

BANK HOLDING COMPANY ACT OF 1955

MAY 20, 1955.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H. R. 6227]

The Committee on Banking and Currency, to whom was referred the bill (H. R. 6227) to provide for the control and regulation of bank holding companies, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

THE NEED FOR BANK HOLDING COMPANY LEGISLATION

INTRODUCTION

The need for immediate legislation which would at the same time control the future expansion of bank holding companies and force them to divest themselves of nonbanking business has been established to the complete satisfaction of your committee. It held exhaustive public hearings on H. R. 2674 (since superseded by H. R. 6227) from February 28 through March 9, 1955. Executive sessions extended from April 20 to May 13. The views of the Federal Reserve System were presented by the Honorable William McChesney Martin, Chairman of its Board of Governors, while those of the Office of the Comptroller of the Currency were presented by the Honorable Ray M. Gidney. Other witnesses representing all shades of opinion in regard to bank holding companies appeared and were afforded every opportunity to set forth their views. All witnesses were subjected to unusually lengthy and searching interrogation by the membership of your committee. The printed hearings, including appropriate exhibits, cover 645 pages.

Evidence developed during the hearings has convinced your committee that bank holding companies are not in accord with the very

precepts upon which our banking system rests. The United States early in its history, it should be recalled, adopted a democratic ideal of banking. Other countries, for the most part, have preferred to rely on a few large banks controlled by a banking elite. There has developed in this country, on the other hand, a conception of the independent unit bank as an institution having its ownership and origin in the local community and deriving its business chiefly from the community's industrial and commercial activities and from the farming population within its vicinity or trade area. Its activities are usually fully integrated with the local economic and social organization. The bank holding company device threatens to destroy this democratic grassroots institution.

Your committee believes that the destruction of the American unit banking system, resulting in the further concentration of credit facilities, would have revolutionary effects upon our free-enterprise system. Ultimately, monopolistic control of credit could entirely remold our fundamental political and social institutions.

The time for action is now. We dare wait no longer, for already we are rapidly following the example of England whose many banks became the Big Five. She finally passed a law against further concentration. The Bank of England has been nationalized. France has nationalized its few banks. The same will inevitably come to pass here unless we forestall it by legislation.

There is no question about what the reaction of the American people would be to such a condition. A nation that would not allow a monopoly over tobacco certainly will not condone one over the lifeblood of its economy, money, and credit. Through their Representatives in Congress and the State legislatures they have at various periods erected legal barriers against centralization of credit. Some of these have fallen, some have corroded. It is urgently necessary that we stop the remaining laws from being evaded. H. R. 6227 would do this. Its adoption by the Congress is necessary if we are to preserve our free-enterprise banking system, the economic counterpart of our political system. Each is essential to the other.

The four fundamental reasons for enacting this legislation are set forth below.

BANK HOLDING COMPANIES THWART NATIONAL BANKING POLICY

While our banking structure has evolved down through the years to meet changing economic requirements, this country has held steadfast to the doctrine that competition should prevail in the banking industry. Our national banking policy has aimed at protecting and fostering the growth of independent unit banks.

Repeatedly Congress has been urged to break down the restrictions in the national banking law regarding branches of national banks. Congress has been urged to permit branches, regardless of State bank laws, on a trade area basis, on an interstate or Federal Reserve district basis, and in fact on a nationwide basis. Each time, however, Congress has declared its approval of the American system of local independent and competitive banks, and has left the matter of branches to the States to determine, each State for itself. In spite of these rebuffs, those who have sought to concentrate banking control into fewer and fewer hands have been able, in certain areas of the

country, to accomplish their purpose to a substantial extent through the holding company device, acquiring control of a group of banks which, can thereafter be operated, in effect, as branches.

The opponents of H. R. 6227, it is true, have contended that to base holding company legislation on branch banking law is wrong, because there is a difference between branches and affiliated, or subsidiary, banks. Great stress has been placed on their difference in form, which everyone of course recognizes. Your committee feels, however, in a large measure they are differences without a distinction. Other than in form, what is the practical difference between a branch and a bank the stock of which is owned by a holding company that can select the bank's directors and change them at its pleasure, even holding repurchase rights to the directors' qualifying shares; that can hire and fire the bank's personnel and otherwise supervise its operations; that can make its investments, handle its insurance, buy its supplies, originate and place its advertising; can pass on its loans to local firms and individuals, usually receiving a fee for services performed?

Bankers certainly should know whether bank holding company subsidiaries can in effect be operated as branches. A bankers' association asked the bankers of the country this question: "Do you consider holding company banking, in effect, branch banking?" More than 97 percent of the replies were "Yes."

Your committee believes it is obvious that the declared will of Congress in favor of independent competitive banking is being thwarted by indirect branch banking, through the mechanism of the holding company.

BANK HOLDING COMPANIES CIRCUMVENT STATE BANKING LAWS

In the past, Congress has repeatedly been urged both to permit national banks to carry on branch banking across State lines and to allow them to operate interstate branches without regard to State branch banking laws. The Congress however has steadfastly respected the rights of the States to specify the extent to which branch banking shall be practiced within their respective borders. In fact, the Federal law authorizes National banks to have branches only to the extent that State banks are so permitted under the law of the State in which the national bank is located. This establishes parallel treatment of branches as regards banks whether State or federally chartered. Although this equality exists with respect to branches, States have no way to protect themselves against an outside bank holding company coming in and buying stock in banks, especially national banks, located within their borders.

Just recently, for example, the General Contract Corp. of St. Louis (a holding company) purchased two banks in the southern part of Illinois; namely the Bank of Benton and the Bank of Ziegler. A commercial bank, under both existing Federal and State laws, is not only prohibited from buying stock in banks located in another State, but is also prohibited from purchasing stock in banks located in the same State.

This bank holding company would not have been permitted to buy these banks which are now subsidiaries of this corporation if H. R. 6227 was then on the statute books. This corporation already owned the Illinois State Bank of Quincy which now gives it control

of 3 banks in Illinois; 4 banks in St. Louis, Mo.; 1 in Memphis, Tenn.; besides 3 insurance companies operating in 42 States; a dealer finance and personal loan company, blanketing 7 States; and approximately 30 finance and personal loan offices extending from St. Louis, Mo., to New Orleans, La.

The General Contract Corp. is by no means unique. Bank holding companies of the type which would be controlled under the bill now reach into 31 States, and no State is immune from invasion. The operations of the principal interstate bank holding companies are very extensive. As of December 31, 1954, 1 company, the Northwest Bancorporation, operated 72 banks with 22 branches located in 7 States; the Equity and Morris Plan Corps. operated 10 banks with 19 branches located in 4 States and the District of Columbia; the Transamerica Corp. operated 6 banks, with 167 branches, located in 5 States; the First Bank Stock Corp. operated 75 banks with 6 branches located in 4 States; the First Security Corp. operated 3 banks with 45 branches located in 3 States.

The bank holding company moreover circumvents our State banking laws on an additional major count, engaging in nonbanking businesses.

Most States restrict banks to the banking business and forbid banks to engage in or control nonbanking businesses. Through the device of the bank holding company, however, one organization can bring under centralized control an unlimited number and variety of businesses.

A wholly owned subsidiary of Morris Plan Corporation of America, the National Industrial Credit Corp., has direct or indirect interests in six companies engaged in the fire, casualty, reinsurance, and life-insurance business. Transamerica in addition to its banking interests in five States, controls corporations engaged in such widely diversified businesses as life, fire, automobile, and marine insurance, oil and gas, fish canning and processing, frozen foods, castings, forge equipment, kitchen tools, and agricultural equipment.

BANK HOLDING COMPANIES ARE SUSCEPTIBLE TO ABUSE

Your committee, of course, does not contend that all, or even most, holding companies were organized by promoters for unethical purposes, but the mechanism of the holding company in the field of banking, just as in other fields, is particularly susceptible to abuse by such individuals.

It is known, however, that there have been cases such as occurred not too long ago where a finance company from Texas acquired control of two banks in Chicago and was in the process of acquiring a third bank in Indiana, for the evident purpose of loading these institutions with questionable paper belonging to the holding company. This action resulted in the temporary closing of these Chicago banks. Their reopening was only made possible by a change in control and a very substantial advance by the Federal Deposit Insurance Corporation.

There have been other cases in which bank holding companies have been mismanaged and exploited for the benefit of those who controlled them. This fact was lucidly demonstrated during the banking crisis of the early 1930's. The Bank of the United States, a New York State-chartered institution that was placed in the hands of receivers late in 1930, for example, was found to have no less than 55 affiliates,

many of them mere dummy enterprises that had been created to serve as holding companies in which poor or doubtful paper could be hidden, without having to show it on the books of the parent bank.

In 1930 the head of the Guardian National Bank of Commerce of Detroit appeared before your committee and boastfully told of the new era that had been brought to the Detroit area through acquisitions by holding companies of carefully selected, well-managed and strong banks; how, through the supermanagerial ability of the men who dominated the holding company stronger institutions, better-managed institutions, more profitable institutions, rendering greater service to every corner of the city and its environs, had come to bless the Detroit area. Within a matter of only a few months both the Guardian and the Detroit Bankers—two gigantic Detroit holding company groups of banks—began to totter. In 1932 the vast financial empire lay in ruins, 297 controlled banks and branch offices, \$785 millions in deposits—the scars of which disaster still mar the lives of millions of people. Your committee at that time developed that 12 men, each of whom invested \$100 apiece, had gained control of a Detroit chain of more than 250 banks. In other cases banks had lent heavily to their officers to finance speculation in the stock of their holding companies. Subsidiary banks had been compelled to pay unwarranted dividends in the face of operating losses to enable holding companies to maintain their dividend policies. Holding companies borrowed from the banks which they owned to finance speculative dealings. The Banking Act of 1933, it is true, aimed at preventing a repetition of such abuses. Your committee wishes to point out, however, that under the terms of that act, a bank holding company can be regulated only if it happens to own a bank which is a member of the Federal Reserve System and only if it desires to vote the stock of that bank.

BANK HOLDING COMPANIES NOT AS CONDUCTIVE TO ECONOMIC DEVELOPMENT AS INDEPENDENT UNIT BANKS

Independent unit banks, by their willingness to bear substantial local risks, have accelerated the economic development of the United States. Most of our leading companies, it should be recalled, were once small, and got started because local banks had confidence in the ability of the founders. Ideas and ability are to be found everywhere. And who is so likely to recognize these as the local banker who has the power to act on his intimate knowledge, and who will benefit his bank and his community by developing a substantial customer and employer. As the Commercial and Financial Chronicle has so well stated:

Unit banking is peculiarly suited to the genius of the American people, to the democratic republican form of government which we have developed, to the nature of our business and industrial organization, to our social institutions, and to the individualism which is the foundation of our national progress * * *. Let us never despise the day of small beginnings nor the virtue inherent in small things.

The local independent bank is itself, of course, an ideal small-business enterprise. Local people get together, they invest their own capital, they select their own management and solicit the deposits of the community in which they are located. They then take those deposits and put them out to work for the benefit of the people living in that community. Moreover, because of the FDIC, the

Federal Reserve System, and its corresponding banks, the local bank is in an advantageous position to meet the changing needs of its community.

Your committee should like to reemphasize the fact that this is the only country left where most communities are served by home-owned and home-managed banks which are aware of and responsive to the needs of the people of their areas. Our independent banking system has been a vital factor in the development of the United States. Like yeast cells in a loaf of bread, each working in its immediate area, our banks scattered throughout the country have cooperated to produce the greatest and most general economic development the world has known.

Other countries must depend on 3, 4, or 5 banks having up to thousands of branches. Policies and important credit decisions are made hundreds or thousands of miles from many of the branches. The interest of an enterprising local customer may run counter to that of a large main office account, in which event the former might suffer. This inevitably tends toward concentration in all lines, cartels, the stifling of new enterprises, and stagnation—what has been termed the “mature economy.”

THE ORIGIN OF GROUP BANKING

During the history of banking in the United States there have been in operation three distinct types of banking. They are commonly referred to as (1) independent unit banking, representing a bank with 1 office or with 1 office and branches and having only 1 board of directors and 1 capital structure; (2) chain banking, in which 1 individual owns or controls a number of independent unit banks; and (3) group banking, which is the ownership and control of a group of individual banks by a corporate holding company or control of bank shares by a trustee or a group of trustees or control through a majority ownership of bank shares for investment purposes. This bill, H. R. 6227, is concerned only with group banking through what is commonly referred to as ownership or control of banks by a bank holding company.

The most rapid as well as the greatest expansion in group banking came during the years 1927-29. This was a period of substantial corporate promotional activity which in many cases was activated by a desire for promotional and speculative profit. It was during this era that most of the bank holding companies were formed including the major bank holding companies that are operating at the present time. One of the main reasons for the formation of bank holding companies was the limitation on branch banking which existed during that time. Through the bank holding company device the ownership of banks could be acquired in different locations within the same State and also in different States. Until 1927 national banks were not permitted to open branches and most States did not authorize branch banking or if they did so it was limited to areas adjacent to the bank's home office. Thus through the bank holding company device ownership and control of banks could be achieved whereas bank growth could not be expanded through the medium of branches.

Bank holding companies are engaged basically in one or two types of businesses or both. Some bank holding companies own only the stocks of banks and are primarily engaged in managing or controlling such banks through such stock ownership. Other bank holding com-

panies not only own and control banks but also own or control several nonbanking businesses. Historically, National banks and State banks (excluding mutual savings banks) have been prohibited from investing in the stock of any corporation and their investments are limited to investment securities of a debt character, that is notes, bonds, or debentures which do not represent an equity ownership. The fundamental reason for this limitation on bank investment in common stocks is for the protection of the depositors in our banks. If banks were permitted to own nonbanking businesses they would be compelled in many instances to extend credit to such businesses to the detriment of other competitive businesses in the community and possibly also to a degree which would be unsound from a banking viewpoint. A bank should always be at arms' length with its borrowers and such a position could not be maintained were banks permitted to own nonbanking businesses and make credit available to them. Through the bank holding company device these restraints which are placed upon banks generally are absent.

Since the bank holding company device can be used to acquire control of banks and nonbanking businesses the question might be asked as to why such operations have not been controlled previously. There is no constitutional basis by which a State could prohibit a corporation chartered in another State from owning or controlling a national bank located within its borders. The only effective means by which bank holding companies can be regulated and controlled is through Federal legislation.

THE PRESENT SITUATION

As previously mentioned there are now on the statute books certain provisions enacted in 1933 and 1935 regulating affiliates and holding company affiliates of banks which are members of the Federal Reserve System. Any holding company affiliate which desires to vote the stock owned by it in any member bank must first obtain from the Board of Governors of the Federal Reserve System a voting permit and, as a condition to the permit, the company must agree to submit itself and its controlled banks to examination, to establish certain reserve funds, to dispose of any interest in securities companies, and to declare dividends only out of actual net earnings.

The term "holding company affiliate" as defined in the Banking Act of 1933, as amended, essentially includes any corporation, business trust, association, or other similar organization (1) which owns or controls, directly or indirectly, either a majority of the shares of capital stock of a member bank or more than 50 percent 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 (2) for the benefit of whose shareholders or members all or substantially all the capital stock of a member bank is held by trustees. Any corporation all of the stock of which is owned by the United States is excluded and the Board of Governors of the Federal Reserve System is also given authority to exclude any organization which the Board determines not to be engaged, directly or indirectly, as a business in holding the stock of, or managing or controlling, banks, banking associations, savings banks, or trust companies.

Information with respect to the number of bank holding company groups operating in the country is not complete. Control of non-member banks by corporations, business trusts, associations, and other similar organizations is not generally required to be reported pursuant to existing Federal law. Undoubtedly, examination of sources of information other than required reports would disclose bank holding companies other than the presently known cases for which information is readily available. The Federal Reserve has compiled a list of 114 known cases in which corporations, business trusts, associations, and other similar organizations own or control 50 percent or more of the capital stocks of one or more banks including both member and nonmember banks. Such groups as of December 31, 1954, had 1,313 banking offices (including branches) with total deposits of \$23.2 billion. The following table sets forth a breakdown of these groups.

TABLE I.—*Characteristics and size of 114 bank holding company groups (as of Dec. 31, 1954)*

Type of group	Cases	Banks	Branches	Total offices	Deposits
Groups presently regulated by Federal Reserve Board.....	18	254	578	832	\$10,781,929,000
1 bank group where the controlled bank is a member bank.....	¹ 63	78	197	275	9,622,904,000
1 bank group where the controlled bank is a non-member bank.....	15	21	41	62	682,820,000
More than 1 bank group where the controlled banks are nonmember banks.....	8	59	35	94	1,117,417,000
Other groups with 2 or more banks of which at least 1 controlled bank is a member bank.....	² 10	40	10	50	1,043,691,000
Total.....	114	452	861	1,313	23,248,761,000

¹ Of which 61 have been exempted by the Federal Reserve Board.

² Of which 6 have been exempted by the Federal Reserve Board.

As of December 31, 1954, there were 18 holding company affiliate bank groups operating in the country which had obtained voting permits from the Board of Governors of the Federal Reserve System and thus were subject to the regulation provided for in existing law. These 18 holding company groups operated in 22 States, had 832 banking offices (including branches) with total deposits of \$10.8 billion. As of the same date all commercial banks in the United States had 19,948 banking offices (including branches) with total deposits of \$183.6 billion.

While the holding company affiliate bank group totals related to national totals appear relatively modest (4.17 percent for number of banking offices and 5.87 percent for deposits) a quite different picture is presented by examination of the data on a State basis. In 11 States more than 20 percent of deposits in all commercial banks in those States is controlled by one or more of these 18 holding company affiliate bank groups. Detail by States is set forth in the following table.

TABLE II.—Control of bank deposits in certain States

State	Percent of deposits of 18 holding company groups to deposits of all commercial banks in State	Number of regulated holding company groups operating in the State
Nevada.....	78.29	1
Minnesota.....	57.04	3
Oregon.....	44.88	1
Montana.....	44.19	2
Washington.....	32.76	4
Idaho.....	32.26	1
South Dakota.....	32.19	2
North Dakota.....	29.13	2
Utah.....	24.14	1
Wisconsin.....	22.09	2
Arizona.....	21.13	1

In the case of Nevada, Oregon, and Arizona, just one holding company through its controlled banking offices had 74.29, 44.88, and 21.13 percent of all deposits of all commercial banks in those States respectively. Of the 18 holding company affiliate bank groups under the supervision of the Federal Reserve Board, 4 of these groups operate across State lines. One of these groups has banking offices in 7 States which are located in 3 Federal Reserve districts.

The provisions of existing law providing for the regulation of the activities of a bank holding company apply only if the bank holding company controls at least one member bank of the Federal Reserve System and only if the holding company desires to vote the stock of that member bank. A bank holding company may avoid regulation by the Federal Reserve Board through electing not to vote the stock of any member bank. For instance there is one bank holding company which owns more than 50 percent of the stock of 5 national banks, 2 State nonmember banks, and in addition has substantial minority interests in 3 other national banks. Although approximately 36 percent of the par value of all the bank stocks owned by the holding company is represented by its stock investment in the five national banks, the holding company has not elected to obtain a voting permit enabling it to vote the shares of these banks in which in each case it owns more than 50 percent of their outstanding capital stocks.

There are a number of bank holding companies which are not subject to regulation by the Federal Reserve Board due to the fact that they own controlling interests in only nonmember banks. One such holding company owns the controlling stock interest in 8 State banks located in 3 States.

One holding company which has extensive nonbanking investments also owns through a subsidiary the controlling interest in 10 banks located in 4 States and the District of Columbia. All of these banks are State banks and hence the bank holding company is not subject to Federal Reserve Board regulation. However, the activities of this holding company are such as to make it subject to regulation by the Securities and Exchange Commission under the Investment Company Act of 1940. While such regulation is extensive in scope it is designed principally to protect the interests of share owners as contrasted with

holding company regulation by the Federal Reserve Board which is concerned principally with protecting the soundness of the banks in the group.

There is nothing in existing law which prevents the combination under the same control, through the holding company device, of both banking and nonbanking enterprises. Of the 18 holding company affiliate groups now under regulation by the Federal Reserve Board 13 of the groups had stock investments in one or more nonbanking organizations. In all, 90 nonbanking organizations were included in the holdings of these groups as of December 31, 1953 (latest date for which complete year end figures are available). The following table sets forth pertinent information as to these holdings.

TABLE III.—*Nonbanking organizations in 18 holding company affiliate groups as of Dec. 31, 1953*¹

Type of business	Number of groups	Number of nonbanking organizations	Total assets of nonbanking organizations
Safe deposit.....	1	2	\$625,000
Bank buildings.....	6	8	10,169,000
Liquidation of assets.....	3	4	1,749,000
Liquidation of assets and insurance agency.....	1	1	208,000
In liquidation.....	3	4	852,000
Inactive.....	4	6	87,000
Service organizations of groups.....	2	2	1,307,000
Trustees under deeds of trust.....	1	2	763,000
Insurance agencies.....	7	13	1,997,000
Owning and operating real estate.....	6	8	1,039,000
Real estate activities and oil development.....	1	1	19,453,000
Real estate sales and insurance.....	1	1	329,000
Real estate sales, rentals, and property management.....	1	1	27,000
Real estate sales and liquidations.....	1	1	58,000
Real estate insurance agency.....	1	1	334,000
Financing and servicing real estate.....	3	3	58,646,000
Home construction and improvement.....	1	9	324,000
Building and loan association.....	1	1	1,331,000
Automobile financing.....	1	1	2,899,000
Installment financing.....	1	1	1,595,000
Installment service agency.....	2	2	125,000
Abstract and title insurance.....	1	2	1,657,000
Investment of own funds.....	3	5	5,532,000
Insurance underwriting (life, fire, casualty, or automobile).....	2	8	498,896,000
Catching, processing, and selling fish and fish products.....	1	1	11,761,000
Metals manufacturing (and subsidiary sales and service company).....	1	2	25,697,000
Total.....	13	90	647,493,000

¹ The "holding company affiliates" in these groups are those which are now subject to the limited regulation provided by existing law.

² Omitting duplications.

One of the regulated bank holding companies which owns more than 50 percent of the capital stocks of banks with total deposits of slightly over \$2 billion, in its annual report for the year ending December 31, 1954, sets forth considerable information as to its holdings and operations of nonbanking subsidiaries. This holding company owns all of the capital stock of a life insurance company with total assets of \$447 million. This insurance company with over \$5 billion of life insurance in force operates in 47 States, 7 Canadian Provinces, Hawaii, Alaska, and the District of Columbia. In addition the holding company owned from 92.5 to 100 percent of the capital stock of 4 fire and casualty insurance companies which write practically all forms of insurance other than life. The combined assets of these companies were over \$98 million and their premium income in 1954 was over \$46 million. The holding company owned a 94.4 percent stock interest

in a company which manufactures hydraulic pumps, diesel engines, and precision metal products. This manufacturing company with assets of \$23.7 million had net sales in 1954 of over \$35 million. The holding company owned a 75.6 percent stock interest in a seafood packing company which cans salmon and tuna and also sells frozen seafoods as well as precooked fish sticks. Assets of this packing company exceeded \$11.3 million and 1954 sales volume was almost \$15 million. The holding company owned all the capital stock of a finance company dealing in mortgages and home-improvement loans. The finance company had assets of over \$36.6 million and at the end of 1954 was servicing notes and mortgages totaling slightly over \$171 million. The holding company owned all of the capital stock of a real-estate investment company with assets of \$19.3 million. This investment company develops on its own account or participates with others in the development of home and shopping-center projects. It realizes income from the sale of oil from 118 producing wells which it owns or in which it has an interest together with royalties and rentals from 130 properties leased to major oil companies. The company owns subsurface rights to approximately 400,000 acres of lands.

MAJOR PROVISIONS OF H. R. 6227

Your committee is convinced from the evidence presented during its recent hearings that this bill represents the minimum legislation necessary to deal with the bank holding company problem. The committee wishes to make clear that the legislation which it proposes is not designed to abolish bank holding companies or to prohibit the expansion, within certain limits, of existing bank holding companies. The bill would impose controls which the committee deems desirable over the creation and expansion of bank holding companies and would require them to separate their business of managing and controlling banks from unrelated businesses. The bill contains five major provisions.

First, the bill would set forth a declaration that it is the policy of the Congress (a) to control the creation and expansion of bank holding companies, (b) to separate their business of managing and controlling banks from unrelated business, (c) generally to maintain competition among banks and to minimize the danger inherent in concentration of economic power through centralized control of banks, and (d) to subject bank holding companies to examination and regulation. It is the opinion of your committee that bank holding companies should be subject, insofar as practicable, to the same type of examination as the banks which they control.

Second, the bill would define a bank holding company as any company which either (a) controls 25 percent or more of the voting shares of 2 or more banks or of a bank holding company, or (b) is found by the Board of Governors of the Federal Reserve System, after notice and opportunity for hearing, to exercise a controlling influence over 2 or more banks. Certain exemptions from the definition of "bank holding company" are, however, provided. These are as follows: (a) Any corporation a majority of the shares of which are owned by the United States or any State, (b) banks which own or control shares solely in a fiduciary capacity (except where such shares are held for the benefit of all or a majority of the persons beneficially

interested in such bank), and (c) any mutual savings bank, and any nonprofit organization operating exclusively for charitable, religious, and similar purposes which would otherwise be a bank holding company by reason of its ownership of bank stock on the effective date of the act.

Third, the bill would require bank holding companies to obtain the prior approval of the Board of the Federal Reserve System before acquiring additional bank stocks or assets. The Board, before granting approval of any application, would be required to ask for the recommendation of the agency that chartered the bank or banks involved, the Comptroller of the Currency in the case of a National bank and the State supervisor in the case of a State bank. If such an agency denied approval within 30 days that action would be final, but if approval was granted then the Board, of course, in the light of the overall situation still could make its own determination.

Fourth, the bill would require bank holding companies within a maximum of 5 years to divest themselves of interests in nonbanking enterprises. Suitable tax relief on the distribution of such interests made at the order of the Board, or where because of such an order a company chooses to distribute its holdings of bank shares so as to cease to be a bank holding company, is provided.

Fifth, the bill would prohibit a bank subsidiary of a bank holding company from investing any of its funds in, or lending any of its funds on the security of the stock or other securities of the holding company of which it is a subsidiary, and other subsidiaries thereof, and would prohibit the bank from making loans to its bank holding company and other subsidiaries.

DEFINITION OF A BANK HOLDING COMPANY

The bill defines a bank holding company as any company which either (a) controls 25 percent or more of the voting shares of 2 or more banks or of a bank holding company, or (b) is found by the Board of Governors of the Federal Reserve System, after notice and opportunity for hearing, to exercise a controlling influence over 2 or more banks. Certain exemptions from the definition of "bank holding company" are, however, provided. These are as follows: (a) Any corporation a majority of the shares of which are owned by the United States or any State, (b) banks which own or control shares solely in a fiduciary capacity (except where such shares are held for the benefit of all or a majority of the persons beneficially interested in such bank), and (c) any mutual savings bank, or any organization operating exclusively for charitable, religious, and similar purposes which would otherwise be a bank holding company by reason of its ownership of bank stock on the effective date of the act.

Your committee is unable to endorse the definition of "bank holding company" proposed by the Federal Reserve Board. It recommended that a "bank holding company" be defined as any company which owns or controls, directly or indirectly, a majority of the shares of one or more banks. Such a definition would perpetuate the long-recognized deficiencies of the definition of the term "holding company affiliate" contained in present law. This definition is based primarily on ownership or control of a majority of the shares of a bank or of the shares voted in the last election of directors of a bank. Congress and

the courts have recognized the fact that control is often exercised through ownership of much less than a majority of the shares of a corporation. In the Public Utilities Holding Company Act of 1930, for example, the Congress defines a holding company as follows:

* * * any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company or of a company which is a holding company by virtue of this clause or clause (B), unless the Commission, as hereinafter provided, by order declares such company not to be a holding company.

In the Investment Companies and Advisers Act, "control" is defined in this manner:

Control means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.

Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 per centum of the voting securities of a company shall be presumed to control such company.

Ownership of a majority of the shares voted in the preceding election of directors is equally unrealistic. In marked contrast to its present position the Board in its 1943 annual report acknowledged it when it stated:

In the Board's experience, the case in which regulation is most necessary is likely also to be the case in which advantage has been taken of the gaps in the statutory definition with respect to the number of shares owned or controlled. The Board believes that these gaps should be filled in by incorporating in the statute a more realistic definition envisaging the manner and means by which effective control actually is exercised.

The type of definition now proposed by the Federal Reserve Board would not cover some existing groups which are in effect bank holding companies. More important, it is quite possible it would not cover arrangements for control of a number of banking units which could easily be devised in the future to escape coverage of the definition proposed by the Board. In contrast, your committee believes the definition of "bank holding company" contained in H. R. 6227 is a realistic definition fully adequate to meet these possibilities of evasion.

As pointed out previously this bill does not deal with banks owned by an individual. The definition of "company" contained in the bill does not include an individual, and it also specifically excludes the administrator of a person's estate, the executor of a person's will, and the trustees of a testamentary trust. Also excluded would be an irrevocable trust the corpus of which is donated by one person and consists only of such person's property. In connection with the latter exclusion, however, your committee desires to point out that the exclusion is only intended to cover bona fide trusts created for specifically named beneficiaries. The exclusion is not to be used to evade the purposes of the act. For instance, if a number of individuals owning stock in the same banks create such trusts for the purpose of controlling the banks through the voting of the trustees in concert, such trusts would not be bona fide trusts entitled to exclusion from the provisions of this bill. Your committee desires to alert the Federal Reserve Board in this respect, and requests the Board to inform your committee and the Congress in its annual reports of attempts to use this particular exclusion for the purpose of evading the purposes of the bill.

CONTROL OF BANK HOLDING COMPANY EXPANSION

The bill would control the future expansion of bank holding companies. The problem of how far bank holding company systems should be permitted to expand has long been of serious concern. It is in this area that one of the greatest potential evils of bank holding company operations exists.

A chartered bank may be prevented by Federal or State law or by the appropriate regulatory agency to which it is subject from expanding its banking offices either by the establishment of new branches or by taking over and operating the offices of other banks as branches.

In order to establish branches, national banks must first obtain permission from the Comptroller of the Currency, State member banks from the Federal Reserve Board, and nonmember insured banks from the Federal Deposit Insurance Corporation. But a bank holding company is not limited by any such requirements.

Through the acquisition by the holding company of the stock of an existing bank which thereafter may be operated essentially as a branch of the holding company system, the denial of a branch application of a controlled bank may become almost meaningless.

The holding company device lends itself readily to the amassing of vast resources obtained largely from the public, which can be controlled by the relatively few who comprise the management of the holding company, giving them a decided advantage in acquiring additional properties and in carrying out a program of expansion. Such power can be used to acquire independent banks by measures which leave local management and minority stockholders little with which to defend themselves except their own protests.

The enactment into law of H. R. 6227, your committee feels, is necessary to correct this situation. Section 5 of the bill provides that no action could be taken which would make a company a bank holding company without obtaining the approval of the Federal Reserve Board, nor could any voting stock in any bank or the assets of a bank be acquired by a bank holding company without obtaining approval of the Board. The only exception to these provisions is the acquisition by a bank holding company of voting stock acquired as a stock dividend.

Before granting approval to any application, the Board would be required to ask for the recommendations of the agency that chartered the bank or banks involved, the Comptroller of the Currency in the case of a national bank and the State supervisor in the case of a State bank. If such agency denied approval within 30 days, that action would be final, but if approval was granted then the Board, of course, in the light of the overall situation still could make its own determination.

The argument made by the Federal Reserve Board for centering all decisions on expansion in its hands is not convincing. It is apparently the position of the Federal Reserve Board that to give the Comptroller in the case of a National bank and the State supervisor in the case of a State bank, the right to deny approval of acquisition of the stock or assets of a bank would bring about diffusion of authority, involve dual application of effort and give rise to administrative difficulties.

Your committee regards this position as fallacious and untenable. The Federal Reserve Board agrees that the respective Federal and State supervisory authority should be consulted, and their views should be considered by the Board. We are unable to see how making a recommendation by the State supervisors would entail any less investigative work upon their part, create less diffusion of responsibility, or give rise to less administrative difficulties than the making of a definite decision that would be final on the Board.

As a matter of fact, if the Federal Reserve's recommendation were adopted both the Comptroller and the State supervisor and the Federal Reserve would have to make an investigation, but under the terms of the bill reported by your committee, if the State supervisor said "No," that would mean no investigation would be necessary by the Federal Reserve. The decision would be final and no administrative work would follow.

Section 5 further provides that in no case could further expansion outside of the home State of a bank holding company or a subsidiary thereof be approved and applications within the home State could be approved only within the area within which branches of banks are permitted or where by State statute such expansion is specifically exempted from branch banking restrictions.

The essence of section 5, your committee believes, is the placing of bank holding company expansion on the same basis as expansion in offices of banks. It establishes equity between holding companies and banks as to the area in which they can expand. The statutes of the States contain provisions clearly calculated to control the extent of banking operations by geographic limitations. It has been a generally recognized principle that such control could best be exercised by the individual State, depending on the banking needs of such State. This principle was given recognition by the Congress in the Banking Acts of 1927 and 1933, which authorized the Comptroller of the Currency to approve branches for a National bank only within State boundaries, and subject to the restrictions as to location imposed by the laws of the State on State banks.

Nearly all of the States already have legislated on the subject of branch banking. There is no reason to force a State again to legislate on branch banking. Your committee concurs with R. M. Evans, a former member of the Board of Governors of the Federal Reserve System, who said:

* * * Once we acknowledge what has been officially ruled in at least two States—that is, that holding company banking is a type of branch banking—then holding company legislation should do what our present National banking legislation does; namely, permit branches when State law permits them and deny branches when State law does not permit them.

Finally, section 5 enumerates the standards which would guide the Federal Reserve Board in deciding whether to approve any such expansion. First, it would have to consider the financial history and conditions of the applicant and the banks concerned; their prospects; character of their management; and the needs of the communities involved.

These are in general the considerations now specified in the law as the basis for administrative action in connection with the admission of State banks to membership in the Federal Reserve System and the granting of deposit-insurance coverage.

However, under H. R. 6227, the Federal Reserve Board would also have to consider whether the proposed expansion of a bank holding company or of any banking subsidiary in a bank holding company group would extend the operation of the holding company group beyond limits consistent with adequate and sound banking and the public interest.

DIVESTMENT OF NONBANKING BUSINESSES

The bill provides for the divestment by bank holding companies of investments in businesses extraneous to banking within a period of 2 years which period can be extended to a maximum of 5 years by the Federal Reserve Board. Suitable tax relief on such distributions made at the order of the Board, or where because of such an order a company chooses to distribute its holdings of bank shares so as to cease to be a bank holding company, is provided.

The reasons underlying the divestment requirement are simple. As a general rule, banks are prohibited from engaging in any other type of enterprise than banking itself. This is because of the danger to the depositors which might result where the bank finds itself in effect both the borrower and the lender. It is for this reason, among others, that statutes limiting the investments of banks have been passed by both the Congress and State legislatures.

The bank holding company is under no such restriction. It may acquire and operate as many nonbanking businesses as it has funds and the disposition to acquire. There are in the country today, as has been pointed out previously, bank holding companies which, in addition to their investments in the stocks of banks, also control the operations of such nonbanking businesses as insurance, manufacture, real estate, mining, and a number of others.

Whenever a holding company thus controls both banks and nonbanking businesses, it is apparent that the holding company's nonbanking businesses may thereby occupy a preferred position over that of their competitors in obtaining bank credit. It is also apparent that in critical times the holding company which operates nonbanking businesses may be subjected to strong temptation to cause the banks which it controls to make loans to its nonbanking affiliates even though such loans may not at that time be entirely justified in the light of current banking standards. In either situation the public interest becomes directly involved.

Your committee finds itself unable to accede to the desire of the Federal Reserve Board for discretionary authority to exempt business determined by it "to be so closely related to the business of banking * * * as to make it unnecessary for the prohibitions of this section to apply * * *"

Your committee finds itself in full accord with the views expressed by former Comptroller of the Currency Preston Delano, when he testified before the Senate Banking and Currency Committee in 1950 on the Board's proposal. He stated:

Under this provision, a holding company could engage through its subsidiaries in any other business which the Board, in its discretion, determines to be a "proper incident" to the business of managing, operating, or controlling banks.

By way of illustrating the possible effect of this sweeping discretionary power, it might be pointed out that if the Board of Governors considered the business of acquiring consumer paper by purchase or otherwise and the servicing and sale of

that paper to be a "proper incident" to the business of managing, operating, or controlling banks, a large bank holding company would be in a position to organize and control subsidiary companies in every city in the Nation to engage in this business in competition with independent banks operating in their respective business areas, and such subsidiary companies could funnel this business into the banks of the holding company system.

Freedom to engage in such activities would give to the bank holding company systems a tremendous competitive advantage over independent banks, which cannot engage in similar activities away from their home offices except through duly authorized branches, which in no case can be established beyond State lines.

Your committee has, however, exempted certain specific businesses which it believes to be obviously incidental to the business of banking. A bank holding company would not be required to divest itself of any company engaged solely in holding or operating properties used wholly or in part by any subsidiary that is a bank in its operations or acquired for such future use, or engaged solely in conducting a safe deposit business, or solely in the business of serving such holding company and its subsidiaries in auditing, appraising, investment counsel, or in liquidating assets acquired from such bank holding company and its subsidiaries. Neither would a bank holding company be required to divest itself of securities which are eligible for investment by national banks or general investments of limited amounts.

Your committee has examined the various proposals to "freeze" bank holding companies' nonbanking investments. All of these, it was found, have a common defect. They would leave any company, controlled by a bank holding company, free to expand its capital structure by issuing preferred stock or bonds, by merger, or the organization of subsidiaries of its own.

The fallacy of any attempt to "freeze" nonbanking investments will best be understood by a concrete illustration. Transamerica owns 75 percent of the outstanding voting stock, carried at \$2,665,000, in Columbia River Packers. Now let us assume that Transamerica's investment in this company was completely frozen; that is, the amount of money it had invested, the number of shares it held, and the percentage of voting shares it held could not be changed. The Columbia River Packers, nevertheless, could expand its operations by issuing additional securities to others than the holding company. This company could also absorb other companies and could expand into other fields—in fact into any line of business which its charter permitted. It could organize subsidiaries, raising capital funds from outsiders, thereby enlarging its financial structure and its operations without dissipating the control of the holding company. Last year it broadened its tuna packing operations and its frozen seafood lines. It added precooked fish sticks this year. Your committee has no reason to believe the company might not expand into canned fruits and vegetables, or other food processing lines, by merger or otherwise. Similar expansion could be accomplished by subsidiaries of any bank holding company.

SELF-DEALING LIMITATIONS

The bill would prohibit a bank subsidiary from investing any of its funds in, or loaning any funds on the securities of, its parent bank holding company or subsidiaries thereof. Such a subsidiary bank would also be prohibited from loaning any of its funds to its parent bank holding company or subsidiaries thereof. Your com-

mittee believes that such prohibitions are essential to prevent unsound banking practices.

While these prohibitions would prevent so-called "upstream" financial transactions between a subsidiary bank up to or through its parent bank holding company, the prohibitions would not prevent reverse operations. The committee recognizes that a bank holding company should be able to make loans and investments in its subsidiaries and in the case of subsidiary banks may perform a very useful function in this regard in supplying needed capital funds.

The inadequacy of existing law with respect to self-dealing between bank holding companies and their subsidiary banks was plainly presented to the banking world in 1953 when the Bankers Discount Corp. of Dallas, Tex., which operated a chain of small-loan companies in Texas, Tennessee, Arizona, and California, purchased the controlling interest in three banks in the Chicago area which later were forced to close temporarily. The almost unbelievable story of the Bankers Discount Corp. was recounted to the Senate Banking and Currency Committee on June 12, 1953, by H. Earl Cook, chairman of the board of directors of the Federal Deposit Insurance Corporation, during the hearings on S. 76 and S. 1118, bills to provide for the control and regulation of bank holding companies.

Briefly stated, this is the story as told by Mr. Cook:

On February 6, 1953, Bankers Discount Corp., of Dallas, Tex., which was incorporated in 1946 and operated a chain of small-loan companies in Texas, Tennessee, Arizona, and California, purchased the controlling interest in the First State Bank of Elmwood Park, Elmwood Park, Ill. Bankers Discount acquired 10,800 shares of the outstanding 20,000 shares of stock at \$25 per share. On February 6 and 25 Bankers Discount Corp. purchased 6,800 shares of the outstanding 10,000 shares of stock of the Devon-North Town State Bank, of Chicago, Ill., at \$90 a share. In both instances the stock acquired by the Bankers Discount was purchased from Henry J. Beutel, president of the two banks, who was also president of West Irving State Bank, Chicago, Ill., and his associates.

Concurrently with the acquisition of the stock in the two banks, Bankers Discount obtained unsecured loans from each bank in the amount of the banks' legal lending limit. In the case of First State Bank of Elmwood Park a \$50,000 unsecured loan was obtained and in the Devon-North Town State Bank an \$85,000 unsecured loan was granted. In the case of Devon a contract was entered into on February 16 whereunder the bank agreed to purchase notes from Bankers Discount Corp. without recourse for the full value of such notes less a 2-percent discount to be held in a reserve account. Up to April 1 the bank purchased approximately \$925,000 of such notes which subsequent payments reduced to approximately \$837,000. In the case of the Elmwood Park Bank a similar agreement was entered into on or about March 23, and between that date and April 3 the bank acquired approximately \$2,180,000 of personal notes previously held by Bankers Discount Corp.

On March 31, the auditor of public accounts of the State of Illinois advised the Federal Deposit Insurance Corporation it was his intention to take over the Elmwood Park and Devon banks for examination and adjustment on April 2 unless the Bankers Discount Corp.'s loans and the notes which had been purchased by the banks were removed. He made other requirements with regard to the management. Subsequently an extension of time was granted the banks by the auditor in order to permit them to endeavor to have the Bankers Discount obligations removed. This measure failing, the auditor, on the morning of Saturday, April 11, took over the Devon and Elmwood Park banks for examination and adjustment and also took over the West Irving State Bank which had just agreed to purchase approximately \$800,000 of Bankers Discount Corp. notes and had granted the Bankers Discount a \$65,000 unsecured loan.

As a result of the action taken by the auditor of public accounts the \$800,000 proceeds of the sale of the notes could not be drawn upon by Bankers Discount, the sale was canceled and the West Irving State Bank was permitted to reopen without financial assistance from this corporation on April 20 after the \$65,000 loan was refinanced by Bankers Discount Corp.

Through the extension of financial aid of approximately \$4,820,000 by the Federal Deposit Insurance Corporation in accordance with the provisions of section 13 (e) of the Federal Deposit Insurance Act, the deposit liabilities of First State Bank of Elmwood Park were assumed by the newly organized bank of Elmwood Park as of the close of business on May 26.

On May 28, the Devon-North Town State Bank reopened for business, after disposing of the Bankers Discount Corp. notes held by it, without the financial assistance of this Corporation.

Your committee feels that to fail to prohibit self-dealing between bank holding companies and their subsidiary banks would be to invite a repetition of the situation described above.

TAX RELIEF FOR DISTRIBUTIONS MADE UNDER THE ACT

The bill 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 which are made pursuant to the Bank Holding Company Act of 1955 within the period prescribed in the act.

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 6 (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 6 (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 act. 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 act 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 act 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 to 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 act. 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 act 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 such a transaction does not expire until 1 year after the date on which the corporation gives notification that a final certification by the Board has been made.

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 unless the time has been extended by the Board for 1-year renewals not to exceed 5 years from date of enactment.

MISCELLANEOUS PROVISIONS

The bill contains a number of miscellaneous provisions, some of which are of substantive importance, and some of which are technical in nature.

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.

REGISTRATION, REPORTS, AND EXAMINATION

The bill would require each bank holding company to register with the Board of Governors of the Federal Reserve System. It would be required to do this within 6 months after the effective date of the act or within 6 months after becoming a bank holding company, whichever was later, and the Board may grant extensions up to an additional 6 months. When registering, it would be required to give such information about its finances and operations as the Board deemed necessary to carry out the purposes of the act. The bill would also authorize the Board, to enable it to carry out the purposes of the act, to issue regulations and orders, require reports under oath, and make examinations of each bank holding company and subsidiary thereof.

The Board of Governors would be required within 1 year after the effective date of the act, and each year thereafter in the Board's

annual report to report to Congress the results of the administration of the act, stating what, if any, substantial difficulties had been encountered in carrying out the purposes of the act and any recommendation as to changes in the law which the Board believed desirable.

RESERVATION OF RIGHTS TO STATES

The bill, in a clear-cut statement, would preserve all the rights which States, now or hereafter, may have to regulate banks or bank holding companies.

HEARINGS AND REVIEW

The bill would give any person affected by the Federal Reserve Board's action or omission to act under the bill a right to judicial review with a trial of the facts de novo in an appropriate court proceeding. Your committee believes that simple justice requires any action or inaction of the Federal Reserve Board should be subject to hearings and the aggrieved party should have the right to court review.

PENALTIES

The bill would provide 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 or 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-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 sets forth a declaration of policy by the Congress that the creation and expansion of bank holding companies be subjected to control, that bank holding companies be required to separate their business of managing and controlling banks from unrelated businesses and that bank holding companies be subjected to the same type of examination and regulation as the banks which they control. The section further provides that it is a policy of the Congress generally to maintain competition among banks and to minimize the danger inherent in the concentration of economic power through centralized control of banks.

Section 3.—Subsection (a) defines the term "bank holding company" to mean 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 any company which, after notice and hearing, is determined by the Board of Governors of the Federal Reserve System to exercise directly or indirectly a controlling influence over the management or policies of 2 or more banks. A successor to any such bank holding company for purpose of the act is deemed to be a bank holding company as of the date the predecessor company became a bank

holding company. However, no (1) mutual savings bank, (2) non-profit religious, charitable, scientific, or educational organization, nor (3) company owning banks with aggregate deposits of less than \$15 million as of December 31, 1954, shall be classed as or held to be a bank holding company by reason of the ownership of the stock of any bank as of the effective date of the act. A provision of the definition specifically excludes any corporation wholly owned by the United States, or any bank owning or controlling shares in a fiduciary capacity except where such shares are beneficially held for all or a majority of the persons interested in the bank.

Subsection (b) defines a "subsidiary" of a specified bank holding company in terms of the ownership and control tests applicable to a bank holding company.

Subsection (c) defines the term "company" to include any bank, corporation, partnership, joint-stock company, business trust, voting trust, association, or any similar organized group of persons whether incorporated or not. However, any such company the majority of the shares of which are owned by the Federal Government or by any State are excluded.

Subsection (d) 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 (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 4.—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 for not to exceed an additional 180 days.

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 a year 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 5.—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.

Subsection (a) makes it unlawful, except with prior approval of the Board of Governors of the Federal Reserve System (1) for any action to be taken which results in a company becoming a bank holding company; (2) for any bank holding company or subsidiary thereof to acquire directly or indirectly, any voting shares of a bank (other than those received as a stock dividend); or (3) for any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank.

Subsection (b) requires the Board before approving an application for the acquisition of voting shares or assets of a bank to give 30 days notice to the Comptroller of the Currency if the applicant or the bank involved is a national or district bank or to the appropriate State supervisory authority if the applicant or the bank involved is a State bank. If the supervisory authority so notified files a written disapproval of the application within the 30-day period the application cannot be approved by the Board.

Subsection (c) confines future bank acquisitions by bank holding companies to the State within which the bank holding company or subsidiary thereof maintains its principal office or in which it conducts its principal operations. Within a State, future bank acquisitions by a bank holding company or subsidiary thereof are required to conform to the geographic limitations which apply to the establishment of branch banks unless State law otherwise affirmatively permits other acquisition.

Subsection (d) sets forth standards to be considered by the Board in connection with applications for bank acquisitions under section 5. These relate to financial history and status, prospects, management of the holding company and banks involved, needs and welfare of the communities, and the public interest.

Section 6.—This section relates to bank holding company interests in nonbanking organizations and provides for separation of banking and nonbanking interests.

Subsection (a) makes it unlawful (except as otherwise provided) for a bank holding company to own any shares or other securities or obligations of any company other than a bank or to engage in any business other than (1) banking, (2) managing or controlling banks, or (3) businesses of the kind enumerated in subsection (c) (1) of this section. Such ownership or activities become unlawful 2 years after the effective date of the act except that the Board upon application may extend such period up to a maximum of 5 years after the date of enactment or after a company becomes a bank holding company, whichever is later.

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 those of the kinds and amounts eligible for national bank investment under section 5136 of the Revised Statutes. The paragraph also exempts shares lawfully acquired and owned prior to the enactment of this act by such a bank or any of its wholly owned subsidiaries.

Paragraph (5) exempts investments held by a bank (which is a bank holding company) if such investments may be owned under the laws of the State in which such bank is operating.

Paragraph (6) 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. A bank holding company may also indirectly so invest through an investment company provided the investment company does not own more than 5 percent of the voting securities of any company and does not own any single security having a value greater than 5 percent of the total assets of the holding company.

Section 7.—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 8.—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.

Section 9.—This section provides that any person adversely affected or aggrieved shall have the right to a judicial review of the action or nonaction of the Board of Governors of the Federal Reserve System, and that the action or nonaction which is the subject thereof shall not be considered to be action committed to agency discretion within

section 10 of the Administrative Procedure Act. The facts shall be subject to trial de novo in an appropriate court proceeding.

Section 10.—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 or 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 11.—This section contains technical amendments to banking acts and other acts to reflect the provisions of this act.

Subsection (a) amends the 16th paragraph of section 4 of the Federal Reserve Act which pertains to the nomination and election of class A and class B directors of Federal Reserve banks.

Subsection (b) provides for repeal of the last sentence of paragraph 19 and all of paragraph 22 of section 9 of the Federal Reserve Act. These paragraphs respectively deal with the penalty imposed on a State member bank for failure to obtain reports of holding company affiliates and the applicability of voting permit conditions to State member banks affiliated with a holding company affiliate.

Subsection (c) provides for repeal of subsection (c) of section (2) of the Banking Act of 1933, as amended. That subsection contains the definition of a "holding company affiliate" under that act.

Subsection (d) rewrites section 5144 of the Revised Statutes, as amended, so as to delete the provisions of that section relating to voting permits of holding company affiliates of national banks.

Subsection (e) amends section 5211 of the Revised Statutes so as to remove a sentence subjecting holding company affiliates to the reporting provisions of that section.

Subsection (f) 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.

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 any distribution by a qualified bank holding corporation with respect to any stock which was acquired by the shareholder of such corporation after May 15, 1955, unless such shareholder receives such stock in a distribution the gain with respect to which was not recognized by reason of subsection (a) or (b).

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. Thus, 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 subsection (a) of section 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 shareholders 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.

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 with respect to any distribution by any corporation unless the Board certifies that, before the expiration of 2 years after the enactment of this part, the qualified bank holding corporation has ceased to be a bank holding company. However, under subparagraph (B) 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. Such period may not in any case be extended beyond the date 5 years after the date of enactment of this part. 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 relates to the periods of limitation. Under this subsection the periods of limitation provided in sections 6501 and 6502 on the making of an assessment or the collection by levy, or a proceeding in court shall not expire, with respect to any deficiency (including interest and additions to the tax) resulting solely from the receipt of property to which subsection (a) or (b) of section 1101 applies, before the date which is 1 year after the date on which the corporation notifies the Secretary or his delegate, that final certification by the Board with respect to the corporation from which such property was received has been made under section 1101 (e); and such assessment and collection may be made notwithstanding any provision of law or rule of law which would otherwise prevent such assessment and collection. Thus, if the Board does not make the certification provided in subsection (e) (1) or (2), the periods of limitation provided in sections 6501 and 6502 will not prohibit the making of an assessment or collection by levy or proceeding in court with respect to any deficiency for prior taxable years resulting solely from receipt of property which would otherwise fall within subsections (a) or (b) of section 1101.

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." 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 subpara-

graph (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.

Subsection (g) amends the Investment Company Act of 1940, as amended, and the Investment Advisers Act of 1940, as amended, so as to exclude from those acts, bank holding companies as defined in the Bank Holding Company Act of 1955 rather than as defined in the Banking Act of 1933. The subsection also excludes from the Investment Company Act of 1940 and the Investment Advisers Act of 1940 any banking subsidiary or other subsidiary of a bank holding company if such subsidiary is exempt from the provisions of section 6 of the Bank Holding Company Act of 1955 by reason of the provisions of section 6 (c) (1) of that act.

Section 12. 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 13. This section contains the usual separability clause for provisions of the act.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

FEDERAL RESERVE ACT, AS AMENDED

* * * * *

SEC. 4. * * *

Paragraph 16. Nomination and election of class A and B directors

Directors of class A and class B shall be chosen in the following manner:

The Board of Governors of the Federal Reserve System shall classify the member banks of the district into three general groups or divisions, designating each group by number. Each group shall consist as nearly as may be of banks of similar capitalization. Each member bank shall be permitted to nominate to the chairman of the board of directors of the Federal Reserve bank of the district one candidate for director of class A and one candidate for director of class B. The candidates so nominated shall be listed by the chairman, indicating by whom nominated, and a copy of said list shall, within fifteen days after its completion, be furnished by the chairman to each member bank. Each member bank by a resolution of the board or by an amendment to its by-laws shall authorize its president, cashier, or some other officer to cast the vote of the member bank in the elections of class A and class B directors: **[**Provided, That whenever any two or more member banks within the same Federal Reserve district are affiliated with the same holding company affiliate, participation by such member banks in any such nomination or election shall be confined to one of such banks, which may be designated for the purpose by such holding company affiliate**]** *Provided, That whenever any member banks within the same Federal Reserve district are subsidiaries of the same bank holding company within the meaning of the Bank Holding Company Act of 1955, participation in any such nomination or election by such member banks, including such bank holding company if it is also a member bank shall be confined to one of such banks, which may be designated for the purpose by such holding company.*

* * * * *

SEC. 9. * * *

Paragraph 19. Failure to obtain reports of affiliates

Any such affiliated member bank which fails to obtain from any of its affiliates and furnish any report provided for by the two preceding paragraphs of this section shall be subject to a penalty of \$100 for each day during which such failure continues, which, by direction of the Board of Governors of the Federal Reserve System, may be collected, by suit or otherwise, by the Federal reserve bank of the district in which such member bank is located. [For the purposes of this paragraph and the two preceding paragraphs of this section, the term "affiliate" shall include holding company affiliates as well as other affiliates.]

Paragraph 22. Holding company affiliates

[Each State member bank affiliated with a holding company affiliate shall obtain from such holding company affiliate, within such time as the Board of Governors of the Federal Reserve System shall prescribe, an agreement that such holding company affiliate shall be subject to the same conditions and limitations as are applicable under section 5144 of the Revised Statutes, as amended, in the case of holding company affiliates of national banks. A copy of each such agreement shall be filed with the Board of Governors of the Federal Reserve System. Upon the failure of a State member bank affiliated with a holding company affiliate to obtain such an agreement within the time so prescribed, the Board of Governors of the Federal Reserve System shall require such bank to surrender its stock in the Federal reserve bank and to forfeit all rights and privileges of membership in the Federal Reserve System as provided in this section. Whenever the Board of Governors of the Federal Reserve System shall have revoked the voting permit of any such holding company affiliate, the Board of Governors of the Federal Reserve System may, in its discretion, require any or all State member banks affiliated with such holding company affiliate to surrender their stock in the Federal reserve bank and to forfeit all rights and privileges of membership in the Federal Reserve System as provided in this section.]

BANKING ACT OF 1933, AS AMENDED

SEC. 2. As used in this Act and any provision of law amended by this Act—

[(c) The term "holding company affiliate" shall include any corporation, business trust, association, or other similar organization—

[(1) 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 or a majority of the directors of any one bank; or

[(2) For the benefit of whose shareholders or members all or substantially all the capital stock of a member bank is held by trustees.

[Notwithstanding the foregoing, the term "holding company affiliate" shall not include (except for the purposes of section 23A of the Federal Reserve Act, as amended) any corporation all of the stock of which is owned by the United States, or any organization which is determined by the Board of Governors of the Federal Reserve System not to be engaged, directly or indirectly, as a business in holding the stock of, or managing or controlling, banks, banking associations, savings banks, or trust companies.]

SECTION 5144, REVISED STATUTES, AS AMENDED

SEC. 5144. In all elections of directors, each shareholder shall have the right to vote the number of shares owned by him for as many persons as there are directors to be elected, or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and in deciding all other questions at meetings of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him; except that (1) this shall not be construed as limiting the voting rights of holders

of preferred stock under the terms and provisions of articles of association, or amendments thereto, adopted pursuant to the provisions of section 302 (a) of the Emergency Banking and Bank Conservation Act, approved March 9, 1933, as [amended,] amended; (2) in the election of directors, shares of its own stock held by a national bank as sole trustee, whether registered in its own name as such trustee or in the name of its nominee, shall not be voted by the registered owner unless under the terms of the trust the manner in which such shares shall be voted may be determined by a donor or beneficiary of the trust and unless such donor or beneficiary actually directs how such shares shall be voted[.]; and (3) shares of its own stock held by a national bank and one or more persons as trustees may be voted by such other person or persons, as trustees, in the same manner as if he or they were the sole trustee [; and (4) shares controlled by any holding company affiliate of a national bank shall not be voted unless such holding company affiliate shall have first obtained a voting permit as hereinafter provided, which permit is in force at the time such shares are voted, but such holding company affiliate may, without obtaining such permit, vote in favor of placing the association in voluntary liquidation or taking any other action pertaining to the voluntary liquidation of such association]. Shareholders may vote by proxies duly authorized in writing; but no officer, clerk, teller, or bookkeeper of such bank shall act as proxy; and no shareholder whose liability is past due and unpaid shall be allowed to vote. Whenever shares of stock cannot be voted by reason of being held by the bank as sole trustee, such shares shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite percentage of shares.

[For the purposes of this section shares shall be deemed to be controlled by a holding company affiliate if they are owned or controlled directly or indirectly by such holding company affiliate, or held by any trustee for the benefit of the shareholders or members thereof.

[Any such holding company affiliate may make application to the Board of Governors of the Federal Reserve System for a voting permit entitling it to vote the stock controlled by it at any or all meetings of shareholders of such bank or authorizing the trustee or trustees holding the stock for its benefit or for the benefit of its shareholders so to vote the same. The Board of Governors of the Federal Reserve System may, in its discretion, grant or withhold such permit as the public interest may require. In acting upon such application, the Board shall consider the financial condition of the applicant, the general character of its management, and the probable effect of the granting of such permit upon the affairs of such bank, but no such permit shall be granted except upon the following conditions:

[(a) Every such holding company affiliate shall, in making the application for such permit, agree (1) to receive, on dates identical with those fixed for the examination of banks with which it is affiliated, examiners duly authorized to examine such banks, who shall make such examinations of such holding company affiliate as shall be necessary to disclose fully the relations between such banks and such holding company affiliate and the effect of such relations upon the affairs of such banks, such examinations to be at the expense of the holding company affiliate so examined; (2) that the reports of such examiners shall contain such information as shall be necessary to disclose fully the relations between such affiliate and such banks and the effect of such relations upon the affairs of such banks; (3) that such examiners may examine each bank owned or controlled by the holding company affiliate, both individually and in conjunction with other banks owned or controlled by such holding company affiliate; and (4) that publication of individual or consolidated statements of condition of such banks may be required;

[(b) After five years after the enactment of the Banking Act of 1933, every such holding company affiliate (1) shall possess, and shall continue to possess during the life of such permit, free and clear of any lien, pledge, or hypothecation of any nature, readily marketable assets other than bank stock in an amount not less than 12 per centum of the aggregate par value of all bank stocks controlled by such holding company affiliate, which amount shall be increased by not less than 2 per centum per annum of such aggregate par value until such assets shall amount to 25 per centum of the aggregate par value of such bank stocks; and (2) shall reinvest in readily marketable assets other than bank stock all net earnings over and above 6 per centum per annum on the book value of its own shares outstanding until such assets shall amount to such 25 per centum of the aggregate par value of all bank stocks controlled by it;

[(c) Notwithstanding the foregoing provisions of this section, after five years after the enactment of the Banking Act of 1933, (1) any such holding company affiliate the shareholders or members of which shall be individually and severally liable in proportion to the number of shares of such holding company affiliate held by them respectively, in addition to amounts invested therein, for all statutory liability imposed on such holding company affiliate by reason of its control of shares of stock of banks, shall be required only to establish and maintain out of net earnings over and above 6 per centum per annum on the book value of its own shares outstanding a reserve of readily marketable assets in an amount of not less than 12 per centum of the aggregate par value of bank stocks controlled by it, and (2) the assets required by this section to be possessed by such holding company affiliate may be used by it for replacement of capital in banks affiliated with it and for losses incurred in such banks, but any deficiency in such assets resulting from such use shall be made up within such period as the Board of Governors of the Federal Reserve System may by regulation prescribe and the provisions of this subsection, instead of subsection (b), shall apply to all holding company affiliates with respect to any shares of bank stock owned or controlled by them as to which there is no statutory liability imposed upon the holders of such bank stock;

[(d) Every officer, director, agent, and employee of every such holding company affiliate shall be subject to the same penalties for false entries in any book, report, or statement of such holding company affiliate as are applicable to officers, directors, agents, and employees of member banks under section 5209 of the Revised Statutes, as amended (U. S. C., title 12, sec. 592); and

[(e) Every such holding company affiliate shall, in its application for such voting permit, (1) show that it does not own, control, or have any interest in, and is not participating in the management or direction of, any corporation, business trust, association, or other similar organization formed for the purpose of, or engaged principally in, the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail or through syndicate participation, of stocks, bonds, debentures, notes, or other securities of any sort (hereinafter referred to as "securities company"); (2) agree that during the period that the permit remains in force it will not acquire any ownership, control or interest in any such securities company or participate in the management or direction thereof; (3) agree that if, at the time of filing the application for such permit, it owns, controls, or has an interest in, or is participating in the management or direction of, any such securities company, it will, within five years after the filing of such application, divest itself of its ownership, control, and interest in such securities company and will cease participating in the management or direction thereof, and will not thereafter, during the period that the permit remains in force, acquire any further ownership, control, or interest in any such securities company or participate in the management or direction thereof; and (4) agree that thenceforth it will declare dividends only out of actual net earnings.

[(f) If at any time it shall appear to the Board of Governors of the Federal Reserve System that any holding company affiliate has violated any of the provisions of the Banking Act of 1933 or of any agreement made pursuant to this section, the Board of Governors of the Federal Reserve System may, in its discretion, revoke any such voting permit after giving sixty days' notice by registered mail of its intention to the holding company affiliate and affording it an opportunity to be heard. Whenever the Board of Governors of the Federal Reserve System shall have revoked any such voting permit, no national bank whose stock is controlled by the holding company affiliate whose permit is so revoked shall receive deposits of public moneys of the United States, nor shall any such national bank pay any further dividend to such holding company affiliate upon any shares of such bank controlled by such holding company affiliate.

[(g) Whenever the Board of Governors of the Federal Reserve System shall have revoked any voting permit as hereinbefore provided, the rights, privileges, and franchises of any or all national banks the stock of which is controlled by such holding company affiliate shall, in the discretion of the Board of Governors of the Federal Reserve System, be subject to forfeiture in accordance with section 2 of the Federal Reserve Act, as amended.]

• * * * * *

SECTION 5211, REVISED STATUTES, AS AMENDED

SEC. 5211. Every association shall make to the Comptroller of the Currency not less than three reports during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president, or of the cashier, or of a vice president, or of an assistant cashier of the association designated by its board of directors to verify such reports in the absence of the president and cashier, taken before a notary public properly authorized and commissioned by the State in which such notary resides and the association is located, or any other officer having an official seal, authorized in such State to administer oaths, and attested by the signature of at least three of the directors. Each such report shall exhibit, in detail and under appropriate heads, the resources and liabilities of the association at the close of business on any past day by him specified, and shall be transmitted to the comptroller within five days after the receipt of a request or requisition therefor from him; and the statement of resources and liabilities, together with acknowledgment and attestation in the same form in which it is made to the comptroller, shall be published in a newspaper published in the place where such association is established, or if there is no newspaper in the place, then in the one published nearest thereto in the same county, at the expense of the association; and such proof of publication shall be furnished as may be required by the comptroller. The comptroller shall also have power to call for special reports from any particular association whenever in his judgment the same are necessary in order to obtain a full and complete knowledge of its condition.

Each national banking association shall obtain from each of its affiliates other than member banks and furnish to the Comptroller of the Currency not less than three reports during each year, in such form as the Comptroller may prescribe, verified by the oath or affirmation of the president or such other officer as may be designated by the board of directors of such affiliate to verify such reports, disclosing the information hereinafter provided for as of dates identical with those for which the Comptroller shall during such year require the reports of the condition of the association. [For the purpose of this section the term "affiliate" shall include holding company affiliates as well as other affiliates.] Each such report of an affiliate shall be transmitted to the Comptroller at the same time as the corresponding report of the association, except that the Comptroller may, in his discretion, extend such time for good cause shown. Each such report shall contain such information as in the judgment of the Comptroller of the Currency shall be necessary to disclose fully the relations between such affiliate and such bank and to enable the Comptroller to inform himself as to the effect of such relations upon the affairs of such bank. The reports of such affiliates shall be published by the association under the same conditions as govern its own condition reports. The Comptroller shall also have power to call for additional reports with respect to any such affiliate whenever in his judgment the same are necessary in order to obtain a full and complete knowledge of the conditions of the association with which it is affiliated. Such additional reports shall be transmitted to the Comptroller of the Currency in such form as he may prescribe. Any such affiliated bank which fails to obtain and furnish any report required under this section shall be subject to a penalty of \$100 for each day during which such failure continues.

* * * * *

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. Basis 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*.

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

Sec. 1101. Distributions pursuant to Bank Holding Company Act of 1955.

Sec. 1102. Special rules.

Sec. 1103. Definitions.

**SEC. 1101. DISTRIBUTIONS PURSUANT TO BANK HOLDING COM-
PANY 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 6 (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 distribution with respect to any stock which was acquired by the distributee after May 15, 1955, unless gain to such distributee with respect to the receipt of such stock was not recognized by reason of subsection (a) or (b).

(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 effectuate the first sentence of section 6 (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 CONSTRUCTION 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 6 (a) of such Act (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).

(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 two years after the date of the enactment of this part. 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 one 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 five years after the date of the enactment of this part.

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 sections 6501 and 6502 on the making of an assessment or the collection by levy or a proceeding in court shall not expire, with respect to any deficiency (including interest and additions to the tax) resulting solely from the receipt of property to which subsection (a) or (b) of section 1101 applies, before the date which is one year after the date on which the corporation notifies the Secretary or his delegate that final certification by the Board with respect to the corporation from which such property was received has been made under section 1101 (e); and such assessment and collection may be made notwithstanding any provision of law or rule of law which would otherwise prevent such assessment and collection.

(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 prohibited 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 3 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 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 reference 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 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 such section 6 (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 6 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) (6) of such section.

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

(1) obligations (including notes, drafts, bills of exchanges, 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 or 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.

* * * * *

INVESTMENT COMPANY ACT OF 1940, AS AMENDED

* * * * *

SEC. 3. * * *

(c) Notwithstanding subsections (a) and (b), none of the following persons is an investment company within the meaning of this title:

* * * * *

[(4) Any holding company affiliate, as defined in the Banking Act of 1933, which is under the supervision of the Board of Governors of the Federal Reserve System by reason of the fact that such holding company affiliate holds a general voting permit issued to it by such Board prior to January 1, 1940; and any holding company affiliate which is under such supervision by reason of the fact that it holds a general voting permit thereafter issued to it by the Board of Governors and which is determined by such Board to be primarily engaged, directly or indirectly, in the business of holding the stock of, and managing or controlling, banks, banking associations, savings banks, or trust companies. The Commission shall be given appropriate notice prior to any such determination and shall be entitled to be heard. The definition of the term "control" in section 2 (a) shall not apply to this paragraph.]

(4) Any bank holding company which is registered with the Board of Governors of the Federal Reserve System pursuant to the Bank Holding Company Act of 1955, or any banking subsidiary or any other subsidiary thereof which is exempt from section 6 by reason of the provisions of subsection (c) (1) thereof as defined in said Act.

* * * * *

INVESTMENT ADVISERS ACT OF 1940, AS AMENDED

* * * * *

SEC. 202 (a) * * *

(1) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include (A) a bank, [or any holding company affiliate, as defined in the Banking Act of 1933] or any bank holding company, as defined in the Bank Holding Company Act of 1955, or any banking subsidiary or any other subsidiary thereof which is exempt from section 6 by reason of the provisions of subsection (c) (1) thereof as defined in said Act, which is not an investment company; * * *.

* * * * *

