

Mr. Clayton

December 30, 1937.

Messrs. Morrill, Wyatt, Paulger,
Goldenweiser, and Sneed
Messrs. Blattner, Cagle, and Wingfield

Holding Companies

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There is attached for your consideration and criticism a copy of the first draft of the memorandum and appendix describing proposed statutory provisions with respect to bank holding companies.

The factual data which will also be included in the final draft of this memorandum has not yet been completed but will be furnished to you as soon as possible. The completed portion of the first draft of the memorandum is being furnished to you at this time in the interest of expedition.

Preliminary draft by
B. M. Wingfield
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Bank Holding Companies

The purpose of this memorandum is to present some facts concerning the present status of bank holding companies and to suggest statutory requirements which would

- (a) Limit their future expansion;
- (b) Result in their eventual though not immediate dissolution; and
- (c) Simplify and strengthen the procedure of regulating them.

An outline of statutory provisions which are suggested to take the place of existing Federal statutes is as follows:

1. Conversion of subsidiary banks into branches

As soon as it may lawfully be accomplished, subsidiary banks of bank holding companies shall be converted into branches.

2. Eventual dissolution of holding companies

Not later than five years after date of Act, bank holding company relationships shall be terminated.

3. Future acquisition of subsidiary banks

(a) Limited to States in which the company has a subsidiary bank on the date of the Act.

(b) Where a company might acquire a subsidiary bank under (a) above, permission under regulations of the Board would be required. Cases where such permission could be granted would be limited to those looking to rehabilitation of a bank, to merge a bank with another bank, or to convert a bank to a branch.

4. Definition of bank holding company

One owning directly or indirectly more than 25% of the stock of more than one bank, where at least one is an insured bank.

5. Regulatory provisions

- (a) Present voting permit provisions to be repealed but holding companies to be required to register with the Board.
- (b) The Board of Governors to have power to make such examinations and require the submission or publication of such information and reports by holding companies and their subsidiaries as deemed necessary, and to take action to prevent unsound practices or policies.
- (c) Requirements for the conservation of a large part of resources and profits of each holding company while the value of its assets other than bank stocks is less than a prescribed percentage of bank stocks owned.

6. Penalties for violation of the statute or the Board's regulations or orders

The provisions which must be included in a statute covering a complicated subject of this kind, in order to give the Board adequate power and to prevent evasions, will necessarily involve considerable detail. Provisions which might be contained in a statute such as that broadly outlined above will be described in an appendix to this memorandum. In this appendix provision is made for extensive regulatory powers in the Board, but if it is determined that all holding companies must be dissolved within five years such regulatory provisions might be curtailed.

December 29, 1937

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APPENDIX

Description of Proposed Statutory Provisions
with Respect to Bank Holding Companies

1. Repeal

All existing laws relating to bank holding companies.

2. Definitions

- (a) "Bank holding company": a company which has more than one subsidiary bank, provided at least one of such banks is an insured bank.
- (b) "Company": any corporation, business trust, association, or other similar organization not wholly owned by the United States.
- (c) "Subsidiary of a specified company": a company more than 25 per cent of whose outstanding voting shares are owned by the specified company and/or its subsidiaries. Provide (1) that in determining the number of outstanding voting shares of any company shares owned by an organization wholly owned by the United States shall not be counted; (2) that shares shall be deemed to be owned by a company if they are held by trustees for the benefit of such company or its shareholders; and (3) that shares held by a company in trust shall not be deemed to be owned by such company unless they are held for the benefit of

its shareholders.

3. Provide that bank holding company ---

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- (a) Shall register with the Board.
 - (b) Shall, as soon as it may lawfully be accomplished, convert its subsidiary banks into branches.
 - (c) Shall not hold stock in any subsidiary bank located in a state in which the company does not have a subsidiary bank on the date of the Act. No company which is not a bank holding company on the date of the Act shall become a bank holding company with respect to any bank which was not a subsidiary of such company on the date of the Act, except as permitted under (d).
 - (d) Shall not acquire more than 25 per cent of the stock of any bank, except with permission under regulations prescribed by the Board. Such permission may be granted only (a) where such acquisition would facilitate the consolidation or merger of banks or the sale of the assets of one bank to another bank or the rehabilitation of a bank or (b) where a branch of a subsidiary bank could lawfully be established and such acquisition would facilitate the establishment of such branch.
 - (e) Shall cause each subsidiary bank to obtain insurance not later than six months after the passage of this Act or after becoming a subsidiary of a bank holding company, whichever is later.

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- (f) Relationships shall be terminated not later than five years after date of Act.
- (g) Shall be subject to examination by examiners selected or approved by the Board and all of its subsidiaries shall be subject to such examination and shall furnish to Board all required reports and information concerning itself and its subsidiaries, provided the Board may be authorized to waive such examinations and reports as are deemed not to be necessary.
- (h) Not later than one year after the date of this Act, shall not engage in the "securities business" or have any interest in any "securities company" and shall not have any subsidiaries so engaged or interested.
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- (i) Shall not pay dividends in excess of 4 per cent per annum on the book value of its own shares outstanding while the value of its assets other than bank stocks is less than 50 per cent of the par value of bank stocks owned.
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- (j) Shall take such action within its power as may be necessary to cause each of its subsidiary banks to maintain a sound financial condition and to cause the net capital and surplus funds of each such subsidiary bank to be adequate in relation to the character and condition of its assets and to the deposit liabilities and other corporate responsibilities of such subsidiary banks.

- (k) The management of each bank holding company shall be, and each bank holding company shall take such action within its power as may be necessary to cause the management of each of its subsidiaries to be, conducted under sound policies governing its financial and other operations, including statements issued relating thereto; and each bank holding company shall maintain a sound financial condition and maintain net capital and surplus funds which shall be adequate in relation to the character and condition of its assets and to its liabilities and other corporate responsibilities.

4. Penalty provisions

Provide that if after notice and opportunity for a hearing the Board finds that a bank holding company (1) has violated any of the provisions of this Act or the Board's regulations or (2) has followed unsafe or unsound practices in conducting its own business or (3) has not taken such action within its power as may be necessary to prevent unsafe or unsound practices or violations of law or the Board's regulations by its subsidiaries, the Board may order

- (a) That the bank holding company shall not, during such period as is fixed in the order, pay any dividends to shareholders of the holding company;
- (b) That the holding company shall not, during such period as is fixed in the order, vote the shares of stock held in any subsidiary bank;

(c) That the holding company shall not, during such period as is fixed in the order, participate in any manner in the management of any subsidiary bank;

(d) That, during such period as is fixed in the order, no subsidiary bank shall pay any dividends to the holding company or make any other payments to the holding company;

(e) That the bank holding company terminate the status of all insured banks as subsidiaries of such company and thereafter not acquire any insured bank as a subsidiary.

If any bank holding company fails to comply with any such order, the Board may assess a penalty against such bank holding company in an amount not exceeding \$1,000 for each day during which such failure continues. If any bank holding company shall fail to comply with an order of the Board to terminate the status of all insured banks as subsidiaries of such company, it shall be the duty of the Federal Deposit Insurance Corporation, when requested by the Board, to terminate the insurance of all subsidiary banks of such bank holding company at the earliest practicable date.

5. Provide that the Board may prescribe such rules and regulations

as it may deem necessary to effectuate the provisions of the Act in accordance with its purposes and to prevent evasions of such provisions, and, without regard to the amount of stock held, if the Board determines that the policy and management of any company are subject to the controlling influence of another company, the former shall be deemed to be a subsidiary of the latter.

6. Provide that not more than one subsidiary of a bank holding company shall participate in the election of any director of a Federal Reserve bank.
7. Amend definition of affiliate to include any company of which a member bank is a subsidiary.