Eccles, if requested by him, regarding the Bill as now amended, it is suggested that you review the enclosures and promptly communicate to the undersigned any comments or suggestions you may care to make.

It is reported that Senator Bricker will attempt to bring the bill up in the Senate for consideration and vote at an early date.

Very truly yours

J. C. Thomson
President

Marriner: This is for your information.

July 1, 1947

BANK HOLDING COMPANY BILL - S. 829
COMMITTEE PRINT NO. 2
June 13, 1947

The Senate Committee on Banking and Currency has unanimously recommended the passage of S. 829 with the amendments adopted by the Committee, all of which amendments we are advised are set forth in italics in the printed copy of "Committee Print No. 2" dated June 13, 1947, which accompanies this memorandum.

In a memorandum entitled "Suggested Amendments to Bank Holding Company Bill - S.829" and further identified by the legend "For conference consideration on May 5, 1947" there were set forth numerous amendments to the bill which had theretofore been suggested. In a further memorandum prepared following a conference with representatives of the Board of Governors of the Federal Reserve System and dated May 19, 1947, there were reported the conclusions of the Board with respect to the suggested amendments of May 5th and in addition (beginning at page 8 of the memorandum of May 19th) there were set forth additional suggested amendments.

At several points in the within memorandum reference is made to the memorandum of May 5th or the memorandum of May 19th to facilitate comparison of amendments requested with amendments made by the Senate Committee. An examination of the two memoranda above referred to will disclose the nature of and in some instances the wording of numerous amendments which were requested by the bank holding companies but not made by the Senate Committee.

The amendments shown in Committee Print No. 2 are set forth below and in some instances comments thereon. References to page and line of the bill refer to the Committee Print.

Section 3 - Definitions:

Page 2, line 20 - In subsection (a) defining "bank holding company" the required percentage of stock ownership is increased from 10 to 15.

Page 2, lines 21-24 - adds to the definition:

> "or any company which is a bank and which directly or indirectly owns, controls, or holds with power to vote 15 per centum or more of the voting shares of one or more other banks,"

This amendment had heretofore been suggested by the bank holding companies. (See memorandum of May 5th, page 2.)

Page 2, line 25 - page 3, line 3 - In the same definition and immediately following the clause above quoted there has been inserted the following:

> "or any company which directly or indirectly owns, controls, or holds with power to vote 15 per centum or more of the voting shares of one bank provided such bank operates one or more branches,"

This is a new provision of undetermined origin which may bring within the definition of bank holding company a large number of companies (as defined in section 3(c) of the bill) by reason of their ownership of 15 per cent of the stock of a single bank having a branch. The word "branch", in the absence of a definition in this bill, may be construed, in accordance with the definition of "branch" contained in the federal statutes dealing with insured banks and national banking associations, to include offices or stations having limited banking powers.

Page 3, lines 19-20 - In the paragraph authorizing the Board to declare that a company is not a bank holding company the words "two or more" preceding the word "banks" have been stricken and there has been inserted in lieu thereof the words "the stated number of".

This amendment is made in recognition of the clause above referred to under which a company may be a bank holding company although it holds stock in only one bank.

It is to be noted that in at least two other places in the bill where a corresponding change might have been made no such change has been made. These places are as follows:

(1) Page 3, lines 9, 10 - in the provision permitting the Board to determine that even in the absence of the required percentage of ownership a company exercises such a controlling influence as to make it necessary to treat the company as a bank holding company, and

(2) Page 10, lines 1 -9 (Section 6(a)), prohibiting the consummation of any plan, undertaking or agreement which would result in a company owning 15 per cent or more of the voting shares of each of two or more banks.

Page 4, line 15 - In the definition of "subsidiary" specifying the requisite percentage of ownership the figure "10" has been changed to "15".

Page 5, lines 8-16 - The following new subsection (f) has been inserted:

> "(f) For the purpose of this section there shall be excluded from consideration all voting shares of banks or other companies acquired or held by a bank in a fiduciary capacity, except where such voting shares are acquired or held for the benefit of all or a majority of the persons beneficially interested in such bank or except where the Board, after notice and opportunity for hearing, finds that such acquisition or holding is being employed as a device for avoiding the provisions of this Act."

This is in substance the provision heretofore suggested by the holding companies for the exclusion of stock held in a fiduciary capacity.

(See memorandum of May 5th, page 3.)

Section 5. Interests in Nonbanking Organizations:

Page 7, line 21 - In the first sentence of subsection (a), prohibiting bank holding companies from owning shares or securities of companies other than banks or from engaging in any business other than that of managing or controlling subsidiary banks, there has been inserted after the words "other than that of" the words "banking or". This amendment is for the purpose of permitting a bank which is a holding company by reason of its ownership of stock in one or more other banks to continue in the banking business. The amendment as originally suggested by the holding companies contained a qualification to the effect that a holding company could engage in the business of banking only if it were so authorized under existing law.

Page 8, lines 5-12 - There is inserted in subsection (b) specifying certain companies, to the stock of which the prohibitions of section 5 shall not apply, the following:

> "or engage(d) in the business of furnishing managerial, auditing, supervisory, purchasing, and other similar services solely to such bank holding company and its subsidiaries, or in the business of procuring and servicing solely for such bank holding company and its subsidiaries investments and paper eligible for bank investment, or in the business of liquidating assets acquired from such bank holding company and its subsidiaries,"

This amendment is in substance as requested by the holding companies. (See memorandum May 5th, page 6.)

Page 8, lines 18-23 - In subsection (c) of section 5, exempting from the prohibition of that section voting shares or securities acquired by a bank holding company from any of its subsidiaries at the request of supervisory authorities the words "at the request of" have been stricken and there has been inserted in lieu thereof the following:

> "which have been requested to dispose of such voting shares, securities or obligations by" (the supervisory authority)

and there has been inserted:

> "or which have been acquired from such subsidiaries with the prior approval of the Board;"

These amendments make no substantial change in this subsection and appear to improve the original provision by permitting the bank holding company to purchase such securities when the supervisory authority shall have requested the bank to dispose of the same. This appears to conform more closely to the normal course of banking practice than to require a direct request by the supervisory authority to the holding company as provided in the bill as originally introduced.

Page 9, lines 8-23 - There has been added a new subsection (d) reading as follows:

> "(d) Nor shall the prohibitions of this section apply to voting shares or other securities or obligations which are held or acquired by a bank, which is a bank holding company, in a fiduciary capacity or which are otherwise lawfully owned by such bank or any of its wholly owned subsidiaries on the effective date of this Act; nor shall the prohibitions in this section apply to investment securities of the kinds and amounts eligible for investment by national banks under the provisions of section 5136 of the Revised Statutes. If, while such bank or bank holding company owns or controls such shares, securities or other obligations, the Board, after notice and opportunity for hearing, determines that the ownership or control of such shares, securities or obligations is being employed as a device for avoiding the provisions of this Act, is may by order require such bank or bank holding company to dispose of all or any part thereof forthwith."

The first clause (lines 8-13) deals with a special situation of a bank which is a holding company and presently owns securities of nonbanking organizations. This clause would permit the continued holding of such securities, subject, however, to the provision in lines 17 to 23. This amendment is the Board's answer to various requests for the exception of listed securities, assets eligible for investment under applicable state law, etc. (See memorandum May 5th, page 6.)

This clause dealing with investment securities eligible

under R. S. 5136 is one requested by the holding companies. (See memorandum May 5th, page 6.) It is to be noted, however, that the new provision on investment securities limits investments to the "amounts" as well as the "kinds" eligible under section 5136. The only limitation as to amount seems to be a limitation to 10 per cent of capital surplus with respect to the total amount of investment securities of any one obligor or maker and the limitations do not apply to obligations of the United States and certain other securities.

Section 6. Acquisition of Bank Shares or Bank Assets:

Page 10, line 3 - In subsection (a) of section 6, prohibiting the acquisition of bank stock which would result in a company owning more than a stated percentage of voting shares of each of two or more banks, the required percentage has been changed by striking the figure "10" and substituting "15".

Page 10, lines 9-13 - At the end of the same subsection there has been added the following proviso:

> "Provided, however, That nothing herein contained shall be construed to apply to the acquisition by a bank holding company of any additional voting shares of a bank in any case where such bank holding company, prior to such acquisition, owned a majority of the voting shares thereof."

This is in substance as requested by the holding companies. (See memorandum May 5th, page 7.)

Page 11, lines 11-23 - There has been added to subsection (d) of section 6, specifying factors to which consideration shall be given in determining whether to approve any acquisition of bank shares or assets under the preceding subsection, the following proviso:

> "Provided, however, That nothing herein contained shall be construed to authorize the approval of any acquisition subject to paragraphs (a), (b), or (c) of this section where, regardless of its competitive or other aspects, the effect of such acquisition

may be to expand the size and extent of a bank holding company system beyond limits consistent with adequate and sound banking and the public interest. The factors stated in this section shall likewise be considered by the Board, the Comptroller of the Currency or the Federal Deposit Insurance Corporation in determining whether to approve an application of any bank, which is a part of a bank holding company system, to establish a branch or branches of such bank."

The first sentence of the proviso is in substance as suggested by the Association of Reserve City Bankers with reference to the size and extent of a bank holding company system.

Representatives of at least one bank holding company object to the concluding sentence of the proviso and have urged that there should be inserted in line 21, following the word "whether" the following:

", having regard to the expansion of the size and extent of a bank holding company system beyond limits consistent with adequate and sound banking,"

It is felt that such an insertion would make clear that the supervisory authority considering an application for a branch is to consider the national policy against restraint of trade, etc., only in so far as it affects the entire operation of the bank holding company and not apply this test to the purely local situation at the point where a branch is sought to be established, and where no such test would be applicable to the application of an independent bank.

Section 7. Borrowing by Bank Holding Company or Its Subsidiaries.

Page 12, lines 8-10 - There has been added to subsection (b), prohibiting a bank from accepting as collateral stock of its bank holding company or of another subsidiary of such bank holding company, the following proviso:

"Provided, however, That any bank may, with the prior approval of the Board, accept such capital stock as a security for debts previously contracted."

The holding companies had requested an exception for debts previously contracted and the Board added the further qualification of prior approval of the Board.

Page 12, line 23 - The figure "10" has been changed to "20", increasing the percentage of capital stock and surplus of the bank which shall be the limit of the aggregate amount of loans by any bank to a bank holding company of which it is a subsidiary, other subsidiaries of that bank holding company, investments in securities of such bank holding company or subsidiary, and loans against collateral consisting of securities of such bank holding company or subsidiary. This increase from 10 to 20 per cent had been requested by the holding companies and the limitation to 20 per cent conforms to the present limitation imposed by section 23A of the Federal Reserve Act.

As noted in the memorandum of May 5th at page 11, national banks are limited under Revised Statutes Section 5200 to a 10 per cent limitation on aggregate loans to a holding company and its majority owned subsidiaries if the aggregate includes any loans to the holding company.

Page 12, line 24 - page 13, line 4 - There has been inserted in subsection (c) the following:

> "Non-interest-bearing deposits to the credit of a bank shall not be deemed to be a loan or advance to the bank of deposit, nor shall the giving of immediate credit to a bank upon uncollected items received in the ordinary course of business be deemed to be a loan or advance to the depositing bank."

This provision was requested by the bank holding companies to make it clear that the specified types of normal banking transactions between correspondent banks would not be held to be extensions of credit for the purposes of this section. (See memorandum May 5th, page 11.)

Section 9. Reserve Fund.

Page 14, line 25 - The word "book" has been substituted for "par" in the first sentence of this section, providing that corporate bank holding companies shall use all their net earnings over 6 per cent per annum of the par value of its own shares to accumulate a reserve fund.

Page 15, lines 10-12 - There has been inserted in the sentence specifying permissable uses of the assets in the reserve fund the following:

> "and, with the prior approval of the Board, to increase the capital or surplus of its subsidiary banks,"

This amendment had been requested by the holding companies but the requirement of prior approval of the Board was inserted by the Board. (See memorandum May 5th, page 13.)

Section 13. Technical Amendments:

Page 22, line 10 - At the beginning of subsection (d) the "(1)" has been stricken, apparently for the reason that the subsection contains only one paragraph and no paragraph number is therefore required.

Page 23, line 24-page 24, line 5 - In subsection (f) paragraph (1) has been stricken in its entirety and the subsequent paragraphs have been renumbered accordingly.

The stricken paragraph purported to amend a provision of section 14 of the Revenue Act of 1936 which no longer appears in the Internal Revenue Code.

Page 24, lines 6-23 - is an amendment to subsection (d) of section 26 of the Internal Revenue Code. The provision in the bill with respect to this amendment has been revised in the following respects:

The reference to section 26 of the Revenue Act of 1936 has been changed to "section 26 of the Internal Revenue Code", which amendment is proper.

In lines 15-18 the references to cash or readily marketable assets of the kinds eligible for investment by national banks under the provisions of section 5136 of the United States Revised Statutes, and to compliance with section 10 of the Bank Holding Company Act of 1947, have been amended to refer only to "readily marketable assets" and to compliance with section 9. These amendments are proper to bring this section into conformity with the provisions of section 9 and had been suggested by the holding companies. (See memorandum May 5th, page 16.)

Page 24, line 24-page 25, line 8 - The amendment to a provision of section 102 of the Revenue Act of 1936 has been changed to refer to the present form of the provision in question as it now appears in section 27 of the Internal Revenue Code. The changes made appear to be proper.

Page 25, line 9-page 26, line 14 - At this point there have been added to subsection (f) of section 13 two new paragraphs reading as follows:

> "(3) Section 112(b) of the Internal Revenue Code (relating to the recognition of gain or loss upon certain exchanges) is amended by inserting at the end thereof the following:
>
> > '(11) DISTRIBUTION PURSUANT TO BANK HOLDING COMPANY ACT OF 1947. - In the case of a distribution of stock, securities, or other obligations held by a bank holding company on the date of the enactment of the Bank Holding Company Act of 1947 or thereafter lawfully acquired pursuant to such Act, made pursuant to the order of the Board of Governors of the Federal Reserve System directing, approving, or permitting such distribution as tending to effectuate the policy of the Bank Holding Company Act of 1947, to a shareholder in a corporation which is a bank holding company as defined in such Act, without the surrender by such shareholder of stock or securities in such corporation, no gain to the distributee shall be recognized.'

"(4) Section 113(a) of the Internal Revenue Code is amended by inserting at the end thereof the following:

'(23) PROPERTY ACQUIRED IN DISTRIBUTION PURSUANT TO BANK HOLDING COMPANY ACT OF 1947. - If stock, securities, or other obligations were acquired in a distribution subject to the provisions of section 112(b) (11), then the basis in the case of the stock in respect of which the distribution was made shall be apportioned, under rules and regulations prescribed by the Commissioner with the approval of the Secretary, between such stock and the stock, securities, and other obligations acquired in such distribution.'"

These amendments to the Internal Revenue Code are in substance as requested by the bank holding companies for the purpose of providing for tax-free distribution of securities of non-banking organizations. (See memorandum May 5th, page 17.)

Page 26, lines 20-21 and page 27, lines 2, 3 - At these two points in the paragraphs of subsection (g) amending the definitions in the Investment Company Act of 1940 and the Investment Advisers Act of 1940, respectively, to exclude from the companies covered by those acts bank holding companies as defined in the new bill rather than holding company affiliates, there has been added the following:

"or any subsidiary thereof as defined in said Act".

This amendment was made to provide for situations in which certain services are rendered to bank subsidiaries of a bank holding company by a service subsidiary of the bank holding company rather than by the bank holding company itself. These amendments had been requested by the bank holding companies. (See memorandum May 19th, page 8.)

Page 27, lines 4-16 - There has been added to section 13 a new subsection (h) reading as follows:

"(h) Subsection (b) of section 2 of the Banking Act of 1933, as amended, is amended by adding the following paragraphs:

'(4) which owns or controls, directly or indirectly, either a majority of the shares of capital stock of a member bank or more than 50 per centum of the number of

shares voted for the election of directors of any one bank at the preceding election, or controls in any manner the election of a majority of the directors of any one bank; or

'(5) for the benefit of whose shareholders or members all or substantially all of the capital stock of a member bank is held by trustees.' "

The effect of this amendment is to make any holding company affiliate as defined in subsection (c) of section 2 of the Banking Act of 1933 an "affiliate" as well as a "holding company affiliate".

It is reported that the purpose of this amendment is to make applicable to bank holding companies the provision of section 20 of the Banking Act of 1933 as amended, with respect to securities affiliates and the loaning provisions of section 23A of the Federal Reserve Act. No such amendment is necessary with respect to section 23A as that section specifically provides that for its purposes the term "affiliate" shall include holding company affiliates as well as other affiliates. Section 20 of the Banking Act of 1933, however, prohibits affiliation "in any manner described in section 2(b)" of the Banking Act of 1933 with a securities company. This amendment will bring within the affiliations specified by section 2(b) a holding company affiliate.

This amendment will also have the effect of extending to holding company affiliates the present provisions permitting federal supervisory authorities to examine, and obtain reports from, affiliates of the banks directly under their supervision.