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CONTROL OF BANK HOLDING COMPANIES

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Mr. ROBERTSON, from the Committee on Banking and Currency, reported the following additional amendments to accompany the bill S. 2577, heretofore reported

The Committee on Banking and Currency, having heretofore considered and reported the bill (S. 2577) to define bank holding companies, control their future expansion, and require divestment of their nonbanking interests, hereby report certain additional amendments, with an accompanying report, and recommend their adoption.

On July 25, 1955, the committee reported the bill (S. 2577) to define bank holding companies, control their future expansion, and require divestment of their nonbanking interests. Since the bill was reported out during the closing days of the 1st session of the 84th Congress, it was understood that the bill would not be acted upon by the Senate until the 2d session of the 84th Congress. The interim period provided an opportunity for the Members of the Senate, representatives of bank holding companies, and other interested persons to study the proposed legislation and determine if any perfecting amendments were necessary. As a result of the study, the committee has agreed to a number of technical and clarifying amendments and amendments to the tax provisions of the bill.

NONTAX AMENDMENTS

The committee wishes to emphasize that these amendments do not in any way change the principal objectives of this proposed legislation. These objectives are: (1) To regulate the future expansion of bank holding companies, and (2) to require bank holding companies to divest their nonbanking investments. The amendments are designed to correct technical errors in the bill and to clarify the language of several provisions so that any possible misinterpretation of the committee's intent can be avoided.

CHANGE OF DATE

The bill as reported by the committee bears the short title of "Bank Holding Company Act of 1955." Since the bill will be scheduled for enactment during 1956, it is necessary to change "1955" to

"1956" in the short title wherever it appears in the bill. This is accomplished by striking "1955" and inserting "1956" on page 1, line 4, and page 14, line 23, in the substantive sections of the bill. The tax amendments make the necessary date changes in the tax provisions.

SHAREHOLDERS OR MEMBERS

On page 5, line 9, of the bill as reported by the committee, a reference is made to shares held by trustees for the benefit of the "shareholders and members" of a bank holding company. The "and" is a typographical error and should read "or." This change makes the provision conform to the language on page 2, line 3, where reference is also made to "shareholders or members."

ACQUISITION SHARES IN A FIDUCIARY CAPACITY

Section 3 (a) of the bill requires prior approval by the Federal Reserve Board before any action may be taken which results in a company (including a bank) becoming a bank holding company. The bill as reported provided an exemption from this requirement for a bank which is a bank holding company in cases where the shares were acquired (i) in good faith in a fiduciary capacity or (ii) in the regular course of securing or collecting a debt. This language would seem to preclude a bank which is not a bank holding company from acquiring such shares in other banks or in bank holding companies without prior approval by the Board. It was not the intent of the committee to require approval by the Board where a bank acquired shares in a fiduciary capacity or in the regular course of securing or collecting a debt. In order to clarify the language of the exemption, the committee struck the works "which is a bank holding company" on lines 4 and 5 of page 6. Thus, the amendment exempts from the prohibition of section 3 (a)—

shares acquired by a bank (i) in good faith in a fiduciary capacity, except where such shares are held for the benefit of the shareholders of such bank, or (ii) in the regular course of securing or collecting a debt previously contracted in good faith but any shares acquired after the date of enactment of this Act in securing or collecting any such previously contracted debt shall be disposed of within a period of 2 years from the date on which they were acquired;.

SHARES IN A BANK HOLDING COMPANY

Section 4 (a) (2) of the bill as reported provides in part that no bank holding company shall, after the date of enactment of the act, "retain direct or indirect ownership or control of any voting shares of any company which is not a bank." This language would prohibit a bank holding company from holding shares in a subsidiary bank holding company. This result was not intended, since it is a common practice for bank holding companies to hold a part or all of their banking investments in a subsidiary corporation. In order to remedy this situation, line 17 on page 8 was amended by adding after the word "bank" the words "or a bank holding company." Thus, this section as amended provides that no bank holding company shall after the date of enactment of the act—

retain direct or indirect ownership or control of any voting shares of any company which is not a bank or a bank holding company.

SUBSIDIARY SERVICE COMPANIES

Section 4 (c) provides certain exemptions from the divestment requirements of the bill. Subparagraph (1) of section 4 (c), as reported by the committee, exempts companies engaged in serving the bank holding company and its subsidiary banks in "auditing, appraising, investment counseling." Your committee has found this provision too restrictive as there are many other legitimate types of servicing which should be permitted. Other services rendered by subsidiary companies are in the fields of advertising, public relations, developing new business, organization, operations, preparing tax returns, personnel, and many others.

In order to properly encompass this wide range of activities, your committee amended subparagraph (1) to exempt such companies solely engaged in "furnishing services to or performing services for" the bank holding company and its banking subsidiaries. Thus, the bill, as amended, would permit a bank holding company to furnish these services to its subsidiaries through a subsidiary company as well as directly by the holding company itself as provided in section 4 (a) (2).

This provision is not intended to supplant the exemption contained under section 4 (c) (6), where the Federal Reserve Board is given discretion to exempt activities of a "financial, fiduciary, or insurance nature" which are so closely related to banking as to be a proper incident thereto. Such financial, fiduciary, or insurance activities do not come within the scope of the meaning of the phrase "furnishing services to or performing services for a bank holding company." The servicing exemption should not be interpreted to include activities beyond the ordinary category of such services.

SHARES ACQUIRED IN SATISFACTION OF A DEBT

Section 4 (c) (2) of the bill as reported provides an exemption from the divestment requirements for shares acquired by a bank holding company which is a bank or "any of its banking subsidiaries" in satisfaction of a debt previously contracted in good faith. A literal reading of this language would seem to provide an exemption only for banking subsidiaries of a bank holding company which is a bank. It was intended that the exemption would apply to banking subsidiaries of any bank holding company. This provision was clarified by amending line 4 on page 10 by striking the words "any of its banking subsidiaries" and inserting in lieu thereof "by any banking subsidiary of a bank holding company." Thus, a banking subsidiary of any bank holding company could qualify under this exemption.

SHARES ACQUIRED IN A FIDUCIARY CAPACITY

Section 4 (c) (4) of the bill as reported provides an exemption from the divestment requirements of the bill for shares which are held or acquired by a bank which is a bank holding company in a fiduciary capacity. This language would not permit a banking subsidiary of a bank holding company to qualify under this exemption. Lines 19 and 20 on page 10 were amended by striking the words "which is a bank holding company in a fiduciary capacity" and inserting in lieu thereof—

holding company which is a bank or by any banking subsidiary of a bank holding company, in good faith in a fiduciary capacity, except where such shares are held for the benefit of the shareholders such bank holding company or any of its subsidiaries.

Thus the exemption applies both to a bank holding company which is a bank and to a banking subsidiary of any bank holding company with the limitation that such shares cannot be held for the benefit of the shareholders of such bank holding company or any of its subsidiaries.

OWNERSHIP AND ACQUISITION OF SHARES

Section 4 (c) (5) of the bill as reported provides an exemption from the divestment requirements for the ownership by a bank holding company of up to 5 percent of the shares of any company. This section does not refer to the acquisition of shares as is set forth in other exemptions under section 4 (c). Because of the shift in language, it could be argued that this exemption does not apply to the acquisition of shares but only to the retention of shares already owned. To clarify the situation, lines 24 and 25 on page 10 were amended by striking the words "to the ownership by a bank holding company of shares of any company" and by inserting in lieu thereof "to shares of any company which are held or acquired by a bank holding company." This amendment makes it clear that the exemption applies to both the acquisition and ownership of such shares.

LABOR, AGRICULTURAL OR HORTICULTURAL ORGANIZATIONS

Section 4 (c) (7) of the bill as reported contains an exemption from the divestment requirements for any bank holding company which is a labor, agricultural or horticultural organization. Although the committee report points out that in order to be entitled to this exemption no net income derived by any such organization can inure to the benefit of any individual, this limitation is not set forth in the language of the subsection. The intention of the committee is made explicit by inserting at the end of the subsection on line 15, page 11, the words "and which is exempt from taxation under section 501 of the Internal Revenue Code of 1954."

FOREIGN BANKING SUBSIDIARIES

Section 2 (c) of the bill as reported defines "bank" so as to exclude any organization which does not do business within the United States. Thus, technically any foreign banking subsidiary of a bank holding company would be a nonbanking investment and would be required to be divested pursuant to section 4 (a) of the bill. The Federal Reserve Board would probably exempt such foreign banking subsidiaries from divestment by applying the provisions of section 4 (c) (6), which authorizes the Board to exempt companies of a financial nature which are so closely related to the business of banking as to be a proper incident thereto.

However, in order to make it unmistakably clear that foreign banking subsidiaries are not subject to divestment, the committee added a new subparagraph (8) to section 4 (c) specifically exempting such subsidiaries. The amendment provides that the divestment requirements shall not apply—

to shares held or acquired by a bank holding company in any company which is organized under the laws of a foreign country and which is engaged principally in the banking business outside the United States.

ADMINISTRATION

The committee agreed in reporting out the bill that section 5 (a) contain the same language as set forth in section 4 (a) of H. R. 6227 in regard to the information required by a bank holding company in registering with the Federal Reserve Board. However, through inadvertence, improper language was inserted on lines 22 through 25 on page 11. This was corrected by striking the words beginning with "history" on line 22 through to the word "organizations" on line 25 and inserting in lieu thereof—

condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries,.

RESERVATION OF STATES RIGHTS

A great deal of concern has been expressed that section 7 of the bill as reported by the committee granted new authority and powers to States over national banks in general, and respecting the stocks of national banks in particular. This concern apparently has arisen as a result of the language added to this section by the committee and certain statements which appeared in the committee report. The language added by the committee in the bill as reported provided that States in the exercise of their jurisdiction and powers over banks and bank holding companies could impose "no less onerous" restrictions than were provided in the bill. The intent of the committee was to make it clear that a State could not enact legislation inconsistent with the bill and therefore nullify its effect. In view of the fact that the meaning of the no less onerous clause has apparently been misconstrued by some persons, the committee agreed to strike the clause and thus return to the language of the comparable section of H. R. 6227. However, your committee reiterates its view that section 7 in no way permits States to exercise such powers and jurisdiction in a manner inconsistent with this proposed legislation.

In order to clarify the legislative history of section 7, the committee wishes to emphasize that this section does not grant any new authority to States over national banks.. The purpose of the section is to preserve to the States those powers which they now have in our dual banking system. It is always of uppermost importance in legislation of this nature to preserve the dual system of National and State banks, and section 7 must be viewed in that light.

TIME LIMIT ON JUDICIAL REVIEW

Section 9 of the bill as reported by the committee contained no limit on the time within which an aggrieved party must seek judicial review of an order of the Federal Reserve Board. A time limit is necessary so that persons or companies affected by the Board's orders may know when they may act in reliance thereon without fear of the orders being subsequently set aside or modified by court decree. The committee amended this section by providing that any aggrieved party seeking judicial review must do so within "60 days after entry of the Board's order."

TAX AMENDMENTS

General Explanation

H. R. 6227, passed by the House of Representatives, would add a new part VIII to subchapter O of the Internal Revenue Code of 1954. Under this new part, several tax-free paths are provided for the divestment of property which this bill imposes on a bank holding company. S. 2577, as originally reported, adopted the tax provisions of the House bill with certain technical changes. Your committee's additional amendments modify these tax provisions so as to prevent abuse and to make them more flexible to meet legitimate business needs by alining them closer to similar provisions in the Internal Revenue Code of 1954.

In general, a corporation which comes within the terms of the bill as a bank holding company can choose between remaining a bank holding company or disposing of its interests in banks. The tax provisions of the bill apply only to a corporation which would have been a bank holding company on May 15, 1955, and which on that date held prohibited property.

If a 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 bill, to its shareholders without the recognition of gain by the shareholders. For this purpose prohibited property, in general, means stock or assets of nonbanking businesses to the extent the bank holding company is required to divest itself of such assets under section 4 of the bill. The term does not include cash, Government bonds, or certain short-term obligations. It is believed desirable to expressly exclude cash, and so forth, 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, in which case all of the shares in the new corporation must be distributed directly to shareholders. Under the bill prohibited property may be placed in one or more such new corporations. Your committee's amendments differ from S. 2577, as originally reported, by providing that other assets may also be transferred to a new corporation without making the transaction taxable. This would include cash and bonds, for working capital purposes, as well as prohibited property acquired after May 15, 1955, but not controlling shares of bank stock or similar property.

Your committee's amendments also differ from S. 2577, as originally reported, by providing that the tax exemption for any particular distribution may be denied if that distribution is part of a plan with a principal purpose of avoiding dividend tax on a distribution of earnings and profits.

Your committee's amendments also differ from S. 2577, as originally reported, by making provisions for certain exchanges of stocks and bonds as part of the divestment program. Under S. 2577, as originally reported, bank holding companies having outstanding preferred stocks and bonds might encounter serious obstacles in making use of the tax provisions of the bill. The divestments required under the general provisions of the bill would remove from the corporation property that provides security for its preferred stocks or bonds. Your committee's amendments would permit the exchange of preferred stocks and bonds in the old corporation for comparable securities in the new corporations or direct distribution of prohibited property in exchange for the outstanding preferred stocks or bonds.

The bill provides that in exchanges involving the creation of a subsidiary a common shareholder may only receive common stock, a preferred shareholder may only receive preferred stock issued on substantially the same terms or common stock, and, finally, a bondholder may receive only bonds issued on substantially the same terms, or preferred or common stock. It is also provided that a bondholder in such an exchange may be taxable on any greater face value of bonds received over those given up.

If a corporation which is a qualified bank holding company under the bill chooses to divest itself of all or part of any stock or property which causes it to be a bank holding company, it may distribute directly to its shareholders or bondholders such stock or property, or it may form a subsidiary to effectuate such distribution. Your committee has made the same revisions for divestments of this type as are made in the case of divestments of prohibited property.

The Board must certify that the divestment of the bank stock or similar property is necessary or appropriate to effectuate the policies of the bill. In the case of direct distributions, for example, the corporation may distribute to its shareholders without the recognition of gain all the shares of bank stock in a bank in which it was deemed to have control within the meaning of section 2 (a) of the bill. Thus, if a corporation owned 40 percent of the voting stock of each of two banks, it could distribute all of its shares in those banks even though it ceased to be a bank holding company by distributing only 16 percent of the voting shares in one bank. If the same corporation had in addition 15 percent of the voting shares of a third bank, it would not be able to distribute tax free, under this bill, those voting shares unless the Federal Reserve Board deemed that by virtue of those shares the corporation exercised an effective control over the election of a majority of the board of directors of the particular bank.

Your committee contemplates that the Federal Reserve Board, in the discharge of its functions in making certifications that exchanges and distributions are necessary or appropriate to effectuate the purposes of the bill, will examine these from the point of view of their desirability from a banking standpoint. However, a certification by the Board that a particular divestment is necessary or appropriate is not to be considered as permitting any method of carrying out this

divestment if it is part of a plan having a principal purpose of avoiding dividend tax on a distribution of earnings and profits.

In case of direct distributions to stockholders and bondholders of either prohibited property or property which causes the distributing corporation to be a bank holding company, your committee has restricted the nonrecognition treatment to property which was owned on May 15, 1955. This restriction is deemed necessary to prevent corporations from purchasing highly marketable shares and other property as a means of transferring cash from the corporation to its shareholders. The restriction would not apply, however, if the property were received in a transaction in which gain was not recognized because of either the general rules described above or in certain types of corporate reorganizations or liquidations. For example, if prohibited property originally acquired prior to May 15, 1955, were distributed by a subsidiary to its parent in a corporate chain without recognition of gain to the parent by reason of provisions in this bill, 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 controlling bank interests certified by the Board are retained at the corporate level by the transfer to a wholly owned subsidiary created for that purpose if stock of the subsidiary is distributed by the qualified bank holding company, and such distribution meets the tax avoidance test discussed previously. In the case of the creation of a subsidiary, prohibited property or controlling bank stock acquired after May 15, 1955, may be transferred to it along with prohibited property or controlling bank stock acquired prior to May 15, 1955.

In the case of a contribution to capital of any corporation made by a bank holding company after the date of enactment of this bill, the general test of a principal purpose of tax avoidance will be applied. Where a contribution has been made after May 15, 1955, and before the date of enactment under the terms described in the bill, the treatment provided in S. 2577, as originally reported, will be retained. If any part of the contribution made in this period is part of a plan for the avoidance of taxes, only a portion of the shares of the corporation to which the contribution is made will be taxable on distribution. This portion will correspond to the portion of the value of those shares attributable to 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 or appropriate to comply with the bill within the statutory period permitted for divestment. If this final certification is not obtained, the transactions previously permitted to be made without recognition of gain are reopened and tax may be imposed in such cases. For this purpose the statute of limitations on assessment of deficiency resulting solely from the distribution of prohibited property which has been certified by the Board does not expire until 5 years after the corporation gives notification that the period prescribed in section 4 (a) of the bill has expired.

A similar final certification is required where nonrecognition treatment has been originally accorded to the distribution of bank stock or

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

The basis of stock or other property received by a distributee without recognition of gain under the provisions of the bill is determined by allocating the adjusted basis of the stock with respect to which the distribution is made between such stock and the property so distributed. In the case of any recognition of gain upon the receipt of stock or property, such gain will be taken into account in determining the adjusted basis of the stock with respect to which the distribution was made and the property which was received. These rules are similar to the general rules for allocation of basis in the case of stock dividends and corporate reorganizations. The bill provides that the allocation of basis shall be made under regulations provided by the Secretary or his delegate.

Where a bank holding company distributes stock of a subsidiary formed to receive either prohibited property or controlling bank interests which causes it to be a bank holding company, proper allocation of the earnings and profits of the bank holding company is made to the subsidiary. Your committee has extended such treatment to direct distributions of stock of a corporation where the bank holding company owns at least 80 percent of such corporation.

Except in the case of a distribution permitted to be made tax free under this part, nothing in this bill is intended to limit the applicability of other provisions of the Internal Revenue Code of 1954. For example, in a program of divestments under this bill a bank holding company could make distributions permitted under the tax provisions of this bill or under subchapter C of chapter 1 of the Internal Revenue Code of 1954 (relating to corporate distributions and adjustments).

DETAILED DISCUSSION

Section 10 of S. 2577, as reported by your committee, 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 1956. 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. Accordingly, where the distribution to the shareholders of a bank holding company of 100 percent of the stock of another corporation meets the requirements of section 355 of the Internal Revenue Code of 1954, no gain or loss is recognized to such shareholders notwithstanding the fact that, under the provisions contained in part VIII, nonrecognition of gain or loss would not be granted, in some cases, with respect to 5 percent of such stock.

The additional amendments of your committee make certain changes in the tax provisions of the bill.

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.

The additional amendments of your committee revise subsection (a) of section 1101 in several respects: (1) Distributions of prohibited property consisting of stock received in an exchange to which section 1101 (c) (2) applies are treated separately from all other distributions of prohibited property; (2) provision is made for the nonrecognition of gain to certain shareholders and security holders on certain exchanges; and (3) it is specifically provided that nonrecognition treatment may be available whether or not a distribution is pro rata.

Section 1101 (a) (1) provides that a distribution of prohibited property, other than stock received in an exchange to which section 1101 (c) (2) applies, by a qualified bank holding corporation with respect to its stock and without the surrender by the shareholders of any stock in such corporation will not result in any gain being recognized on the receipt of such property by the shareholders if the Board has, before the distribution, certified that the distribution of such property is necessary or appropriate to carry out section 4 of the Bank Holding Company Act of 1956. Furthermore, under your committee's amendments, the qualified bank holding corporation may distribute such property to a shareholder in exchange for its preferred stock or to a security holder in exchange for its securities if the Board has certified that the distribution of such property is necessary or appropriate to carry out section 4 of the Bank Holding Company Act of 1956. On the date of distribution the distributing corporation must have been a qualified bank holding corporation. Section 4 provides in general that it shall be unlawful for any bank holding

company, after 2 years from the date of enactment of the Bank Holding Company Act of 1956, to own any voting shares of any company other than a bank or a bank holding company or to engage in any business other than that of banking or of managing or controlling banks or of furnishing services to or performing services for any bank of which it owns or controls 25 percent or more of the voting shares. However, section 4 (c) sets forth certain exceptions and permits the holding by a bank holding company of certain types of property.

Section 1101 (a) (2) of your committee's bill provides for the tax treatment of certain distributions of stock and securities received in an exchange to which section 1101 (c) (2) applies. A distribution of common stock received in an exchange to which section 1101 (c) (2) applies may be made by a qualified bank holding corporation to its shareholders (both common and preferred), with or without the surrender by such shareholders of their stock, without the recognition of any gain to the shareholders. Shareholders owning common stock in the distributing corporation may not receive preferred stock received in an exchange to which section 1101 (c) (2) applies with respect to their common stock without recognition of gain, whether or not they surrender common stock. Nor may shareholders owning preferred stock in the distributing corporation receive preferred stock obtained in an exchange to which section 1101 (c) (2) applies without recognition of gain without surrender of preferred stock. Similarly, in no case may security holders receive common stock, preferred stock, or securities received in an exchange to which section 1101 (c) (2) applies without recognition of gain without the surrender of securities. Preferred stock or common stock, or both, received in an exchange to which section 1101 (c) (2) applies may be distributed by a qualified bank holding corporation to shareholders owning preferred stock in exchange for their preferred stock without the recognition of gain if the preferred stock received (if any) has substantially the same terms as the preferred stock surrendered. Either common or preferred stock, or both, received in an exchange to which section 1101 (c) (2) applies may be distributed by a qualified bank holding corporation to its security holders, in exchange for their securities, without any recognition of gain to the security holders. A qualified bank holding corporation may also distribute securities received in an exchange to which subsection (c) (2) of section 1101 applies in exchange for its securities, without recognition of gain to the security holders, if the securities received have substantially the same terms as the securities surrendered. However, if the principal amount of the securities received by the security holder is greater than the principal amount of the securities surrendered, the excess principal amount does not receive nonrecognition treatment under section 1101 (a). In the case of any exchange of stock or securities of the distributing corporation it is not necessary that all of the stock or securities held by the distributee be surrendered.

A distribution may be entitled to nonrecognition treatment, with respect to shareholders, under paragraphs (1) or (2) of section 1101 (a) whether or not the distribution is pro rata with respect to all of the shareholders of the qualified bank holding corporation.

Section 1101 (b) deals with distributions in the case of a corporation ceasing to be a bank holding company. As in the case of subsection (a), the additional amendments of your committee revise subsec-

tion (b) of section 1101 in several respects: (1) Distributions of stock received in an exchange to which section 1101 (c) (3) applies are treated separately from all other distributions of property which cause a corporation to be a bank holding company; (2) provision is made for the nonrecognition of gain to certain shareholders and security holders on certain exchanges; and (3) it is specifically provided that nonrecognition treatment may be available whether or not a distribution is pro rata. In order to provide greater clarity, your committee has also revised the description in section 1101 (b) (1) (B) of property causing a corporation to be a bank holding company.

Section 1101 (b) (1) applies to a distribution of property, other than stock received in an exchange to which section 1101 (c) (3) applies, by a qualified bank holding corporation, with respect to its stock, to a shareholder without the surrender by such shareholder of stock in such corporation where the Board has before the distribution certified that (1) such property is all or part of the property by reason of which such corporation controls within the meaning of section 2 (a) a bank or a bank holding company, or that such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under section 1101 (b) or exchanged under section 1101 (c) (3), and (2) the distribution is necessary or appropriate to effectuate the policies of the Bank Holding Company Act of 1956. Under your committee's amendment, the qualified bank holding corporation may also distribute such property to a shareholder in exchange for its preferred stock or to a security holder in exchange for its securities if the Board has made a similar certification. In the case of a distribution falling within subsection (b), no gain to the shareholder or security holder upon the receipt of such property is recognized. Property which is intended to be covered by section 1101 (b) (1) 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 2 (a) of the Bank Holding Company Act of 1956. 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 section 1101 (b) (1) (B). Furthermore, if any corporation was held by the Board to be a bank holding company under clause (2) of section 2 (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 section 1101 (b) (1) (B).

Section 1101 (b) (2) of your committee's bill provides for the tax treatment of certain distributions of stock and securities received in an exchange to which section 1101 (c) (3) applies. A distribution of common stock received in an exchange to which section 1101 (c) (3) applies may be made by a qualified bank holding corporation to its shareholders (both common and preferred), with or without the surrender by such shareholders of their stock, without the recognition of

any gain to the shareholders. Shareholders owning common stock in the distributing corporation may not receive preferred stock received in an exchange to which section 1101 (c) (3) applies with respect to their common stock without recognition of gain, whether or not they surrender common stock. Nor may shareholders owning preferred stock in the distributing corporation receive preferred stock obtained in an exchange to which section 1101 (c) (3) applies without recognition of gain without surrender of preferred stock. Similarly, in no case may security holders receive common stock, preferred stock, or securities received in an exchange to which section 1101 (c) (3) applies without recognition of gain without the surrender of securities. Preferred stock or common stock, or both, received in an exchange to which section 1101 (c) (3) applies may be distributed by a qualified bank holding corporation to shareholders owning preferred stock in exchange for their preferred stock without the recognition of gain if the preferred stock received (if any) has substantially the same terms as the preferred stock surrendered. Either common or preferred stock, or both, received in an exchange to which section 1101 (c) (3) applies may be distributed by a qualified bank holding corporation to its security holders, in exchange for their securities without any recognition of gain to the security holders. A qualified bank holding corporation may also distribute securities received in an exchange to which subsection (c) (3) of section 1101 applies in exchange for its securities, without recognition of gain to the security holders, if the securities received have substantially the same terms as the securities surrendered. However, if the principal amount of the securities received by the security holder is greater than the principal amount of the securities surrendered, the excess principal amount does not receive nonrecognition treatment under section 1101 (b). In the case of any exchange of stock or securities of the distributing corporation it is not necessary that all of the stock or securities held by the distributee be surrendered.

A distribution may be entitled to nonrecognition treatment, with respect to shareholders, under paragraphs (1) or (2) of section 1101 (b) whether or not the distribution is pro rata with respect to all of the shareholders of the qualified bank holding corporation.

It is the intent of the bill 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. Therefore, section 1101 (a) (4) and (b) (4) provide that if the first distribution under this part qualifies for nonrecognition treatment under subsection (a) no distribution may qualify under subsection (b). Similarly, if the first distribution under this part qualifies for nonrecognition treatment under subsection (b) no distribution may qualify under subsection (a).

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 (1) gain was not recognized by reason of subsection (a) or (b), or (2) the property was received by the corporation in

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exchange for all of its stock in an exchange to which paragraph (2) or (3) of subsection (c) applies, or (3) such property was acquired by the distributing corporation in a transaction in which gain was not recognized under section 305 (a) or section 332, or under section 354 by reason of a reorganization described in section 368 (a) (1) (E) or (F) (recapitalization or mere change in identity, form, or place of organization).

Under subparagraph (B) of paragraph (1), neither subsection (a) nor (b) of section 1101 is applicable to the distribution by a qualified bank holding corporation of property which was acquired by such corporation in a distribution with respect to stock acquired by it after May 15, 1955, unless such stock was acquired by it (1) in a distribution (with respect to stock held by it on May 15, 1955, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b) of section 1101, or (2) in exchange for all of its stock in an exchange meeting the requirements of section 1101 (c) (2) or (3), or (3) in a transaction in which gain was not recognized under section 305 (a) or section 332, or under section 354 by reason of a reorganization described in section 368 (a) (1) (E) or (F).

Paragraphs (2) and (3) of subsection (c) of section 1101 are exceptions to the general rule of paragraph (1) of subsection (c) that subsections (a) and (b) do not apply to any property acquired by a distributing corporation after May 15, 1955. In general paragraphs (2) and (3) permit the distribution of the stock and securities of corporations organized to receive property which could have been distributed directly. Under the tax provisions of S. 2577 as originally reported by your committee, the corporation organized under these paragraphs could receive only property which could have been distributed directly without recognition of gain to shareholders. The amendments proposed by your committee permit the transfer of additional property (including cash) when there is not a plan to avoid Federal income tax.

Under subparagraph (C) of paragraph (1), neither subsection (a) nor (b) of section 1101 is applicable to the distribution by a qualified bank holding corporation of property acquired by such corporation in a transaction in which gain was not recognized under section 332, unless such property was acquired from a corporation which, if it had been a qualified bank holding corporation, could have distributed such property under section 1101 (a) (1) or (b) (1).

Under paragraph (2) if a qualified bank holding corporation exchanges property which, under subsection (a) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders and other property (except property described in section 1101 (b) (1) (B) (i)) 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 in a manner prescribed in section 1101 (a) (2) (A), then the stock and securities of the second corporation may be distributed to the shareholders and security holders of such qualified bank holding corporation in distributions meeting the requirements of section 1101 (a) (2). However, prior to such exchange, the Board must certify, with respect to the property exchanged consisting of

property which the corporation could have distributed directly to its shareholders or security holders without recognition of gain under section 1101 (a) (1), that the exchange and distribution are necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956.

Under paragraph (3) of section 1101 (c) if any qualified bank holding corporation exchanges property which it could have distributed directly to its shareholders or security holders without recognition of gain to them under section 1101 (b) (1) and other property (except prohibited property), 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 in a manner prescribed in section 1101 (b) (2) (A), then the stock and securities of the second corporation may be distributed to the shareholders and security holders of such qualified bank holding corporation in distributions meeting the requirements of section 1101 (b) (2). However, prior to such exchange the Board must have certified, with respect to the property exchanged consisting of property which the corporation could have distributed directly to its shareholders or security holders without recognition of gain under section 1101 (b) (1), that (1) such property is all or part of the property by reason of which such corporation controls within the meaning of section 2 (a) a bank or a bank holding company, or that such property is part of the property by reason of which the corporation did control a bank or a bank holding company before any property of the same kind was distributed under section 1101 (b) (1) or exchanged under section 1101 (c) (3), and (2) the exchange and distribution are necessary and appropriate to effectuate the policies of the Bank Holding Company Act of 1956.

An exchange will meet the requirements of section 1101 (c) (2) or (3) even though the only property transferred by the qualified bank holding corporation is property which could have been distributed to its shareholders or security holders directly without the recognition of gain to them. However, the distribution of the stock and securities of the corporation receiving such property will not receive the nonrecognition treatment provided in sections 1101 (a) and (b) if property of the type referred to in section 1101 (d) is retained in pursuance of a plan to avoid Federal income tax. The qualified bank holding corporation making an exchange under section 1101 (c) (2) or (3) may receive securities of the second corporation in addition to all of the stock of such corporation. However, the securities received may be distributed without recognition of gain only to the extent provided in section 1101 (a) (2) and (b) (2).

Your committee has amended the tax provisions of S. 2577, as originally reported, to provide, in section 1101 (d), that distributions which are a part of a plan to avoid Federal income tax will not qualify for nonrecognition treatment under sections 1101 (a) and (b). This amendment to the bill adopts an approach analogous to that used in section 355 (a) (1) (B) of the Internal Revenue Code of 1954. This amendment is applicable both to direct distributions of property and to distributions of the stock and securities received in an exchange to which section 1101 (c) (2) or (3) applies. Paragraph (1) of section 1101 (d) provides that section 1101 (a) shall not apply to a distribution of nonbanking property if, in connection with such distribution, the

distributing corporation retains, or transfers after May 15, 1955, to any corporation, property (other than prohibited property) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation. Similarly, paragraph (2) of section 1101 (d) provides that section 1101 (b) shall not apply to a distribution of banking property if, in connection with such distribution, the distributing corporation retains, or transfers after May 15, 1955, to any corporation property (other than property described in sec. 1101 (b) (1) (B) (i)) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

Your committee has adopted an amendment providing a special rule for contributions to capital of a corporation made after May 15, 1955, and prior to the date of enactment. Paragraph (3) of section 1101 (d) provides that in a case of a distribution a portion of which is attributable to a transfer which is a contribution to the capital of a corporation, made after May 15, 1955, and prior to the date of enactment, if section 1101 (a) or (b) would apply to such distribution but for the fact that such contribution to capital is part of a tax avoidance plan under paragraph (1) or (2) of section 1101 (d), then, notwithstanding paragraph (1) or (2) of subsection (d), section 1101 (a) or (b) shall apply to that portion of such distribution not attributable to such contribution to capital and shall not apply to that portion attributable to such contribution to capital.

The preceding paragraph may be illustrated by the following examples:

(1) Assume that corporation A (a qualified bank holding corporation) owns all of the stock of corporation X. Assume further that corporation A, after May 15, 1955, and prior to the date of the enactment of this bill, makes a contribution to the capital of corporation X in the amount of $50,000 in pursuance of a plan to avoid Federal income tax under paragraph (1) or (2) of section 1101 (d). Thereafter, corporation A makes a distribution of the stock of corporation X to the shareholders of corporation A which would be entitled to nonrecognition treatment but for the tax avoidance plan. Under subsection (d) the nonrecognition of gain provided by subsection (a) does not apply to that portion of the distribution which is attributable to the contribution of capital, that is, $50,000. The amount of the distribution to the extent of the contribution to capital, $50,000, is a distribution subject to the provisions of section 301 of the Internal Revenue Code of 1954.

(2) The facts are the same as in example (1) above, except that the value of the portion of the distribution which is attributable to the contribution to capital, at the time of the distribution, is less than $50,000. The value of that portion of the distribution which is attributable to the contribution to capital of $50,000 is a distribution subject to the provisions of section 301 of the Internal Revenue Code of 1954.

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 sub-

section (a) shall not apply to any such distribution unless the Board certifies that, before the expiration of the period permitted under section 4 (a) of the Bank Holding Company Act of 1956 (including any extensions thereof granted to such corporation under such sec. 4 (a)), the corporation has disposed of all the property, the disposition of which is necessary or appropriate to effectuate section 4 (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 property by a qualified bank holding corporation, it is essential that such corporation dispose of all of such property within the period (including extensions thereof) specified in section 4 (a) of such act. During the period during which such corporation is required to dispose of all such property, distributions of 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 such property and the Board has made the certification required under subsection (e) of section 1101, subsection (a) of section 1101 will apply to distributions of 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 section 4 of the Bank Holding Company Act of 1956, then subsection (a) of section 1101 will not apply to any distributions of 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 property by a qualified bank holding corporation to its shareholders is governed by the provisions of other sections of the Internal Revenue Code of 1954 applicable thereto.

Paragraph (2) of subsection (e) of section 1101 is applicable to distributions falling within subsection (b) of section 1101. Subparagraph (A) provides that subsection (b) shall not apply unless the Board certifies that the corporation has ceased to be a bank holding company before the expiration of the period specified in subparagraph (B). Under H. R. 6227 the period specified in paragraph (B) was 2 years after the date of enactment. S. 2577, as originally reported, modified subparagraph (B) to provide that the specified period expires 2 years after the enactment of this part or 2 years after the corporation becomes a bank holding company, whichever is later. Under subparagraph (B) of H. R. 6227 the Board is authorized on the application of any qualified bank holding corporation to extend such period from time to time with respect to such corporation for not more than 1 year at a time if, in its judgment, such an extension would not be detrimental to the public interest, but such period might not be extended beyond the date 5 years after the date of enactment of this part. This provision was modified by S. 2577, as originally reported, to provide that such period may not in any case be extended beyond the date 5 years after the date of enactment of this part or 5 years after the date on which the corporation becomes a bank holding company, whichever is later. The purpose of this change was to extend the specified periods in the case of corporations which become bank holding companies after the date of enactment of this part by reason of a distribution under section 1101. This treatment makes the

specified periods uniform whether such a corporation chooses to distribute prohibited property or bank stock. In order that subsection (b) of section 1101 is to apply to distributions of property of a kind which causes a qualified bank holding corporation to be a bank holding company and the disposition of which is necessary to enable such corporation to cease being a bank holding company, it is essential that such corporation cease to be a bank holding company within the period (including extensions thereof) specified in subsection (e) (2) of section 1101. During the period during which such corporation disposes of property to enable it to cease being a bank holding company, distributions of such property are to be considered as being within subsection (b) of section 1101, if other requirements of this part are met. Thus, no gain would be recognized to shareholders on such distributions (if such distributions would otherwise qualify for the benefits of this part) during such period. If, at the close of such period specified in subsection (e) (2), the corporation has ceased to be a bank holding company, subsection (b) of section 1101 will apply to distributions of such property. However, if, at the close of such period, the corporation has not ceased being a bank holding company, then subsection (b) of section 1101 will not apply to any distributions of such property by the corporation. Thus, in a case where the provisions of subsection (e) (2) are not met, the tax treatment of any distributions of property of a kind which causes a qualified bank holding corporation to be a bank holding company to its shareholders is governed by the provisions of other sections of the Internal Revenue Code of 1954 applicable thereto.

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

Subsection (a) relates to the basis of property acquired in distributions under either subsection (a) or subsection (b) of section 1101.

Paragraph (1) of subsection (a) relates to the basis of property received by a shareholder with respect to stock without the surrender by such shareholder of stock. If gain is not recognized by reason of section 1101 (a) or (b) with respect to the receipt of any property then, under paragraph (1), 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.

Paragraph (2) of subsection (a) relates to the basis of property received by a shareholder in exchange for stock or by a security holder in exchange for securities. If gain is not recognized by reason of section 1101 (a) or (b) with respect to the receipt of any property then, under regulations prescribed by the Secretary or his delegate, the basis of the property received shall, in the distributee's hands, be the same as the adjusted basis of the stock or securities exchanged, increased by (1) the amount of the property received which was treated as a dividend and (2) the amount of gain to the taxpayer recognized on the property received (not including any portion of such a gain which was treated as a dividend).

Subsection (b) of section 1102 of H. R. 6227 provided for the extension of the periods of limitation on the assessment and collection of deficiencies in tax arising from distributions to which subsection (a) or (b) of section 1101 applies. S. 2577, as originally reported, modified this provision of the House bill in several respects: (1) It eliminated

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

Subsection (c) of section 1102 relates to allocation of earnings and profits. The amendments proposed by your Committee extend the rule relating to allocation of earnings and profits contained in section 1102 (c) of S. 2577 as originally reported by your committee to the distribution of stock in a controlled corporation. Your committee believes it appropriate to provide a rule which is similar to that applied under section 312 (i) in cases involving the distribution of stock of a controlled corporation under section 355. Accordingly, paragraph (1) of section 1101 (c) provides that in the case of a distribution by a qualified bank holding corporation under section 1101 (a) (1) or (b) (1) of stock in a controlled corporation, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation shall be made under regulations prescribed by the Secretary or his delegate. (Par. (3) of sec. 1101 (c) defines the term "controlled corporation" in the same manner as sec. 368 (c) of the Internal Revenue Code of 1954.) Paragraph (2) of section 1101 (c) provides that in the case of any exchange described in section 1101 (c) (2) or (3), the earnings and profits of the corporation transferring the property shall be properly allocated between such corporation and the corporation receiving such property under regulations prescribed by the Secretary or his delegate.

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 purpose 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 2 of the Bank Holding Company Act of 1956.

Subsection (b) of this section defines the term "qualified bank holding corporation." S. 2577, as originally reported, made a technical amendment to subsection (b) in order to make it clear that the tax provisions of this part apply to any corporation as defined in section 7701 (a) (3) of the Internal Revenue Code of 1954 if such corporation is a qualified bank holding corporation. In order for a corporation to be a qualified bank holding corporation, and therefore for its shareholders to receive the special tax treatment provided by this part, it must not only be a bank holding company but, in addition, it must hold "prohibited property" as defined in subsection (c). For example, if the sole assets of corporation X consist of 25 percent of the voting shares of each of two 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) or (b). 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) or (3) is a qualified bank holding corporation. (The amendments proposed by your committee add references to sec. 1101 (b) and sec. 1101 (c) (2) to par. (1) of sec. 1103 (b) in order to conform the tax provisions of this bill to the change proposed by your committee in sec. 4 (a) (2) of this bill.)

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 two 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 two banks and 4 percent of the outstanding voting stocks (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.

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 1956 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 two 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. Similarly, if corporation X acquired 25 percent or more of the voting shares of each of two banks in a tax-free reorganization, corporation X, although a bank holding company holding prohibited property acquired by it before May 15, 1955, would not be a qualified bank holding corporation. An additional example of the application of subparagraph (A) of paragraph (2) is where corporation X is determined by the Board to be a bank holding company by reason of clause (2) of section 2 (a) of the Bank Holding Corporation Act of 1956, 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 1956 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 distributed 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 section 4 of the Bank Holding Company Act of 1956, if such company continued to be a bank holding company beyond the period (including any extensions thereof) specified in section 4 (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 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 4 of such bill by reason of subsection (c) (5) of such section.

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

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

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

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

Changes in Existing Law

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

INTERNAL REVENUE CODE OF 1954

Chapter I—Normal Taxes and Surtaxes

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SUBCHAPTER O—GAIN OR LOSS ON DISPOSITION OF PROPERTY

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

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Part VIII—Distributions Pursuant to Bank Holding Company Act of 1956

Sec. 1101. Distributions pursuant to Bank Holding Company Act of 1956.
Sec. 1102. Special rules.
Sec. 1103. Definitions.

SEC. 1101. DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT OF 1956.

(a) DISTRIBUTIONS OF CERTAIN NON-BANKING PROPERTY.—

(1) DISTRIBUTIONS OF PROHIBITED PROPERTY.—

If—

(A) a qualified bank holding corporation distributes prohibited property (other than stock received in an exchange to which subsection (c) (2) applies)—

(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

(ii) to a shareholder, in exchange for its preferred stock; or

(iii) to a security holder, in exchange for its securities; and

(B) the Board has, before the distribution, certified that the distribution of such prohibited property is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

(2) DISTRIBUTIONS OF STOCK AND SECURITIES RECEIVED IN AN EXCHANGE TO WHICH SUBSECTION (c) (2) APPLIES.—If—

(A) a qualified bank holding corporation distributes—

(i) common stock received in an exchange to which subsection (c) (2) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

(ii) common stock received in an exchange to which subsection (c) (2) applies to a shareholder, in exchange for its common stock; or

(iii) preferred stock or common stock received in an exchange to which subsection (c) (2) applies to a shareholder, in exchange for its preferred stock; or

(iv) securities or preferred or common stock received in an exchange to which subsection (c) (2) applies to a security holder, in exchange for its securities; and

(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

(3) NON PRO RATA DISTRIBUTIONS.—Paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.

(4) EXCEPTION.—This subsection shall not apply to any distribution by a corporation which has made any distribution pursuant to subsection (b).

(5) DISTRIBUTIONS INVOLVING GIFT OR COMPENSATION.—

In the case of a distribution to which paragraph (1) or (2) applies, but which—

(A) results in a gift, see section 2501, and following, or

(B) has the effect of the payment of compensation, see section 61 (a) (1).

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

(1) DISTRIBUTIONS OF PROPERTY WHICH CAUSE A CORPORATION TO BE A BANK HOLDING COMPANY.—If—

(A) a qualified bank holding corporation distributes property (other than stock received in an exchange to which subsection (c) (3) applies)—

(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

(ii) to a shareholder, in exchange for its preferred stock; or

(iii) to a security holder, in exchange for its securities; and

(B) the Board has, before the distribution, certified that—

(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2 (a) of the Bank Holding Company Act of 1956) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under this subsection or exchanged under subsection (c) (3), and

(ii) the distribution is necessary or appropriate to effectuate the policies of such Act, then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

(2) DISTRIBUTIONS OF STOCK AND SECURITIES RECEIVED IN AN EXCHANGE TO WHICH SUBSECTION (c) (3) APPLIES.—If—

(A) a qualified bank holding corporation distributes—

(i) common stock received in an exchange to which subsection (c) (3) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

(ii) common stock received in an exchange to which subsection (c) (3) applies to a shareholder, in exchange for its common stock; or

(iii) preferred stock or common stock received in an exchange to which subsection (c) (3) applies to a shareholder, in exchange for its preferred stock; or

(iv) securities or preferred or common stock received in an exchange to which subsection (c) (3) applies to a security holder, in exchange for its securities; and

(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

(3) NON PRO RATA DISTRIBUTIONS.—Paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.

(4) EXCEPTION.—This subsection shall not apply to any distribution by a corporation which has made any distribution pursuant to subsection (a).

(5) DISTRIBUTIONS INVOLVING GIFT OR COMPENSATION.—

In the case of a distribution to which paragraph (1) or (2) applies, but which—

(A) results in a gift, see section 2501, and following, or

(B) has the effect of the payment of compensation, see section 61 (a) (1).

(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 (iii) such property was acquired by the distributing corporation in a transaction in which gain was not recognized under section 305 (a) or section 332, or under section 354 with respect to a reorganization described in section 368 (a) (1) (E) or (F), or

(B) any property which was acquired by the distributing corporation in a distribution with respect to stock acquired by such corporation after May 15, 1955, unless such stock was acquired by such corporation (i) in a distribution (with respect to stock held by it on May 15, 1955, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b), or (ii) in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) in a transaction in which gain was not recognized under section 305 (a) or section 332, or under section 354 with respect to a reorganization described in section 368 (a) (1) (E) or (F), or

(C) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 332, unless such property was acquired from a corporation which, if it had been a qualified bank holding corporation, could have distributed such property under subsection (a) (1) or (b) (1).

(2) EXCHANGES INVOLVING PROHIBITED PROPERTY.—If—

(A) any qualified bank holding corporation exchanges (i) property, which, under subsection (a) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except property described in

subsection (b) (1) (B) (i)), 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 in a manner prescribed in subsection (a) (2) (A); and

(C) before such exchange, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (a) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that the exchange and distribution are necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956,

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) property which, under subsection (b) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except prohibited property), 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 in a manner prescribed in subsection (b) (2) (A); and

(C) before such exchange, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (b) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that—

(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2 (a) of the Bank Holding Company Act of 1956) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under subsection (b) (1) or exchanged under this paragraph, and

(ii) the exchange and distribution are necessary or appropriate to effectuate the policies of such Act,

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

(d) DISTRIBUTIONS TO AVOID FEDERAL INCOME TAX.—

(1) PROHIBITED PROPERTY.—Subsection (a) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after May 15, 1955, to any corporation, property (other than prohibited property) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

(2) BANKING PROPERTY.—Subsection (b) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after May 15, 1955, to any corporation, property (other than property described in subsection (b) (1) (B) (i)) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

(3) CERTAIN CONTRIBUTIONS TO CAPITAL.—In the case of a distribution a portion of which is attributable to a transfer which is a contribution to the capital of a corporation, made after May 15, 1955, and prior to the date of the enactment of this part, if subsection (a) or (b) would apply to such distribution but for the fact that, under paragraph (1) or (2) (as the case may be) of this subsection, such contribution to capital is part of a plan one of the principal purposes of which is to distribute the earnings and profits of any corporation, then, notwithstanding paragraph (1) or (2), subsection (a) or (b) (as the case may be) shall apply to that portion of such distribution not attributable to such contribution to capital, and shall not apply to that portion of such distribution attributable to such contribution to capital.

(e) FINAL CERTIFICATION.—

(1) FOR SUBSECTION (a).—Subsection (a) shall not apply with respect to any distribution by a corporation unless the Board certifies that, before the expiration of the period permitted under section 4 (a) of the Bank Holding Company Act of 1956 (including any extensions thereof granted to such corporation under such section 4 (a)), the corporation has disposed of all the property the disposition of which is necessary or appropriate to effectuate section 4 of such Act (or would have been so necessary or appropriate if the corporation had continued to be a bank holding company).

(2) FOR SUBSECTION (b).—

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

(B) The period referred to in subparagraph (A) is the period which expires 2 years after the date of the enactment of this part or 2 years after the date on which the corporation becomes a bank holding company, whichever date is later. The Board is authorized, on application by any corporation, to extend such period from time to time with respect to such corporation for not more than 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 5 years after the date of the enactment of this part or 5 years after the date on which the corporation becomes a bank holding company, whichever date is later.

(f) CERTAIN EXCHANGES OF SECURITIES.—In the case of an exchange described in subsection (a) (2) (A) (iv) or subsection (b) (2) (A) (iv), subsection (a) or subsection (b) (as the case may be) shall apply only to the extent that the principal amount of the securities received does not exceed the principal amount of the securities exchanged.

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, under regulations prescribed by the Secretary or his delegate—

(1) if the property is received by a shareholder with respect to stock, without the surrender by such shareholder of stock, the basis of the property received 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; or

(2) if the property is received by a shareholder in exchange for stock or by a security holder in exchange for securities, the basis of the property received shall, in the distributee's hands, be the same as the adjusted basis of the stock or securities exchanged, increased by—

(A) the amount of the property received which was treated as a dividend, and

(B) the amount of gain to the taxpayer recognized on the property received (not including any portion of such gain which was treated as a dividend).

(b) PERIODS OF LIMITATION.—The periods of limitation provided in section 6501 (relating to limitations on assessment and collection) shall not expire, with respect to any deficiency (including interest and additions to the tax) resulting solely from the receipt of property by shareholders in a distribution which is certified by the Board under subsection (a), (b), or (c) of section 1101, until 5 years after the distributing corporation notifies the Secretary or his delegate (in such manner and with such accompanying information as the Secretary or his delegate may by regulations prescribe) that the period (including extensions thereof) prescribed in section 4 (a) of the Bank Holding Company Act of 1956, or section 1101 (c) (2) (B), whichever is applicable, has expired; and such assessment may be made notwithstanding any provision of law or rule of law which would otherwise prevent such assessment.

(c) ALLOCATION OF EARNINGS AND PROFITS.—

(1) DISTRIBUTION OF STOCK IN A CONTROLLED CORPORATION.—In the case of a distribution by a qualified bank holding corporation under section 1101 (a) (1) or (b) (1) of stock in a controlled corporation, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation shall be made under regulations prescribed by the Secretary or his delegate.

(2) EXCHANGES DESCRIBED IN SECTION 1101 (c) (2) OR (3).—In the case of any exchange described in section 1101 (c) (2) or (3), proper allocation with respect to the earnings and profits of the corporation transferring the property and the corporation receiving such property shall be made under regulations prescribed by the Secretary or his delegate.

(3) DEFINITION OF CONTROLLED CORPORATION.—For purposes of paragraph (1), the term "controlled corporation" means a corporation with respect to which at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock is owned by the distributing qualified bank holding corporation.

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

SEC. 1103. DEFINITIONS.

(a) BANK HOLDING COMPANY.—For purposes of this part, the term "bank holding company" has the meaning assigned to such term by section 2 of the Bank Holding Company Act of 1956.

(b) QUALIFIED BANK HOLDING CORPORATION.—

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

(A) on or before May 15, 1955,

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

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

(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 1956 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 section 4 of the Bank Holding Company Act of 1956 if such company continued to be a bank holding company beyond the period (including any extensions thereof) specified in subsection (a) of such section or in section 1101 (e) (2) (B) of this part, as the case may be. The term "prohibited property" does not include shares of any company held by a bank holding company to the extent that the prohibitions of section 4 of the Bank Holding Company Act of 1956 do not apply to the ownership by such bank holding company of such property by reason of subsection (c) (5) of such section.

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

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

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

(3) money, and the right to receive money not evidenced by a security or obligation (other than a security 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.

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