

NORTHWEST BANCORPORATION
MINNEAPOLIS 2, MINN.

J. C. THOMSON
PRESIDENT

May 19, 1947

Attention Mr. Samsund

The Honorable Marriner S. Eccles, Chairman
Board of Governors of the Federal Reserve System
Washington, D. C.

Dear Marriner:

Enclosed is a memorandum dated May 19, prepared by Mr. Faegre of Faegre & Benson, which is self-explanatory.

In view of the request of Mr. Eccles that he be advised promptly as to the attitude of the bank holding companies respecting the bill and proposed amendments, it will be necessary for you, in turn, to advise me as promptly as possible by wire or by 'phone whether your company will support the Bill with proposed amendments which the Board has indicated as acceptable, subject to the reservation that your company will not be precluded from supporting or opposing new or revised features of the Bill.

You will appreciate that it is essential that there be practical unanimity of support for this Bill if it is to get through at this session of Congress. Your Committee believes that, all things considered, it is desirable to secure the passage of this legislation at this session of Congress.

I understand that tomorrow the Federal Reserve Advisory Council plan to take definite action which will generally be in favor of legislation at this time.

The first hearing will be held on May 26th. If before that time fairly unanimous support develops for the Bill among those interested and affected, it is possible that protracted hearings will not be required. A representative of at least one of the bank holding companies will be in attendance at the meeting on May 26th so as to report developments and the Committee will immediately thereafter report to you.

Sincerely yours,

Copy for your information

Thomson
J. C. Thomson
President

May 19, 1947

BANK HOLDING COMPANY BILL - S. 829

The within memorandum deals with developments occurring since the meeting of representatives of bank holding companies in New York City on May 5.

It will be recalled that it was reported to the meeting that Mr. Eccles, Chairman of the Federal Reserve Board, had made the suggestion that the general attitude of the bank holding companies respecting the bill be reported to him. Accordingly, at the conclusion of the New York meeting a Committee was appointed to meet with Mr. Eccles. The personnel of the Committee included Mr. Thomson as Chairman and Messrs. Baird, George Eccles, Pope and Robinson, with the addition of Mr. Birdzell, if he cared to serve, and with Mr. Faegre invited to sit in. It was then understood that the Committee would probably meet with Mr. Eccles during the following week. Such meeting was had in Washington at the Board's offices on May 16.

Preceding this meeting, however, was a development of which note was taken at the meeting and which will doubtless have an important bearing in some quarters. At the meeting of the Reserve City Bankers earlier in the week a report on the subject of bank holding company legislation was submitted by the Federal Relations Committee of the Association to the membership of the Association in attendance at such meeting and was thereupon approved. Doubtless

copies of the report will shortly be available. Without undertaking to summarize the report in any detail, it may be noted that it concludes that more effective legislation relating to bank holding company operations is required and such legislation should be enacted now; and that the "philosophy" of the report is "slanted" toward geographical limitations upon bank holding company operations.

In the light of the action of the Reserve City Bankers it becomes at once apparent that additional impetus is furnished in support of the program for early legislation.

In addition to Mr. Eccles the Washington meeting included Mr. Townsend, Assistant General Counsel for the Board, Messrs. Thomson and Faegre, Mr. Pope, Mr. George Eccles, and Mr. Baird. (Messrs. Kennedy and Colman for First Bank Stock Corporation were present by invitation). Mr. Robinson was unable to be present. Judge Birdzell concluded not to attend.

At the outset of the meeting it was pointed out to Mr. Eccles that the members of the "Committee" had no authority to speak for anyone except themselves, but they would undertake following the meeting to review with representatives of bank holding companies the discussion had at the meeting with the object of promptly advising Mr. Eccles respecting the general attitude of such companies.

The discussion respecting S. 829 followed the general order of the memorandum of suggested amendments which was submitted at the New York conference on May 5. The review of such discussion follows the same order.

Memo.

May 5 -

p. 1 Bill p. 1 - Declaration of policy - It was pointed out that the language which the proposed amendments principally sought to eliminate - "and to minimize the danger inherent in concentration of economic power through centralized control of banks" - was related to similar language in Section 6 (p. 9, l. 11 of the bill) providing as one of the considerations for Board action on acquisition of banks the "undue concentration of economic power". It was urged that the inclusion of the test of "undue concentration of economic power" would prescribe a standard which was novel in character and might attract opposition from persons who otherwise might support the bill since "bigness" alone has not heretofore been condemned; that business generally might oppose the introduction legislatively of a new standard, i. e., bigness; and that its application would necessarily point to the discretionary character of the power proposed to be delegated to the Board. It was further urged that in any event the phrase might more suitably be revised to read "undue concentration of banking power as an element bearing upon competition in the field of banking".

Board conclusion - that neither the language in the Declaration of Policy or in Section 6 (d) should be changed.

Memo.

p. 2

Definitions - proposed change of 10% to 25%

Board conclusion - amendment declined

Memo. Bill p. 2

p. 2 l. 21

Inclusion of bank as a holding company

Board conclusion - amendment accepted

Memo. Bill p. 3
p. 2 1. 5 Elimination of "investors"

P. 3. 1. 15 Elimination of "investors"

Board conclusion - no change

Memo. Bill p. 3
p. 2 1. 17 (See text of proposed amendment)

Board conclusion - amendment declined

Memo. Bill p. 3
p. 3 1. 24 Proposal that "company" include individual

Board conclusion - no change

Memo.
p. 3 Shares held in fiduciary capacity - disregard of

Board conclusion - approve of exclusion of such shares and will consider adequacy of language as proposed

Memo. Bill p. 5
p. 4 1. 9 Proposal that report of accumulated net income be limited to last preceding ten years.

Board conclusion - propose to cover by Board regulation - limited period of years is acceptable

Memo.
pp. 4 & 5 Examinations - restatement of

Board conclusion - amendment declined

Memo. Bill p. 6,
p. 5 1. 25 Restatement proposed to meet situation of Trust Co. of Georgia

Board conclusion - amendment declined in form proposed but will be amended elsewhere to provide for this situation in connection with which the bill will permit bank holding companies to invest funds in same manner as a national bank may do under 5136 U. S. R. S.

Memo. Bill p. 7,
p. 6 1. 14 Proposed retention of service company

Board Conclusion - amendment accepted subject to striking of words "for or" in next to last line

Memo. <u>p. 6</u>	Bill p. 7, <u>l. 17</u>	Proposal that prohibitions shall not apply to assets eligible under 5136 U. S. R. S. <u>Board conclusion</u> - amendment accepted
Memo. <u>p. 7</u>		<u>Proposal that</u> investments may be in securities listed on a national securities exchange <u>Board conclusion</u> - amendment declined
Memo. <u>p. 7</u>	Bill p. 7, ls. 20, 21 <u>& 22</u>	Proposal that "at request of any Federal or State authority" be stricken <u>Board conclusion</u> - retain as now in bill but add the phrase "or with the prior approval of the Board"
Memo. <u>p. 7</u>	Bill p. 8, <u>l. 6</u>	Proposed new subsection to permit purchase of non-banking securities upon approval of Board <u>Board conclusion</u> - amendment declined
Memo. <u>p. 7</u>	Bill p. 8, <u>l. 15</u>	Proposed new subsection to permit bank holding company, when owning a majority of shares in a bank, to acquire additional shares without obtaining Board approval <u>Board conclusion</u> - amendment accepted
Memo. <u>p. 8</u>	Bill p. 9, <u>l. 8</u>	Proposed restatement of considerations to be taken into account by Board in approving or denying application to acquire additional banks <u>Board conclusion</u> - amendment declined but Board expects to further consider adequacy and scope of test. Discussion touched on possibility of geographical limitation test but the company representatives, speaking for their respective companies, took the unqualified position that they would not support but would be forced to oppose any legislation embodying a geographical limitation of any character.

Memo. <u>p. 8</u>	Bill p. 9, <u>l. 13 et seq</u>	<p>Proposed procedure and right of review as additional subsections to Section 6</p> <p><u>Board conclusion</u> - amendment declined with assertion by Board that adequate safeguards are elsewhere found in the bill. Mr. Faegre then stated that at a later stage of the meeting there would be submitted a supplemental memorandum dealing with procedural suggestions..</p>
Memo. <u>p. 11</u>	Bill p. 9, <u>l. 23</u>	<p>Proposal that banks may accept capital stock for debts previously contracted</p> <p><u>Board conclusion</u> - amendment accepted but with revision to read</p> <p style="padding-left: 40px;">"but any bank may, with the prior approval of the Board, accept such capital stock as security for debts previously contracted"</p>
Memo. <u>p. 11</u>	Bill p. 10, <u>l. 12</u>	<p>Change figure "10" to "20".</p> <p><u>Board conclusion</u> - amendment accepted</p>
Memo <u>p. 11</u>	Bill p. 10, <u>l. 13</u>	<p>Proposal to exclude bank deposits as "borrowing"</p> <p><u>Board conclusion</u> - amendment accepted</p>
Memo <u>p. 12</u>		<p>Apparent necessity of repealing Section 23A</p> <p><u>Board conclusion</u> - Board recognized necessity of amending in some respects</p>
Memo. <u>p. 13</u>	Bill p. 12, <u>l. 8</u>	<p>Strike "par" and insert "book"</p> <p><u>Board conclusion</u> - amendment accepted</p>
Memo. <u>p. 13</u>	Bill p. 12, <u>l. 13 & 14</u>	<p>Proposal to strike "identified in an appropriate manner"</p> <p><u>Board conclusion</u> - amendment declined as unimportant</p>
Memo. <u>p. 13</u>	Bill p. 12, <u>l. 17</u>	<p>Proposal to restate to permit use of reserve to increase capital or surplus of banks</p>

Board conclusion- amendment accepted in following form

"to eliminate losses and depreciation and with the prior approval of the Board to increase capital or surplus of its subsidiary banks".

Memo. <u>p. 13</u>	Bill p. 13, <u>1. 2</u>	Proposal to strike "and prevent evasions thereof"
		<u>Board conclusion</u> - amendment declined as unimportant
Memo. <u>p. 13</u>		<u>Hearings</u> - This is discussed at later stage of this memorandum
Memo. <u>p. 15</u>		<u>Qualifying shares for national bank directors</u> <u>Board suggestion</u> - this concerns the Comptroller; accordingly suggested that bank holding companies obtain letter from Comptroller indicating approval of inclusion of amendment of this character.
Memo. <u>p. 16</u>	Bill p. 21 <u> </u>	Technical amendments <u>Board's conclusion</u> - amendments accepted
Memo p. <u>17</u>		<u>Tax-free Distributions</u> - proposed new section <u>Board conclusion</u> - amendment acceptable but since this would affect the Treasury suggested that the inclusion of the proposed amendment be upon the direction or concurrence of the Treasury. It is understood that Mr. Eccles will communicate with the Treasury.

ADDITIONAL SUGGESTED AMENDMENTS
SUPPLEMENTING THE FOREGOING

Mr. Offutt of First National Bank of Louisville suggested the following amendments:

Page 7, Line 4 - Insert after the word "Bank" the following:

", or a company solely investing in securities eligible for purchase by national banks under the provisions of section 5136 of United States Revised Statutes and in readily marketable securities listed on a national securities exchange, provided not more than $2\frac{1}{2}$ per centum of the company's total assets are invested in the securities of any one company, and that the company does not own more than $2\frac{1}{2}$ per centum of the outstanding securities of any one company,"

Page 7, Line 16 - Insert after the word "operating" the words "aiding, strengthening,"

Board conclusion - amendments declined

The following technical amendments were submitted:

Page 22, line 13 - change period to comma and add

"or any subsidiary thereof as defined in said Act."

Page 22, line 19 - Change period to comma and add

"or any subsidiary thereof as defined in said Act."

Board will consider these

PROPOSED REVISIONS AND ADDITIONS
RESPECTING PROCEDURAL ASPECTS OF
THE BILL

The following revisions in language and additions are designed to insure more adequately judicial review of agency action, and make clear in specific situations that the action of the Board is "by order". It will be observed that the proposed new subsection to be added to Sections 10 or 11 providing that no order shall be made "except after notice and opportunity for hearing" will permit the omission of the repeated expression of similar phrasing appearing in the Bill.

Page 2, line 24 - Following the word "Board" insert "by order"; and in lines 24 and 25 strike the words "after notice and opportunity for hearing."

Page 4, line 15 - After the word "Board" insert the words "by order"; and in line 16 strike the words "after notice and opportunity for hearing."

Page 7, line 15 - After the word "Board" insert the words "by order".

Page 8, line 1 - Strike "after notice and opportunity for hearing" and insert "by order".

Page 8, line 15 - After the word "approval" insert the words "by order".

Page 8, line 20 - After the word "approval" insert the words "by order".

Page 8, line 25 - After the word "approval" insert the words "by order".

Page 11, lines 19 & 20 - Strike "and after appropriate notice and opportunity for hearing"; and following "to determine" insert "by order".

Page 12, line 10 - After the words "prescribed by" insert "order of".

Page 12, line 19 - After "permitted by" insert "order of".

Page 13, line 4 - Insert a new sentence after the period reading:

"No order other than an order unconditionally granting an application shall be issued by the Board except after notice and opportunity for hearing. Every order issued after such hearing shall be based on the record made thereat and such record shall be of the scope prescribed by the Administration Procedure Act."

Without having undertaken to determine what revisions will be required probably in Section 11(d), it is suggested that consideration be given to the substitution for said subsection (d) or the inclusion therein of language of the following substance:

"Any person, shareholder, bank, company or bank holding company authorized to make application under this Act shall have the right to obtain a judicial review under the provisions of the Administrative Procedure Act of any action of the Board or other agency by which he or it is adversely affected or aggrieved or has suffered legal wrong."

The matters under the foregoing heading were submitted as a memorandum toward the conclusion of the meeting. It was stated that the several proposals would be fully considered by the Board.

SAVING CLAUSE

It is suggested that there be included in the Bill a provision similar to the following sentence from Section 20(d) of the Public Utility Holding Company Act of 1935:

"No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason."

REQUEST FOR PROMPT ADVICE TO BOARD REGARDING ATTITUDE OF BANK HOLDING COMPANIES

As noted in an early paragraph of this memorandum Mr. Eccles desires to be advised promptly regarding the attitude of the bank holding companies toward the bill as proposed to be amended in the respects above indicated.

The necessity for prompt advice arises out of the fact that Mr. Eccles proposes to "clear" the bill (with amendments) with the Treasury (Comptroller) this week - assumed not later than Friday - and meet the date of Monday (May 26) now set by the Senate Bank and Currency Committee as the date of initial hearings on the bill.

The company representatives speaking solely in behalf of their respective companies advised Mr. Eccles that they

will go along with the bill as amended in the respects above outlined, with the reservation that they would not be precluded from supporting or opposing new or revised features of the bill - or otherwise stated that they were disposed to accept the bill with amendments as proposed.

It is believed that the within memorandum upon being made available to the several companies will be adequate to enable the companies to advise the "Committee" of their respective attitudes.