Supplementary memorandum to be attached to Mr. Vest's memorandum of April 3rd regarding Bank Holding Company Bill.

Mr. Eccles

# AMENDMENTS TO S. 2318 PROPOSED BY MORRIS PLAN REPRESENTATIVES

Representatives of the Morris Plan group have submitted to the Senate Banking and Currency Subcommittee a lengthy memorandum which sets forth their proposals for changes in the bank holding company legislation, S. 2318. In brief, these proposals are of two alternative categories: (1) A number of amendments to existing law, and (2) a complete revision of S. 2318. These are taken up in order below. However, only the more important suggestions are mentioned and no attempt is made to describe in detail all of the provisions which are proposed, since many of them are of a very technical character and others are in substance the same as suggestions made by other interested groups.

## AMENDMENTS TO EXISTING LAW

Definition of Bank Holding Company. - A bank holding company would be defined as any company which controls two or more banks. A company would be deemed to control a bank if it had the power to elect one-half of the bank's directors or owned more than 50 per cent of the number of shares voted at the last election of directors of the bank, or if the FDIC determined that the company exercised such power over the management or policies of the bank as to be the substantial equivalent of power to elect one-half of the directors of the bank.

Expansion of Bank Holding Companies. - There apparently would be an outright prohibition against any company acquiring shares of a bank which would result in the company becoming a bank holding company, and against a bank holding company acquiring any additional bank shares, except in limited circumstances. Every insured bank would be required to prevent any transfer of its voting shares to a bank holding company or to a company which would thereby become a bank holding company, without the consent of the FDIC regardless of the nature of the bank, and also the consent of the Board, the Comptroller and the State supervisory authority according to the nature of the bank in question. In addition, an insured bank would be prohibited from conveying substantially all of its assets to another insured bank except with the consent of the FDIC in any case and also the consent of the other appropriate supervisory authorities, depending on the nature of the banks.

Application of Investment Company Act. - A bank holding company which owns any securities or businesses except banks and companies which are broadly related to banking would be classified as investment companies under the Investment Company Act of 1940.

PROPOSED REVISION OF S. 2318

Definition of Bank Holding Company. - A bank holding company would be defined as any company which controls two or more banks. A company would be deemed to control a bank if it had the power to elect one-half of the bank's directors or owned more than 50 per cent of the number of shares voted at the last election of directors of the bank, or if the Board determined that the company exercised such power over the management or policies of the bank as to be the substantial equivalent of power to elect one-half of the directors of the bank. A State bank would not be a holding company by reason of owning stock in other banks if this was permitted by State law. Moreover, unless a company owns some stock of a member bank, the company would not be a bank holding company except with the consent of the banking authorities of a majority of the States in which the company was operating. And, unless a company owns some bank stock directly, it would not be a bank holding company merely because it controlled a bank holding company; but such related company would be subject to certain restrictions on intercompany dealings, and these are described later. Likewise, a company which indirectly owned or controlled bank stock but did not directly own any bank stock would not be a bank holding company if it was registered under the Investment Company Act of 1940.

Interests in Nonbanking Organizations. - The requirement for the divorcement of nonbanking assets would not apply to the ownership of any business which was not prohibited to banks or related persons by the applicable State law. Also, the requirement for the divorcement of nonbanking assets would not apply to the ownership by a bank holding company which was registered under the Investment Company Act of securities of a company which was engaged in certain businesses broadly related to the banking business.

Expansion of Bank Holding Companies. - The provisions relating to the expansion of bank holding companies differ in a number of respects from those of S. 2318. In addition, they provide for the diffusion of the authority to regulate and permit such expansion among the Federal and State bank supervisory agencies and also permit the State supervisory agency to veto any such proposed expansion regardless of the viewpoint of the Federal agency. A bank holding company or a company controlling a bank holding company could not acquire more than 5 per cent of the outstanding securities of any other bank holding company without the consent of the Board, unless the acquiring company already owns 25 per cent of the other company or unless the security is received as a dividend.

Transactions of Bank Holding Companies and Related Persons. - There are complicated and detailed provisions based upon the Investment Company Act which would regulate and control intercompany transactions involving bank holding companies and affiliated institutions. The latter are broadly classified as related persons. These provisions involve some seven pages of statutory language and are difficult to understand or interpret. Among other things, an affiliated institution would be prohibited from borrowing money from or selling securities to a bank holding company except with the permission of the Board and except transactions in the ordinary course of business. The Board would be given a broad regulatory authority with respect to transactions in which a bank holding company and a related person participate in order to insure that the bank holding company participates on the same basis as any other person might do. There would be regulatory provisions on compensation in connection with an affiliated institution acting as agent or broker in relation to a bank holding company.

Tax Provisions. - The tax provisions of S. 2318 would be completely rewritten.

## COMMENTS ON MORRIS PLAN PROPOSALS

### Amendments to Existing Law

The proposed definition of "bank holding company" would be unsatisfactory for reasons which have been stated in connection with somewhat similar proposals made by other groups. In addition, the authority to make discretionary individual determinations, which would be vested in the FDIC rather than the Board, appears to be too limited to accomplish the purpose desired.

The outright prohibition against any company hereafter becoming a bank holding company goes much further than S. 2318, which is a bill to regulate rather than to "freeze" the existing situation. For this reason, no doubt strong objection would be voiced by those who may now be favorable to the bill.

The provisions for diffusion of authority among the supervisory agencies has been previously commented upon in connection with other similar suggestions. In addition, the Morris Plan proposal would require the consent of two agencies, instead of one.

The proposed requirement that a bank holding company which has nonbanking assets register under the Investment Company Act is no sufficient reason for eliminating the provisions of the bill regarding divorcement of nonbank assets. The objectives of the Investment Company Act and of the Holding Company Bill are very different.

Generally speaking, the proposed amendments to the existing law are inadequate and unsatisfactory to accomplish the purposes of the bank holding company legislation.

### Proposed Revision of S. 2318

The definition of "bank holding company" is inadequate for reasons previously stated above. Moreover, the various exceptions proposed would provide large loopholes which would make the law ineffective.

The exceptions from the requirements concerning the divorcement of nonbank assets are so broad as to make the requirement almost meaningless in most cases.

The diffusion of authority among the supervisory agencies which would be provided in connection with the expansion of bank holding companies is believed impracticable and objectionable for the reasons discussed in other connections. Moreover, the power of the State supervisory agency to veto any such expansion, and thus impose its will on the Federal agency, would seem to be most undesirable.

The provisions to regulate intercompany transactions, while possibly justifiable from a theoretical standpoint, would involve a completely new approach to the legislation, would be most difficult to work out in an equitable manner, would be hard to understand, would undoubtedly raise many objections on the part of those who are now generally agreeable to the legislation, and would in effect make it necessary to delay the consideration of the legislation until the results of the proposals could be fully explored and considered by all interested parties.

Briefly stated, the provisions of the revision suggested by Morris Plan are so sweeping and involve so many new ideas that it would bring down objection from numerous quarters and would delay the legislation indefinitely. This is in addition to the fact that many of the provisions proposed seem definitely undesirable.

April 4, 1950