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A B I L L

To provide for the regulation of bank holding companies and affiliates, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

That this Act may be cited as the "Bank Holding Company Act of 1938".

SECTION I. (1) "Insured Bank" means any operating bank, banking association, trust company, savings bank, or other banking institution, the deposits of which are insured in accordance with the provisions of Section 12B of the Federal Reserve Act, as amended.

(2) "Person" means any individual, partnership, association of persons, or company.

(3) "Company" means any corporation, incorporated bank, banking association, insured bank, joint-stock company, business trust or trustees of any voting trust.

(4) "Director" means any director or trustee of any company, or any individual who performs similar functions in respect of any company.

(5) "Securities" include notes, drafts, acceptances, bonds, debentures, capital notes, voting trust certificates, capital stock, treasury stock, warrants, and rights to subscribe to or certificates of deposit for any of the foregoing.

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(6) "Capital Stock" includes common and preferred stock, capital notes and debentures.

(7) "Control" means the legal or equitable ownership or holding of more than ten per centum of the total number or par value of the outstanding shares of capital stock or total number of voting rights for electing directors, or the domination, directly or indirectly, in any manner of the election of a majority of the directors of an insured bank or any other company, and wherever used in this act, the word "control" in any grammatical form shall have this meaning.

(8) "Holding Company" of any insured bank means any company which controls the insured bank or controls any other company which in turn controls the insured bank, and every company in any series or succession of companies in any system of controlling and controlled companies, in which any company or combination of companies control the insured bank.

(9) "Affiliate" of any insured bank means any company which with respect to the insured bank is a holding company, every company in any series or succession of companies constituting any system of controlling and controlled companies, in which any company is controlled by the insured bank or by such holding company or by any company or combination of companies in such system, and any company having one or more shareholders who have legal or equitable ownership of more than fifty per centum of the

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number or par value of the outstanding shares of capital stock or voting rights for electing directors of both the company and the insured bank; provided, that notwithstanding the foregoing, any company engaged solely in the business of (a) operating a safe deposit vault; or (b) holding or operating the building and premises occupied by any insured bank, shall not be an affiliate of the insured bank.

(10) "Effective Date" means the date of enactment of this Act.

SECTION II. It shall be unlawful for any insured bank, directly or indirectly or by any device whatever: (1) to make any loan or extension of credit to any of its affiliates or to invest any of its funds or any funds administered by it, in any securities issued or guaranteed by any of its affiliates; or (2) to purchase any securities from any of its affiliates; or (3) to make any loan or extension of credit to any person secured by any collateral consisting of any securities issued or guaranteed by any of its affiliates. Notwithstanding the foregoing, any insured bank, which prior to the effective date, shall have made any loans, extensions of credit or investments which by virtue of this section would constitute prohibited loans, extensions of credit or investments if made after the effective date, shall have three years after the effective date within which to collect, sell or otherwise dispose thereof. During said three year period any such loans or extensions of credit may be renewed or extended, but no renewal or extension

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shall be given beyond said period. Within two years after the effective date, where necessary to save itself from loss, any such insured bank may accept securities issued or guaranteed by its affiliates, as payments to apply on or as collateral security for loans or extensions of credit made prior to the effective date to any person other than one of its affiliates, and in such event the insured bank shall collect, sell or otherwise dispose of such securities within three years after the effective date.

SECTION III. It shall be unlawful for any company to acquire any capital stock, or voting rights for electing directors, of any insured bank or of any holding company of any insured bank, if such company is or upon such acquisition would become a holding company of any insured bank.

SECTION IV. No insured bank shall establish or operate or be permitted to establish or operate any new or additional branches while such insured bank is controlled by any holding company.

SECTION V. Every company shall before the expiration of sixty days after the effective date cause to be filed with the cashier or secretary of every insured bank as to which it is an affiliate, an affidavit to be signed by one of its executive officers having knowledge of the facts, which shall set forth as of the effective date, (1) the total number and par value of the outstanding shares of capital stock and total number of voting

rights for electing directors of such insured bank which such company owns or holds, the names of the persons in whose names such shares or rights are issued and a full description of any instruments evidencing such shares or rights, (2) the amount of any indebtedness of such company to the insured bank, direct and indirect, the maturity dates, and the person in whose name such indebtedness stands, if other than the company, and (3) an itemized statement of its assets and liabilities as of the last day of the preceding month and of its earnings for the current fiscal year to the last day of the preceding month, if the company be directly or indirectly indebted to the bank. Within twenty days after the close of each calendar month thereafter, if there has been any change in any of the matters covered in such affidavit, except item three thereof, during such month, the company shall file a like report, so long as it shall continue to stand in the relation of an affiliate to such insured bank. Every company shall file within thirty days after the last day of June and December of each year with the cashier or secretary of every insured bank as to which it is an affiliate, a like sworn itemized statement of its assets and liabilities as of the last day of June and December of each year and of its earnings for the current fiscal year to the last day of June and December of each year. Every insured bank shall retain such affidavits and statements on file as a part of its records for at least three years.

SECTION VI. Every insured bank, holding company and affiliate shall file with the Federal Deposit Insurance Corporation such annual, semi-annual, quarterly and other periodic and special

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reports, the answers to such specific questions and the minutes of such directors', stockholders', committees' and other meetings, as the Corporation by order may prescribe as necessary or appropriate for the proper consideration of the condition of any insured bank or for the proper supervision of the federal deposit insurance system, and the Corporation may make such investigations of any insured bank, holding company or affiliate, and the books and records thereof, as shall be necessary or proper to disclose the condition of any insured bank or the effect of the relations between any holding company or affiliate and any insured bank, upon the federal deposit insurance system or any insured bank. And such investigations shall be made at the expense of the Corporation; and it shall be unlawful for any insured bank, holding company or affiliate knowingly to make any false statement or report to the Corporation or to refuse authorized representatives of the Corporation access to any information required in connection with any such investigations.

SECTION VII. After the effective date, the Board of Governors of the Federal Reserve System shall not, without the consent of the Board of Directors of the Federal Deposit Insurance Corporation, grant or extend the operative effect of any voting permit to any holding company affiliate under the provisions of Section 2 of the Banking Act of 1933, as amended (Section 61 of Title 12 of the United States Code).

SECTION VIII. Whenever it shall appear to the Board of Directors of the Federal Deposit Insurance Corporation that any

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person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this act, the Board in its discretion may bring an action in the proper district court of the United States or the Supreme Court of the District of Columbia, to enjoin such acts or practices and to enforce compliance with this act, and upon a proper showing, a temporary or permanent injunction, decree or restraining order shall be granted without bond. The Corporation may transmit such evidence as may be available concerning such acts or practices to any United States Attorney or to the Attorney General, who, in his discretion, may institute appropriate criminal proceedings under this act. The proper district for the commencement of any injunction proceeding pursuant to this section shall be any district wherein any act or transaction constituting the violation occurred or in which the defendant is an inhabitant or transacts business, and process in such cases may be served in any district in which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 225 and 347 of Title 28 of the United States Code, and section 7, as amended, of the Act entitled "An Act to establish a court of appeals for the District of Columbia", approved February 9, 1893 (D.C. Code, Title 18, Section 26). No costs shall be assessed for or against the Corporation in any proceeding under this act brought by it in any court.

SECTION IX. It shall be unlawful for any insured bank to pay to any holding company, directly or indirectly, any dividend on any shares of its capital stock so long as such holding company shall continue to hold any shares of the capital stock or voting rights for electing directors of such insured bank, or of any company which is a holding company with respect of such insured bank, acquired in violation of any provision of this act.

SECTION X. Whenever the Board of Directors of the Federal Deposit Insurance Corporation shall determine, after reasonable notice to the company affected an opportunity for a hearing, that any insured bank or any company which with respect to any insured bank is a holding company, has violated any provision of this act, and that such action is necessary for the protection of the public or the safety and integrity of the federal deposit insurance system, it may make a finding of the facts of such violation. Upon making such finding, the Board of Directors of the Federal Deposit Insurance Corporation may cause the same to be published in the Federal Register and thereafter the insured bank shall be ineligible to receive deposits of public funds of the United States or of any public officer, agent or instrumentality of the United States. Upon making such finding the Board of Directors of the Federal Deposit Insurance Corporation may proceed to terminate the insured status of the insured bank, in like manner as provided in subsection

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(i) of Section 12B of the Federal Reserve Act, as amended. Upon notification in writing by the Board of Directors of the Federal Deposit Insurance Corporation to the Board of Governors of the Federal Reserve System of any such finding of such violation on the part of any holding company and request for such revocation, the Board of Governors of the Federal Reserve System forthwith shall proceed to revoke any voting permit theretofore granted to such holding company as a holding company affiliate under the provisions of Section 26 of the Banking Act of 1933, as amended (Section 61 of Title 12 of the United States Code). The Board of Directors of the Federal Deposit Insurance Corporation shall have the right, upon such terms and conditions as may be consistent with the public interest, the safety and integrity of the federal deposit insurance system and the purposes of this act, to review, suspend, modify or revoke any order or finding made pursuant to this section.

SECTION XI. Any person or party aggrieved by an order issued by the Board of Directors of the Federal Deposit Insurance Corporation under this act may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of said Board be modified or set aside in whole or in part.

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A copy of such petition shall be forthwith served upon any member of said Board, or upon any officer thereof designated by the said Board for that purpose, and thereupon the said Board shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of said Board shall be considered by the court unless such objection shall have been urged before said Board or unless there were reasonable grounds for failure so to do. The findings of the said Board as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before said Board, the court may order such additional evidence to be taken before the said Board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. Said Board may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, together with its recommendation if any, for the modification or setting aside of the original order. The judgment

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and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of said Board shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of Title 28 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of said Board's order.

SECTION XII. It shall be unlawful for the individual directors, officers or agents of any company to authorize, order or do any act constituting in whole or in part a violation of the provisions of this act by such company.

SECTION XIII. Any person who knowingly violates any provision of this act shall be guilty of a misdemeanor; any company which knowingly violates any provision of this act, upon conviction thereof, shall be punished by fine of not exceeding \$5,000 for each violation, and any natural person who knowingly violates any provision of this act, upon conviction thereof, shall be punished for each violation by fine of not exceeding \$5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

SECTION XIV. No provision in this act shall apply to, or be deemed to include, the United States, a state, or any political subdivision of a state, or any corporation which is wholly owned, directly or indirectly, by any one or more of the

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foregoing, or any corporation which is managed by a person or persons appointed pursuant to law by the President of the United States or the Governor of a state or the chief executive of any political subdivision of a state, or any officer, agent or employee of any of the foregoing acting as such in the course of his official duty or to any company which is determined by the Board of Directors of the Federal Deposit Insurance Corporation, on application for exemption or of its own motion, to be only incidentally a holding company and to be primarily engaged in business other than holding the stock of or managing or controlling banks, banking associations, savings banks or trust companies, or to be only incidentally or temporarily an affiliate of any insured bank.

SECTION XV. If any provision of this act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the act and the application of such provisions to persons or circumstances other than those as to which it is declared invalid shall not be affected thereby.