BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

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STATEMENT OF CHAIRMAN ECCLES
IN REPLY TO CRITICISM OF S. 829 BY REPRESENTATIVES OF THE MORRIS PLAN
BEFORE THE BANKING AND CURRENCY COMMITTEE OF THE SENATE

Mr. Hill, the Clerk of the Committee, called me the other day to say that the Committee wanted me to appear here this morning to discusss the testimony of certain representatives of the Morris Plan who appeared on June 2nd in opposition to S. 829. Naturally, I am glad to respond to the Committee's request although I must confess a sense of disappointment that, after discussions concerning this bill which have covered a period of almost two years with representatives of other Government agencies, the Federal Advisory Council, two Independent Bankers Associations, bankers generally, and representatives of all of the country's major bank holding companies, I find that we overlooked someone to convince about the merits of this legislation.

I have not had the time to study in detail the extensive oral testimony and elaborate printed statements which were introduced by the Morris Plan representatives. Such as I have seen, however, are so misleading and unfair, and contain so many inaccuracies, as to convince me that they were delivered merely in the hope that one or more of the random charges which they contain might result in damaging delay to the progress of this legislation in this session of Congress. I shall point out two or three of the major inaccuracies contained in these statements simply to show the Morris plan opposition for what it really is, namely, an attempt to prevent the regulation of that group of companies as bank holding companies -- a result which they have so far managed to achieve by taking advantage of one of the loopholes in the present law and causing the withdrawal from System membership of any banks which they acquire.

One of the charges which is repeatedly stressed in their statements is that S. 829 does not contain such adequate standards as to enable those who would be brought under the Act to know in advance what will be the rules of coverage and administration. This charge is made with respect to a number of the sections of the bill.

First it is charged that Section 3, which defines bank holding companies and provides the legislative machinery for obtaining exemptions from the Act, contains what Mr. Huntington, President of Morris Plan, describes as "meaningless" standards. His statement characterizes that section as providing only one "real" standard, which he states is the "arbitrary determination of the Board".

As pointed out in my previous testimony, the definitions and exemption provisions of Section 3 are patterned upon identical provisions in the Public Utility Holding Company Act of 1935. In that Act, as here, the sole criterion of coverage is that of control. In both there is a mathematical coverage based upon a percentage of stock ownership, coupled with the positive right of a company owning the critical number of shares to obtain a declaration that it is not a holding company if it can demonstrate that it does not enjoy the power of control. Similarly, both Acts provide that even if a company does not own the critical number of shares, the Government agency may declare such company to be a holding company upon a determination that control does in fact exist. The standard provided in this section is therefore a purely factual one, one which is capable of concrete proof the same as any other factual issue. Furthermore, this standard is one which has had judicial construction and interpretation in many cases which have gone to the courts from the decisions of the Securities and Exchange Commission on the definitions contained in that Act. If the Committee -- or Mr. Huntington -- desires a list of these cases, I shall be glad to supply it.

Next it is charged that the Board's power under Section 5(b) to "determine" that a business is "related" to banking is also without adequate standards.

This section allows an exemption from the positive prohibition against a holding company owning voting shares in any company other than a bank. Its purpose is to permit a holding company to keep its ownership in those companies which are "related" to the banking business. The standards for determining what is a "related" business are clear. First, under the plain terms of the section, the business must be such as to be a "proper incident" to the banking business. This in itself is a yardstick capable of specific application. Secondly, the section lists a number of specific kinds of businesses which are legislatively declared to be properly incidental to banking and these, under a legal doctrine familiar to most lawyers, limits the kinds of other businesses which may be declared to be "related" to banking to those which are of a like nature. Thirdly, these standards are subject to the further limitation appearing in that part of Section 2 of the Act which reads as follows: "It is hereby declared to be the policy of Congress, in accordance with which policy all of the provisions of this Act shall be interpreted, to control the creation and expansion of bank holding companies; to separate their business of managing and controlling banks from unrelated businesses. * * *"

It is also charged that Section 6 of the Bill lacks adequate standards for determining to what extent a bank holding company may be permitted to expand. In his oral testimony Mr. Huntington, in effect, urged the Congress to adopt a dollar figure defining "bigness".

There is no section of S. 829 which provoked a more searching inquiry for adequate and specific standards than Section 6. Neither the "death sentence" nor the so-called "freeze" seemed to be either just or in the public interest. On the other hand, it was recognized that there should be a positive prohibition against the kind of expansion which operates to the detriment of the public. I believe that the standards as now stated in Section 6 are capable of specific application to each problem of expansion which may hereafter arise. As pointed out in my previous testimony, the banking agencies, when called upon to decide whether to approve the further expansion of a bank holding company, must first consider the financial history and conditions of the applicant and the banks concerned; their prospects; character of management; and the needs of the communities involved. These are considerations which today constitute the legislative guide for administrative action in such matters as the admission of State banks to membership in the Federal Reserve System or the granting of federal deposit insurance coverage. They have been in the banking statutes for many years, without challenge or complaint. Presumably, therefore, they are understood and approved by the banking fraternity generally. Next, the banking agencies are required to take into consideration and to give effect to the national policy against restraints of trade and commerce and the undue concentration of economic power. This standard does not promulgate a new national policy; it merely gives effect to one which has long been on the statute books of this country in the Sherman and Clayton Acts. And judicial interpretation of those Acts has long since fixed the boundaries of this policy in understandable terms of precise application. Finally, there is the requirement under Section 6 that the proposed expansion shall not be inconsistent with adequate and sound banking and the public interest, all of which are familiar expressions to those whose activites are subject to supervision at the hands of banking agencies.

ALLEGED LACK OF ADEQUATE JUDICIAL REVIEW

In addition to the charge of lack of standards it has also been charged that, with very limited exceptions, no provision has been made in S. 829 for judicial review of most of the important decisions which the Board is required to make under the bill.

This charge is so obviously without foundation as scarcely to require a reply. Section 11(d), which is also patterned upon a similar section in the Utility Act, is intended to, and does in fact, grant a specific right of judicial review of any and all orders of the Board made pursuant to S. 829 to a person who is aggrieved by such action. The courts have long since determined that the scope of review provided by the judicial review section of the Utility Act, as well as many similar provisions in other regulatory acts, include the right to review any action which is of a definitive character that adversely affects the legal rights of any person. In the Utility Act the courts have even gone so far as to hold that a minority stockholder not

a party to the proceedings before the Commission is entitled, under certain circumstances to judicial review of the Commission's action affecting the corporation, even though the corporation has not sought such review itself.

ALLEGED EFFECT UPON DUAL BANKING SYSTEM

The third and final charge to which I shall refer is one which both Mr. Huntington and Mr. Morris made, namely, that S. 829 would tend to destroy the dual banking system. This is a familiar red herring. It is repeatedly dragged out by the opponents of the Federal Reserve System, and it is utterly false. Only yesterday I appeared before the House Banking and Currency Committee to answer this charge in relation to the Board's bill to authorize the Federal Reserve Banks to guarantee in part loans by private banks, particularly to small business. Whenever the Board proposes legislation of any kind, selfish opponents make use of this wholly fallacious argument because they feel that by doing so they can cause effective alarm among the senators and representatives in the Congress who have committee responsibilities for such legislation.

I am and have long been in favor of wider membership in the Federal Reserve System. I have urged unification in that sense and only in that sense. This does not mean doing away with State chartering or the State banking authorities, with whom the Federal Reserve System has long worked very closely. We have in the Federal Reserve System nearly 2,000 State member banks having aggregate deposits of 40 billion dollars, or approximately two-thirds of the total deposits of all State commercial banks. It is preposterous to contend that, by extending holding company legislation to reach all such companies, which in turn will subject a relatively few nonmember banks to regulation as a part of a holding company system, this would affect in any way the established dual banking system in this country or that the Board has any such purpose in mind in this or any other legislation.

You will recall that when the legislation was passed by Congress creating the Federal Deposit Insurance Corporation it required that all insured banks were to become members of the Federal Reserve System. Senator Glass' support of this legislation was predicated on that requirement. Opponents of the Reserve System were successful later on in getting this removed from the law as a requirement and this, in my opinion, was a backward step. The point is, however, that the charge of Reserve System hostility to the dual banking system is baseless and contradicted by the facts.