BANK HOLDING COMPANY BILL

A BILL

To provide for control and regulation of bank holding companies, 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 1949.

SEC. 2. DEFINITIONS.--(a) "Bank holding company" means (1) any company which directly or indirectly owns, controls or holds with power to vote 15 per centum or more of the voting shares of each of two or more banks or of a company which is a bank holding company by virtue of this section, or any company which is a bank and which directly or indirectly owns, controls, or holds with power to vote 15 per centum or more of the voting shares of one or more other banks, or any company which directly or indirectly owns, controls, or holds with power to vote 15 per centum or more of the voting shares of one bank provided such bank operates four or more branches, unless the Board as hereinafter provided by order declares such company not to be a bank holding company; (2) any company which the Board determines, after notice and opportunity for hearing, directly or indirectly exercises (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of two or more banks or of

only one bank if such bank operates four or more branches as to make it necessary or appropriate in the public interest or for the protection of investors or depositors that such company be subject to the obligations, duties and liabilities imposed in this Act upon bank holding companies; and (3) any company which is a bank and which the Board determines, after notice and opportunity for hearing, directly or indirectly exercises (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of one or more other banks as to make it necessary or appropriate in the public interest or for the protection of investors or depositors that such company be subject to the obligations, duties and liabilities imposed in this Act upon bank holding companies.

The Board, upon application, shall by order declare that a company is not a bank holding company under clause (1) above if the Board finds that the applicant does not, either alone or pursuant to an arrangement or understanding with one or more other persons, exercise such a controlling influence over the management or policies of the stated number of banks as to make it necessary or appropriate in the public interest or for the protection of investors or depositors that such company be subject to the obligations, duties, and liabilities imposed in this Act upon bank holding companies.

(b) "Bank" means any national bank, or any State bank, banking association, savings bank, or trust company but shall not include

any organization which does not receive deposits nor conducts a trust business within the United States. "State member bank" means any State bank which is a member of the Federal Reserve System. "District bank" means any State bank organized or operating under the Code of Law for the District of Columbia.

(c) "Company" means any bank, corporation, partnership, joint-stock company, business trust, voting trust, association, or any similar organized group of persons, whether incorporated or not, or any receiver, trustee, or other liquidating agent of any of the foregoing in his capacity as such; excluding, however, any such company which is owned by the United States.

(d) "Board" means the Board of Governors of the Federal Reserve System.

(e) "Subsidiary", with respect to a specified bank holding company, means (1) any company 15 per centum or more of whose outstanding voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is owned or controlled by such bank holding company, unless the Board as hereinafter provided by order declares such company not to be a subsidiary of such bank holding company; or (2) any company the management and policies of which the Board determines, after notice and opportunity for hearing, are subject to a controlling influence by the specified bank holding company.

The Board, upon application, shall by order declare that a company is not a subsidiary company of a specified bank holding company under clause (1) above if the Board finds that the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such bank holding company (either alone or pursuant to an arrangement or understanding with one or more other persons).

(f) For the purposes of this section there shall be excluded from consideration all voting shares of banks acquired or held by mutual savings banks; also, there shall be excluded from consideration all voting shares of banks or other companies acquired or held by a bank in a fiduciary capacity, except where such voting shares are acquired or held for the benefit of all or a majority of the persons beneficially interested in such bank or except where the Board, after notice and opportunity for hearing, finds that such acquisition or holding is resulting in the violation or evasion of any of the purposes or provisions of this Act.

SEC. 3. REGISTRATION, REPORTS AND EXAMINATIONS.--(a) Within ninety days after the effective date of this Act, or within ninety days after becoming a bank holding company, whichever is later, every bank holding company shall register with the Board on forms prescribed by the Board, which shall include, with such other information as the Board may require, statements showing (1) its financial condition at the end of its fiscal year last preceding the date of

registration, including therein the amount of its accumulated net income at such time; (2) name and address of each of the bank holding company's subsidiary banks and address of each branch of each such bank; (3) name and address of each other bank of which the bank holding company or its subsidiaries own shares; (4) number of shares of each class of stock of each bank owned by the bank holding company or its subsidiaries; (5) information concerning the manner in which such shares are owned; (6) name, address, and nature of business of each of the bank holding company's subsidiaries, other than banks, and the manner in which the relationship arises; and (7) such information as the Board may deem necessary or appropriate.

The Board may, in its discretion, extend the time within which a bank holding company shall register and file the requisite statement.

(b) Each bank holding company shall furnish to the Board from time to time such reports as may be required by the Board and in such form and detail as the Board may prescribe. Such reports shall contain such information concerning the bank holding company and its subsidiaries as the Board shall deem necessary to disclose fully the relations among such companies, the effect of such relations upon the affairs of the subsidiary banks, and whether the provisions of this Act have been complied with.

(c) Each bank holding company and each subsidiary thereof shall be subject to such examinations by examiners selected or approved by

the Board as shall be necessary to disclose fully the relations between such bank holding company and its subsidiaries, the effect of such relations upon the affairs of the subsidiary banks, and whether the provisions of this Act or of the Board's orders, rules, or regulations have been complied with; and the examiner making such an examination shall have power to administer oaths and to examine any of the officers, directors, employees, and agents of such bank holding company or subsidiary under oath. The expenses of any such examination may, in the discretion of the Board, be assessed against the bank holding company and, when so assessed, shall be paid by such bank holding company. To the extent that the information contained therein is adequate for the purposes of this section the Board is authorized to use the reports of examination made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation or the appropriate State bank supervisory authority.

SEC. 4. INTERESTS IN NONBANKING ORGANIZATIONS.--(a) Except as otherwise provided in this Act it shall be unlawful for any bank holding company, after two years after the effective date hereof, to own any shares or other securities or obligations of any company other than a bank or to engage in any business other than that of banking or managing or controlling subsidiary banks. The Board is authorized, upon application by a bank holding company, to extend this period from time to time as to such company for not more than one year at a time

if, in its judgment, such an extension would not be detrimental to the public interest. However, nothing herein provided shall be construed to authorize the Board to extend any such period beyond a date five years after the enactment hereof.

(b) The prohibitions in this section shall not apply to shares or other securities or obligations owned or acquired by a bank holding company in any company engaged solely in holding and operating property in which the bank premises are located, or engaged solely in conducting a safe-deposit business, or engaged solely in the business of furnishing managerial, auditing, supervisory, purchasing, and other similar services to such bank holding company and its subsidiaries, or solely in the business of liquidating assets acquired from such bank holding company and its subsidiaries, or in any other company all the activities of which the Board has determined are so closely related to the business of managing, operating, or controlling banks as to be a proper incident thereto.

(c) Nor shall the prohibitions in this section apply to shares or securities or obligations acquired by a bank holding company from any of its subsidiaries which have been requested to dispose of such voting shares, securities or obligations by any Federal or State authority having statutory power to examine such subsidiaries or which have been acquired from such subsidiaries with the prior approval of the Board; but such bank holding company shall dispose of such shares, securities, or obligations within a reasonable time.

If, while such bank holding company owns or controls such shares, securities, or obligations, the Board, after notice and opportunity for hearing, determines that the ownership or control of such shares, securities, or obligations is resulting in the violation or evasion of any of the purposes or provisions of this Act, it may by order require such bank holding company to dispose of all or any part thereof forthwith.

(d) Nor shall the prohibitions of this section apply to shares or other securities or obligations which are held or acquired by a bank, which is a bank holding company, in a fiduciary capacity or which are otherwise lawfully owned by such bank or any of its wholly owned subsidiaries on the effective date of this Act; nor as to any bank holding company shall the prohibitions in this section apply to investment securities of the kinds and amounts eligible for investment by national banks under the provisions of section 5136 of the Revised Statutes. If, while such bank or bank holding company owns or controls such shares, securities or other obligations, the Board, after notice and opportunity for hearing, determines that the ownership or control of such shares, securities or obligations is resulting in the violation or evasion of any of the purposes or provisions of this Act, it may by order require such bank or bank holding company to dispose of all or any part thereof forthwith.

(e) Nor shall the prohibitions of this section apply to shares or other securities or obligations of a company which is registered with

the Securities and Exchange Commission pursuant to the requirements of the Investment Company Act of 1940.

SEC. 5. ACQUISITIONS OF BANK SHARES OR BANK ASSETS.--(a) No plan, undertaking, or agreement by or on behalf of any company which would result in that company becoming a bank holding company, as defined in section 2(a)(1) of this Act, and no plan, undertaking, or agreement by or on behalf of any bank holding company to acquire either directly or indirectly any voting shares of a bank, shall be consummated, effectuated, or completed except with the prior approval of the Board: Provided, however, That nothing herein contained shall be construed to apply to the acquisition by a bank holding company of any additional voting shares of a bank in any case where such bank holding company, prior to such acquisition, owned a majority of the voting shares thereof.

(b) No plan, undertaking, or agreement by or on behalf of any bank holding company or any of its nonbanking subsidiaries to acquire all or substantially all of the assets of any bank shall be consummated, effectuated, or completed except with the prior approval of the Board.

(c) No plan, undertaking, or agreement by or on behalf of a banking subsidiary of a bank holding company to acquire all or substantially all of the assets of any bank shall be consummated, effectuated, or completed except with the prior approval of (1) the

Comptroller of the Currency if the acquiring bank is a national bank or district bank; or (2) the Board if the acquiring bank is a State member bank; or (3) the Federal Deposit Insurance Corporation in the case of any other acquiring bank. Nor shall any State member bank (not including a District bank) which is a subsidiary of a bank holding company, establish any branch within the limits of the city, town or village in which the head office of such bank is located except with the prior approval of the Board.

(d) In determining whether to approve any acquisition subject to paragraphs (a), (b), or (c) of this section consideration shall be given to the financial history and condition of the applicant and the banks concerned; their prospects; the character of their management, the convenience, needs, and welfare of the communities and the area concerned; and whether or not the effect of such acquisition may be to expand the size and extent of a bank holding company system beyond limits consistent with adequate and sound banking and the public interest. The factors stated in this section shall likewise be considered by the Board, the Comptroller of the Currency or the Federal Deposit Insurance Corporation in determining whether to approve an application of any bank, which is a part of a bank holding company system, to establish a branch or branches of such bank.

(e) Before determining whether to approve any acquisition or application pursuant to this section, the Comptroller of the Currency,

the Federal Deposit Insurance Corporation, or the Board, as the case may be, shall notify the bank supervisory authority in the State in which the acquiring or applying bank is located and shall afford such State banking authority a period of thirty days within which to submit a written statement of his views and recommendations as to whether such acquisition or application should be approved. Such statement and recommendation shall be taken into consideration by the Comptroller of the Currency, the Federal Deposit Insurance Corporation or the Board, as the case may be, in determining whether to approve any acquisition or application pursuant to this section, and such statement and recommendation shall be made a part of the record upon which such acquisition or application is approved or rejected.

SEC. 6. BORROWING BY BANK HOLDING COMPANY OR ITS SUBSIDIARIES. -- (a) No bank shall invest any of its funds in the capital stock of (1) a bank holding company of which it is a subsidiary, or (2) a subsidiary of such bank holding company.

(b) No bank shall accept the capital stock of (1) a bank holding company of which it is a subsidiary, or (2) a subsidiary of such bank holding company as collateral security for advances made to any person, partnership, association, or corporation: Provided, however, That any bank may, with the prior approval of the Board, accept such capital stock as a security for debts previously contracted.

(c) No bank shall (1) make any loan or any extension of credit to, or purchase securities under repurchase agreement from, (a) a bank holding company of which it is a subsidiary, or (b) a subsidiary of such bank holding company; or (2) invest any of its funds in the bonds, debentures, or other such obligations of any such bank holding company or subsidiary; or (3) accept the bonds, debentures, or other such obligations of any such bank holding company or subsidiary as collateral security for loans or advances made to any person, partnership, association, or corporation, if, in the case of all such bank holding companies and subsidiaries, the aggregate amount of such loans, extensions of credit, repurchase agreements, investments, and advances against such collateral security will exceed 20 per centum of the capital stock and surplus of such bank. Non-interest-bearing deposits to the credit of a bank shall not be deemed to be a loan or advance to the bank of deposit, nor shall the giving of immediate credit to a bank upon uncollected items received in the ordinary course of business be deemed to be a loan or advance to the depositing bank. Within the foregoing limitations, each loan or extension of credit of any kind or character to such bank holding company or subsidiary shall be secured by collateral in the form of stocks, bonds, debentures, or other such obligations having a market value at the time of making the loan or extension of credit of at least 20 per centum more than the amount of the loan or extension of credit, or of at least 10 per centum more than the amount of the loan

or extension of credit if it is secured by obligations of any State or of any political subdivision or agency thereof: Provided, That no margin of collateral shall be required when such loan or extension of credit is secured by obligations of the United States Government, the Federal Intermediate Credit banks, the Federal land banks, the Federal home loan banks, or the Home Owners' Loan Corporation, or by such notes, drafts, bills of exchange, or bankers' acceptances as are eligible for rediscount or for purchase by Federal Reserve banks.

(d) The provisions of this section shall not apply to (1) any company of the types described in section 4(b) of this Act, or (2) any company whose subsidiary status has arisen out of a bona fide debt to the bank contracted prior to the date of the creation of such status, or (3) any company whose subsidiary status exists by reason of the ownership or control of voting shares thereof by the bank as executor, administrator, trustee, receiver, agent, or depositary, or in any other fiduciary capacity, except where such shares are held for the benefit of all or a majority of the stockholders of such bank.

SEC. 7. SERVICE FEES OR BENEFITS.--The Board is authorized, if in its opinion such action is necessary or appropriate for the protection of depositors or investors and after appropriate notice and opportunity for hearing, to determine the reasonableness of any service, management or similar charge or fee or benefit obtained by a bank holding company or any of its subsidiaries from a subsidiary

bank of such bank holding company, and to order that all or any part of such charges or fees or benefits which it finds to be unreasonable shall be discontinued. It shall be unlawful for such bank holding company or any of its subsidiaries thereafter to assess or obtain any such charge or fee or benefit in contravention of the Board's order.

SEC. 8. RESERVE FUND.--After the effective date of this Act, every corporate bank holding company shall use all its net earnings over and above 6 per centum per annum of the book value of its own shares to accumulate a fund, and every noncorporate bank holding company shall accumulate a fund in accordance with the terms prescribed by the Board, in an amount equal to at least 12 per centum of the aggregate par value of all bank shares owned by it. Such fund shall consist of readily marketable assets and shall be identified in an appropriate manner and kept free and clear of any lien, pledge, or hypothecation of any kind or nature. Such assets may be used by the bank holding company to replace capital of its subsidiary banks and to eliminate losses and depreciation from the assets of such banks, and, with the prior approval of the Board, to increase the capital or surplus of its subsidiary banks, but, except as permitted by the Board, shall not be used by the bank holding company for any other purpose, and any deficiency in such assets resulting from such use shall be replaced in the same manner as above provided.

SEC. 9. REGULATIONS.--The Board shall have the authority to make and issue such rules, regulations, and orders, not inconsistent with the provisions of this Act, as may be necessary to enable it to administer and carry out the purposes of this Act and prevent evasions thereof and it shall likewise have authority to amend, modify, or rescind any such rules, regulations, or orders so made or issued. All powers and functions of the Board prescribed by this Act, other than the issuance, amendment, modification, or rescission of rules, regulations, and orders and the determination of matters of general policy, may be performed through such members of the Board or such officers and employees thereof or such Federal Reserve banks or officers or employees thereof as the Board may deem advisable in order to facilitate the administration of this Act.

SEC. 10. HEARINGS, INVESTIGATIONS, AND COURT REVIEW OF ORDERS.--(a) In addition to the hearings authorized in this Act, the Board also shall have authority to make such investigations as may be necessary to determine whether any proceeding under this Act should be instituted against a particular person or persons, or with respect to a particular transaction or transactions; and the Board shall keep appropriate records of all hearings and investigations.

(b) For the purpose of any hearing or investigation under this Act, any member of the Board, or any officer thereof designated by it, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the

production of any books, records, or other papers which are relevant or material to the inquiry. Such attendance of witnesses and the production of any such papers may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place where such a hearing is being held or investigation is being made.

(c) In case of refusal to obey a subpoena issued to, or contumacy by, any person, the Board may invoke the aid of any court of the United States within the jurisdiction of which such hearing or investigation is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, records, or other papers. And such court may issue an order requiring such person to appear before the Board or member or officer designated by the Board, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. No person shall be excused from attending and testifying or from producing books, records, or other papers in obedience to a subpoena issued under the authority of this Act on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or

forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. Any person who without just cause shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, records, or other papers in obedience to the subpoena of the Board, if in his or its power so to do, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(d) Any person or party aggrieved by any final action of the Board 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 the Board be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Board or upon the Board's secretary at its offices in the city of Washington, and thereupon the 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 the Board shall be considered by the court unless such objection shall have been urged before the Board or unless there were reasonable grounds for failure so to do. The finding of the 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 proceeding before the Board, the court may order such additional evidence to be taken before the Board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The 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, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Board shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification

as provided in section 1254 of Title 28, U.S.C. The commencement of proceedings to review an order of the Board issued under this Act shall not operate as a stay of the Board's order unless the court otherwise orders.

SEC. 11. PENALTIES.--(a) If, after notice and opportunity for hearing, the Board finds that a bank holding company has willfully violated any of the provisions of this Act, or of any rules, regulations, or orders of the Board issued pursuant thereto, or has knowingly permitted or assented to or participated in any such violation by any subsidiary, the Board may issue an order, effective for such period as may be fixed by the order and containing any one or more of the following prohibitions: (i) That such bank holding company shall not pay any salary or other remuneration to any officer or director of the company found by the Board to have willfully participated in such violation or violations and who was made a party to such hearing by the Board; (ii) that no subsidiary bank of such bank holding company shall pay dividends on shares owned by such bank holding company or pay or become liable to pay to such bank holding company or any of its subsidiaries any service, management, or similar charges or fees, or render any specified benefit; and (iii) that such bank holding company shall not directly or indirectly vote the shares owned by it or otherwise participate in the management or control of any subsidiary bank.

(b) Any person who willfully violates any provision of this Act or any rule, regulation, or order issued by the Board pursuant thereto shall upon conviction be fined not more than $10,000 or imprisoned not more than two years, or both. Every officer, director, agent, and employee of a bank holding company shall be subject to the same penalties for false entries in any book, report, or statement of such bank holding company as are applicable to officers, directors, agents, and employees of member banks for false entries in any books, reports, or statements of member banks under section 1005 of Title 18 U.S.C.

SEC. 12. TECHNICAL AMENDMENTS.--(a) The last sentence of the sixteenth paragraph of section 4 of the Federal Reserve Act, as amended, is amended by striking out all of the language therein which follows the colon and by inserting in lieu thereof the following: "Provided, That whenever any member banks within the same Federal Reserve district are subsidiaries of the same bank holding company within the meaning of the Bank Holding Company Act of 1949, participation in any such nomination or election by such member banks, including such bank holding company if it is also a member bank, shall be confined to one of such banks, which may be designated for the purpose by such bank holding company."

(b)(1) The eighteenth paragraph of section 9 of the Federal Reserve Act is amended by striking out the last sentence of such paragraph.

(2) The twenty-first paragraph of section 9 of the Federal Reserve Act is repealed.

(c) Subsection (c) of section 2 of the Banking Act of 1933, as amended, is repealed.

(d) Section 5144 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 5144. In all elections of directors, each shareholder shall have the right to vote the number of shares owned by him for as many persons as there are directors to be elected, or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and in deciding all other questions at meetings of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him; except that (1) this shall not be construed as limiting the voting rights of holders of preferred stock under the terms and provisions of articles of association, or amendments thereto, adopted pursuant to the provisions of section 302 (a) of the Emergency Banking and Bank Conservation Act, approved March 9, 1933, as amended, (2) in the election of directors, shares of its own stock held by a national bank as sole trustee, whether registered in its own name as such trustee or in the name of its nominee, shall not be voted by the registered owner unless under the terms of the trust the manner in which such shares shall be voted may be determined

by a donor or beneficiary of the trust and unless such donor or beneficiary actually directs how such shares shall be voted, and (3) shares of its own stock held by a national bank and one or more persons as trustees may be voted by such other person or persons, as trustees, in the same manner as if he or they were the sole trustee. Shareholders may vote by proxies duly authorized in writing; but no officer, clerk, teller, or bookkeeper of such bank shall act as proxy; and no shareholder whose liability is past due and unpaid shall be allowed to vote. Whenever shares of stock cannot be voted by reason of being held by the bank as sole trustee, such shares shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite percentage of shares."

(e) The second paragraph of section 5211 of the Revised Statutes is amended by striking out the second sentence of such paragraph.

(f)(1) Subsection (d) of section 26 of the Internal Revenue Code, as amended, is amended to read as follows:

"(d) BANK HOLDING COMPANIES.--In the case of a bank holding company (as defined in the Bank Holding Company Act of 1949), the amount of the earnings or profits which the Board of Governors of the Federal Reserve System certifies to the Commissioner has been devoted by such company during the taxable year to the acquisition of readily marketable assets in compliance with section 8 of the Bank Holding Company Act of 1949. The aggregate of the credits allowable under this subsection for all taxable years shall not exceed the amount

required to be devoted under such section 8 to such purposes, and the amount of the credit for any taxable year shall not exceed the adjusted net income for such year."

(2) Subdivision (3) of subsection (b) of section 27 of the Internal Revenue Code, as amended, is amended to read as follows:

"(3) The bank holding company credit provided in section 26 (d)."

(3) Section 112 (b) of the Internal Revenue Code is amended by inserting at the end thereof the following:

"(11) DISTRIBUTIONS AND EXCHANGES PURSUANT TO BANK HOLDING COMPANY ACT OF 1949.--

"(A) Distributions.--In the case of a distribution of property not permitted to be owned by a bank holding company under the provisions of section 4 of the Bank Holding Company Act of 1949, held by a bank holding company on the date of enactment of such Act or thereafter legally acquired pursuant to such Act, made pursuant to an order of the Board of Governors of the Federal Reserve System authorizing, approving or directing such distribution as effectuating the policy of the Bank Holding Company Act of 1949, to a shareholder in such bank holding company as defined in such Act, without the surrender by such shareholder of stock or securities in such company, no gain to the distributee shall be recognized.

"(B) Exchanges.--No gain or loss shall be recognized if a bank holding company, pursuant to an order of the Board of

Governors of the Federal Reserve System authorizing, approving or directing such exchange as effectuating the policy of the Bank Holding Company Act of 1949, transfers property not permitted to be owned by a bank holding company under the provisions of section 4 of such Act, to a corporation organized to receive such property solely in exchange for all of the stock of such transferee corporation and such stock is distributed forthwith in a distribution subject to the provisions of subparagraph (A).

"(C) Application of Subparagraphs (A) and (B).--The provisions of subparagraphs (A) and (B) of this paragraph shall not apply unless the Board of Governors of the Federal Reserve System shall certify that such distribution or exchange was of property not permitted to be owned under the provisions of section 4 of the Bank Holding Company Act of 1949 and was necessary or appropriate to effectuate the provisions of such Act. In such certification, the Board of Governors of the Federal Reserve System shall specify and itemize the stock, securities or other property so distributed or exchanged."

(4) Section 113 (a) of the Internal Revenue Code is amended by inserting at the end thereof the following:

"(23) PROPERTY ACQUIRED IN DISTRIBUTION PURSUANT TO BANK HOLDING COMPANY ACT OF 1949.--

"(a) If property other than stock or securities is acquired in a distribution subject to the provisions of section 112 (b)(11), then the basis of such property shall be the same as it would be in the hands of the company distributing such property; and an amount equal to the adjusted basis which such property had in the hands of such distributing company at the time of such distribution shall be applied against and reduce the adjusted basis of the stock in respect of which the distribution was made, and if in excess of such basis, such excess shall be taxable in the same manner as a gain from the sale or exchange of property.

"(b) If stock or securities is acquired in a distribution subject to the provisions of section 112 (b)(11), then the basis in the case of the stock in respect of which the distribution was made shall be apportioned, under regulations prescribed by the Commissioner with the approval of the Secretary, between such stock and the stock or securities acquired in such distribution.

"(c) Where stock or securities and property other than stock or securities are acquired in a distribution subject to the provisions of section 112 (b)(11), subparagraph (a) of this paragraph shall be applied before subparagraph (b).

"(d) If stock is acquired by a bank holding company in an exchange subject to the provisions of section 112 (b)(11)(B),

then the basis of such stock shall be the same as in the case of the property exchanged; and when, in a distribution subject to the provisions of section 112 (b)(11)(A), such stock is acquired by a distributee of such company, then the basis shall be determined as though the stock were property other than stock or securities.

"(e) If property is acquired by a corporation in a transfer from a bank holding company subject to the provisions of section 112 (b)(11)(B), then the basis of such property shall be the same as it would be in the hands of such bank holding company."

(g)(1) Paragraph 4 of subsection (c) of section 3 of the Investment Company Act of 1940 is amended to read as follows:

"(4) Any bank holding company which is registered with the Board of Governors of the Federal Reserve System pursuant to the Bank Holding Company Act of 1949, or any banking subsidiary or any other subsidiary thereof which is exempt from section 4 by reason of the provisions of subsection (b) thereof as defined in said Act."

(2) Paragraph (11) of subsection (a) of section 202 of the Investment Advisers Act of 1940 is amended by changing the words "or any holding company affiliate, as defined in the Banking Act of 1933" to read "or any bank holding company, as defined in the Bank Holding Company Act of 1949, or any banking subsidiary or any other subsidiary

thereof which is exempt from section 4 by reason of the provisions of subsection (b) thereof as defined in said Act".

(h) Subsection (b) of section 2 of the Banking Act of 1933, as amended, is amended by adding the following paragraphs:

"(4) which owns or controls, directly or indirectly, either a majority of the shares of capital stock of a member bank or more than 50 per centum of the number of shares voted for the election of directors of any one bank at the preceding election, or controls in any manner the election of a majority of the directors of any one bank; or

"(5) for the benefit of whose shareholders or members all or substantially all of the capital stock of a member bank is held by trustees."

SEC. 13. RESERVATION OF RIGHTS TO STATES.--The enactment by Congress of the Bank Holding Company Act of 1949 shall not be construed as preventing any state, to an extent not inconsistent with this Act, from exercising the same power and jurisdiction which it now has with respect to banks, bank holding companies and subsidiaries thereof.

SEC. 14. SEPARABILITY OF PROVISIONS.--If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.