Mr. Eccles

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

Office Correspondence

Date April 3, 1950.

To Board of Governors

Subject: Proposed amendments to Bank Holding Company Bill.

From Mr. Vest

I attach a memorandum which we have prepared, setting forth the various amendments, with comments thereon, to the Bank Holding Company Bill which have been proposed by the Comptroller of the Currency, the American Bankers Association, and Transamerica Corporation. A memorandum regarding the proposals of the Morris Plan group is now being prepared. The staff of the Subcommittee of the Senate Banking and Currency Committee which is working on this legislation would like very much to know the views of the Board on these various proposed amendments. This memorandum is submitted, therefore, as a basis for a discussion of the subject by the Board.

Attachment.

PROPOSED AMENDMENTS TO THE BANK HOLDING COMPANY BILL

The hearings on the Bank Holding Company Bill, S. 2318, began before a subcommittee of the Senate Banking and Currency Committee on March 1, 1950, and continued, with interruptions, until March 23rd, when the hearings were closed. During the hearings, various specific amendments to the bill were proposed by the Comptroller of the Currency, the American Bankers Association, and Transamerica Corporation. There is set forth below the substance (but not the text) of these various proposed amendments, together with comments on each of them.

AMENDMENTS PROPOSED BY THE COMPTROLLER OF THE CURRENCY

Definition of Bank Holding Company

Proposed Amendment. - While the entire proposal in this regard is not specifically stated, it contemplates that there be substituted for that part of the definition in section 2(a) of the bill extending automatic coverage to all companies owning 15 per cent or more of the voting shares of the specified number of banks, a provision such as the definition in the present law of "holding company affiliate". The latter definition is predicated upon the ownership or control of a majority of the stock of a bank or of more than 50 per cent of the number of shares voted at the last election of directors, or other control of a bank's directorate. To this would be added a provision that any company which was a bank holding company on a specified prior date would be a bank holding company with respect to all banks in which it owned or controlled stock, and that such holding company status would continue so long as any bank stock was owned or controlled.

Comment. - One of the principal objections to the existing law is that the definition of "holding company affiliate" is not broad enough to reach all holding company relationships. Ownership or control of 50 per cent of the stock of a bank is entirely unrealistic as the basic test for determining whether a holding company relationship exists because it is common knowledge that one company may exercise a controlling influence over another company without owning or controlling a majority of its stock. The continuation of the 50 per cent test as the basic test would facilitate evasion of the law; and this would be true even though the Comptroller's proposal may contemplate that the agency administering the law would have some discretionary authority to determine that a company was a holding company because it controlled banks in some manner other than through the ownership or control of a majority of their stock. On the other hand, effective regulation would not appear to require, as is apparently proposed by the Comptroller, that a bank should be or continue to be a subsidiary of a holding company which formerly controlled it, merely because the holding company

continues to own a few shares of stock of the bank. Accordingly, it does not seem desirable to agree to the definition proposed by the Comptroller, unless the Board should wish to do so as a matter of compromise to further the possibilities of enactment of the bill; and, even in that event, it would seem desirable that there be some reduction in the percentage of ownership which would make a prima facie case of a holding company relationship.

Area Limitation on Bank Holding Company Expansion

Proposed Amendment. - Here again the proposal is not too specific. Apparently, however, it is desired that a definite ceiling on bank holding company expansion be incorporated in section 5(d) of the bill. This proposal would prohibit bank acquisitions or the establishment of branches by controlled banks where the result would bring about bank holding company control of more than a certain percentage of the banking offices or bank deposits in a specific geographical area, such as a Federal Reserve district. The bill in its present form would authorize the Board to prevent bank holding company expansion beyond a point "consistent with adequate and sound banking and the public interest".

Comment. - A limitation of the kind suggested, if made sufficiently restrictive to have any material effect, would run the risk of preventing further expansion of a bank holding company in all circumstances, notwithstanding the fact that the public interest might sometimes make some expansion in the area desirable. Moreover, the proposal would not affect or control concentrations of a bank holding company group in particular areas where they might well be contrary to the public interest. Accordingly, while it is assumed that the Comptroller does not contemplate eliminating the other provisions of the bill regarding expansion, such a blanket limitation as is suggested would not seem to be desirable. However, the proposal would be more restrictive than is the present bill, and, if the Committee should feel it necessary to put in such a restrictive provision, there appears to be no vital reason why the Board should object.

Diffusion of Administrative Responsibility

Proposed Amendment. - It is suggested that there should be greater diffusion of administrative power concerning bank holding company expansion, apparently meaning that section 5 of the bill should be amended so that, instead of approval by the Board, the approval of the Comptroller would be required in connection with the acquisition by a bank holding company of stock or assets of a national bank, and the approval of the FDIC would be required in connection with such acquisitions of stock or assets of nonmember insured banks.

Comment. - A diffusion of responsibility such as the Comptroller suggests would not be conducive to efficient or uniform administration. The fact that bank holding company systems frequently involve banks of different classes makes it very important to have a centralized authority along the lines of the present bill. The confusion that might well result from this proposal would seem to more than offset any possible advantages. The bill as presently written provides for diffusion of authority where practicable, but to go further than this would result in nonuniform or conflicting policies. This proposal therefore is not desirable.

Exemption from Bank Holding Company Definition

Proposed Amendment. - Section 2 of the bill authorizes the Board to exempt from the bill a bank holding company which does not "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", etc., that it be subject to the bill's provisions. As interpreted by the Comptroller, this authority would authorize the Board, in particular cases, to exempt companies even though they unquestionably control the requisite number of banks. He opposes such authority and suggests an amendment to confine the Board's authority to cases where it finds that the bank holding company does not in fact exercise a controlling influence over the requisite number of banks.

Comment. - While it is not altogether clear just how much practical difference this change would make, it seems intended to be restrictive and it might curtail the Board's authority in permitting exemptions of holding companies where there was no need from the standpoint of the public interest that they be subject to the Act. It is believed that it is unnecessary to make the bill more restrictive in this regard and that it would be undesirable to agree to this proposed amendment.

Organized Groups of Persons

Proposed Amendment. - In further elaboration of the bill's definition of "bank holding company", section 2(c) of the bill defines a "company" to include, among other things, banks, corporations, partnerships, associations, "or any similar organized group of persons". While offering no specific substitute language, the Comptroller proposes that the quoted language be limited so as to prevent what he considers to be potentially excessive coverage.

Comment. - The present language to which the Comptroller objects was carefully considered and is believed to be reasonably satisfactory. It is less inclusive than the provisions of the earlier bank holding company bill in the 80th Congress, S. 829. The Comptroller has suggested no specific substitute and it seems desirable that the present language be permitted to stand.

Shares of Mutual Savings Banks or
Shares Held in a Fiduciary Capacity

Proposed Amendment. - Section 2(f) of S. 2318 provides that in applying the bill's definitions all voting shares of banks acquired or held by mutual savings banks and all voting shares of banks or other companies acquired or held by a bank in a fiduciary capacity shall be excluded from consideration, except where such shares are acquired or held for a majority of the persons beneficially interested in the bank or where the Board finds that any such acquisition or holding results in a violation of the bill's provisions. He states that the present language, in effect, would make the existence of a bank holding company status dependent upon fortuitous circumstances as they might develop from day to day. Consequently, considerable uncertainty would arise in applying the definition of "bank holding company". The Comptroller suggests that appropriate language be used to correct this, without changing the basic intent of the provision.

Comment. - There would seem to be no objection to changing the bill so that, in effect, it would provide that mutual savings banks would not be classified as bank holding companies, and that no company shall be a bank holding company as a result of a bank holding stock in other banks in fiduciary capacities, with the exceptions now stated in the bill. This would merely be a rephrasing of the bill to accomplish what is intended and to eliminate the undesirable feature indicated by the Comptroller.

Divestment of Companies Closely Related to the Banking Business

Proposed Amendment. - The proposal in this regard relates to section 4(b) of the bill authorizing the Board to permit the retention by bank holding companies of nonbanking companies whose business is "so closely related to the business of managing, operating, or controlling banks as to be a proper incident thereto". The Comptroller suggests that this provision be eliminated or curtailed so as definitely to prevent bank holding companies from exercising a banking service or function through controlled companies, since, in this manner, they could establish "a tremendous competitive advantage over independent banks". However, he offers no specific amendment.

Comment.- The Comptroller's apprehension that the bill in this regard might result in competitive advantages to holding companies may have some merit, at least theoretically. For example, as he points out, an extensive consumer credit business might be operated by a bank

holding company through widespread subsidiary institutions. It would seem desirable, however, to retain the provision but with appropriate safeguards. A precise listing in the statute of all organizations which might be regarded as being closely related to banking would probably be impractical. A workable solution might be one which would indicate that the words, "proper incident", shall include only those businesses which operate only in the same localities as the banks in the holding company group.

Disposal of Securities

Proposed Amendment. - Section 4(d) of the bill exempts from the divestment provisions, shares or other obligations held by a bank which is a bank holding company or by its subsidiaries and which were lawfully owned on the day on which the bill would become law. While he suggests no specific amendment, the Comptroller suggests that this exception be deleted, especially as there is no similar exception covering a bank holding company which is not a bank.

Comment. - The provision criticized by the Comptroller in this regard was put in the bill to take care of a particular situation, namely, the Trust Company of Georgia, which would be a bank holding company under the bill and which lawfully holds a substantial amount of stock of other companies. In favor of retaining the criticized provision, it may be observed that since the banking laws do not require divestiture of stocks lawfully acquired, such an investment has not been regarded as detrimental. It seems clear, however, that any extension of the exemption to holding companies which are not banks would be going too far. While it is difficult to make a strong case against the Comptroller's suggestion to delete the provision in question, it is believed the suggestion should not be accepted.

Five Per Cent Provision

Proposed Amendment. - The exemption in section 4(e) of the bill permitting a limited 5 per cent holding by a bank holding company of shares in nonbanking companies is considered by the Comptroller to be contrary to the purpose of the bill. If the exemption is retained, he suggests an amendment which would place "some limitation as to percentage of the holding company's total assets which could be invested in all such nonbanking companies combined, including investments in the form of voting securities and other obligations". It is presumed that the proposal is intended to have a further restrictive effect upon the amount of nonbanking securities which could be owned under this provision of the bill.

Comment. - The Comptroller's objection is based upon the view that the provision in question might enable a large bank holding company virtually to dominate any number of nonbanking companies. While

this seems unlikely, a further tightening of the provision would seem unobjectionable. It is doubtful whether the Comptroller's suggested correction would be adequate to meet his objection, but this might be done by providing that a bank holding company could not own more than five per cent of any class of securities of another company.

Securities Acquired in Satisfaction of Debts Previously Contracted

Proposed Amendment. - It is proposed that there be added to section 4, concerning the divestment of nonbanking interests of bank holding companies, an exception covering stock or other obligations acquired by a bank holding company which is a bank in satisfaction of debts previously contracted.

Comment. - An amendment such as that suggested would seem to be desirable.

Repurchase Agreements

Proposed Amendment. - This proposal is to amend section 6(c) of the bill so as to make the restriction concerning repurchase agreements between controlled banks and their bank holding companies or its other subsidiaries applicable not only to securities, but to other assets or obligations as well.

Comment. - The present language follows that of section 23A of the Federal Reserve Act. The Comptroller's proposal would tighten this to some extent. However, there would appear to be no objection to so doing if the Committee feels that it is desirable.

Technical Amendment to Section 6(c)

Proposed Amendment. - The proposal in this regard is merely to alter punctuation and thereby clarify the meaning of the section. This would be accomplished by replacing with commas the semicolons at the end of clauses (1) and (2).

Comment. - There is no objection to a clarifying amendment such as that here suggested.

Restriction on Payment of Dividends

Proposed Amendment. - The Comptroller proposes that section 7 of the bill be amended to include supervisory authority to restrict the payment of dividends by subsidiary banks where the need for such action is indicated in particular situations.

Comment. - This proposal raises a rather important question of policy, especially as it would give greater authority to the supervisory agency. Such a proposal might well increase the opposition of those who would be regulated. However, if the Committee should deem it desirable, there appears to be no reason for objection.

Use of Reserve Fund

Proposed Amendment. - Among other things, section 8 of the bill provides that the reserve fund required to be maintained by bank holding companies may, with the prior approval of the Board, be used to increase the capital or surplus of subsidiary banks. The Comptroller proposes that this provision be amended so as to make unnecessary the Board's approval for such use of the reserve fund.

Comment. - The provisions of the bill in this regard follow the language now contained in section 5144 R.S.; but there would appear to be no very serious objection to making the suggested change if it should be considered important.

AMENDMENTS PROPOSED BY AMERICAN BANKERS ASSOCIATION

Exemption Pending Board Determination of Holding Company or Subsidiary Status

Proposed Amendment. - Section 2 of the bill provides that upon application, the Board may declare that a bank holding company or a subsidiary of a bank holding company shall not be subject to the bill's provisions where it is found, after hearing, that there does not exist such a controlling influence with respect to management or policies as to necessitate regulation in the public interest. It is proposed that these provisions be amended so that any such applicant for exemption would not be subject to the bill pending Board disposal of the application. The amendment would also specify that the Board should conclude its action on the application within a "reasonable time".

Comment. - This proposed change is based upon a similar provision in the Public Utility Holding Company Act of 1935. While it is conceivable that a company or a subsidiary could take advantage of this period of exemption to expand further without the necessity for obtaining approval under the Act, such cases, it is believed, would be rare. Accordingly it is felt that it would be better to offer no objection to this proposal. Likewise, there seems to be no reasonable basis for objecting to the requirement that the Board act promptly on applications for exemption, although such a provision would seem to be unnecessary, especially in view of a similar requirement in the Administrative Procedure Act.

Exemption of Noninsured Banks

Proposed Amendment. - This proposal would exempt any State nonmember uninsured bank from the definition of "banks" in section 2(b) of the bill. Thus a bank would not be a banking subsidiary under the bill unless it were a member bank or insured bank.

Comment. - A brief and complete answer to this proposal is that bank holding company groups may include noninsured banks as well as insured banks. There can be no sound reason for restricting the application of the bill to only one class of banks. Obviously, if the proposal were adopted, a bank holding company could extend its system in an unlimited manner merely through the ownership of shares in noninsured banks. It is pertinent here to note that one bank holding company system, apparently in order to avoid regulation under the present law, has caused State member banks to withdraw from membership as soon as the holding company acquired control.

Board's Authority to Prevent Evasions

Proposed Amendment. - Sections 2(f), 4(c), and 4(d) contain certain exemptions concerning bank shares held by mutual savings banks or held by a bank in a fiduciary capacity and also with respect to securities passed by a bank to its bank holding company pursuant to an order of a Federal or State bank supervisory agency and other types of securities which may continue to be held by a holding company notwithstanding the requirement for divorcement of nonbanking assets. In all of these cases the Board is authorized, after hearing, to prevent these exemptions from being used to violate or evade other provisions of the bill. It is proposed that this authority in the Board be eliminated.

Comment. - There is a clear necessity for some appropriate method to prevent evasions arising from abuse of exemptions. Otherwise, the various exemptions should be less liberal, and it would be necessary to reconsider the scope of the provisions of the bill in question. The principle has long since been established judicially that Congress need not anticipate all possible situations but that safeguards may be provided through the delegation of administrative authority to the agent chosen by Congress to enforce the law.

Requirement of Information by Board

Proposed Amendment. - Clause (7) of section 3(a) provides that the Board may call for such information as it deems "necessary or appropriate" in the registration statements required to be filed by all bank holding companies. It is proposed that this clause (7) be eliminated so that only the information enumerated in the preceding part of section 3(a) need be filed by the holding company. An amendment is also proposed to section 3(b) of the bill authorizing the Board to require periodic reports from bank holding companies. While technical in nature, the effect of this latter proposal would be to restrict the Board somewhat in calling for information bearing upon the question of compliance with the bill.

Comment. - An intelligent administration of law requires that relevant information be made available. This will not be accomplished by limiting the information that will be available to specific classes, and by failing to provide for unforeseen needs. While the proposed amendments to section 3(b) of the bill may not now appear to be of material consequence, their enactment would constitute a legislative history which might well prove restrictive on the Board in procuring information necessary to the effective fulfillment of its responsibilities.

Extension of Time for Registration

Proposed Amendment. -Section 3 of the bill now provides that the 90-day period in which a bank holding company must register and file the requisite statement may be extended by the Board in its discretion. This proposed amendment would prevent any such extensions by the Board from exceeding a period of one year.

Comment. - If the Committee should feel that it is desirable, there would appear to be no reason for objecting to this proposal.

Use of Reports of Other Agencies

Proposed Amendment. - Section 3(c) of the bill providing for the examination of bank holding companies and their subsidiaries also provides that the Board "is authorized to" use examination reports of other bank supervisory agencies. It is proposed that there be substituted for the above quoted phrase the word "may".

Comment. - The change here proposed would not appear to make any change in meaning. Presumably, it is intended that the Board should be unable to use the examination reports of other agencies if the particular agency concerned should object, but this would seem to be the only reasonable interpretation of the bill as presently written. In any event, there would be no objection to the suggested change in language.

Consent for Examination of State Banks

Proposed Amendment. -There would be added to section 3(c) of the bill a provision prohibiting the Board from examining any State nonmember insured bank without the prior consent of the FDIC.

Comment. - The Board has already suggested an amendment which would require that it obtain the prior consent of the FDIC or of the appropriate State bank supervisory authority, as the case might be, for examinations of nonmember insured and nonmember noninsured banks. The ABA's proposal is not objectionable but does not go far enough because they would exclude nonmember noninsured banks from coverage under the bill. For reasons heretofore stated, it is felt that the bill should apply to both insured and noninsured banks. Therefore, the Board's suggested amendment is the one that should be adopted.

Companies Incidental to the Banking Business

Proposed Amendment. - Section 4(b) of the bill authorizes the Board, by determination, to exempt from the divestment provisions, bank holding company ownership in companies whose activities are closely related to banking and a proper incident thereto. This proposed amendment would specifically require such Board determinations to be "uniform" for all bank holding companies.

Comment. - There is, of course, no objection to the basic idea contained in this proposal. However, as the facts of the different cases that will arise will vary widely, necessitating a case-by-case treatment in almost all instances, a universal rule of thumb such as that suggested might well be conducive to the kind of injustice which could otherwise be avoided. Such a requirement for unqualified uniformity might turn out to be impractical and therefore seems undesirable. However, the point is not a particularly important one.

Holding of Investments by Nonmember State Banks

Proposed Amendment. - It is proposed that section 4(d) of the bill be amended to include among the permissive nonbanking investments of a bank holding company which is a State nonmember bank, any shares or investments which would be lawful under State law.

Comment. - This proposed amendment is identical with the one in this regard recommended by the Board.

Board's Authority with Respect to Five Per Cent Investments

Proposed Amendment. - In section 4(e) of the bill the 5 per cent exemption from the divestment requirements would be amended so as to restrict the Board's discretionary power to prevent the use of such exemption for evasion purposes to situations involving bank holding companies' ownership in investment companies, rather than in both investment companies and other companies, as now provided.

Comment. - Although it is unlikely that the Board would have many occasions to use the authority which this proposal would eliminate, such authority should be in the bill for use when necessary as a safeguard against possible abuse. As stated previously herein with respect to similar provisions, authority is clearly desirable to prevent exemptions from being a source of evasion.

Acquisition of Bank Assets by Bank Holding Companies Which Are Banks

Proposed Amendment. - At present, section 5 of the bill requires the prior consent of the Board for the acquisition of bank assets by a bank holding company or its nonbanking subsidiaries. The proposed amendment would provide that if the bank holding company was a national bank it would be required to obtain the approval of the Comptroller of the Currency, rather than the Board, before acquiring the assets of another bank. If the holding company was an insured nonmember bank, the approval of the FDIC, rather than the Board, would be required.

Comment. - As in the case of a somewhat similar amendment proposed by the Comptroller of the Currency, this proposal would call for a greater diffusion of administrative authority among the Comptroller, the FDIC, and the Board. The comment with respect to the Comptroller's proposed amendment is equally applicable here, as both proposals are objectionable. However, the proposal here is apparently not as broad as that of the Comptroller.

Intracity Branches

Proposed Amendment. - The amendment in this regard would strike from section 5(c) of the bill the provision which would require prior approval of the Board for a State member subsidiary bank of a bank holding company to establish any branch in its head office city.

Comment. - The Board has already considered and rejected a proposal of this character. Under existing law, national banks and nonmember insured banks are required to obtain the consent of the Comptroller of the Currency and the FDIC, respectively, before establishing either intracity or out-of-town branches. State member banks are required to obtain the Board's consent only in connection with out-of-town branches. The provisions of the bill here in question would simply give to the Board the same authority with respect to intracity branches of subsidiary State member banks as the other agencies now have with respect to such branches of national and nonmember insured banks. There is no justification for leaving a loophole permitting expansion of holding company groups through the establishment of intracity branches by State member banks.

Criterion for Considering Expansion

Proposed Amendment. - In determining whether to approve bank holding company acquisitions, section 5(d) of the bill requires the supervisory agency concerned to consider certain factors, one of

which would be "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 in the public interest". This proposed amendment would delete from the bill this standard for administrative action.

Comment. - The provision of the bill here proposed to be deleted is the only one dealing specifically with expansion of a bank holding company in a manner contrary to the public interest or adequate and sound banking. The bank holding company bill S. 829, in the 80th Congress, contained in its preamble some of the ideas expressed by the language in question, and in addition, contained a similar criterion much more specifically stated. The present provision is in the nature of a compromise in deference to conflicting views. Elimination of the present provision would remove from the bill the only statement of one of the bill's principal objectives. It is clear that the provision should not be removed.

Action in Contravention of State Law

Proposed Amendment. - Section 5(e) of the bill requires Federal supervisory consideration of recommendations of the appropriate State authority on the question whether to approve acquisitions by bank holding companies or by subsidiary banks. A proposed amendment to this section would prohibit Federal supervisory approval of such acquisitions "if the effect of such approval will be in contravention of any State law".

Comment. - The Board has already proposed an amendment which would carry out the general purpose of this proposal. While there is no particular objection to the ABA's proposal, the language of the Board's amendment is more specific and there seems to be no particular reason for not using the Board's language. However, either language would probably do the job.

Service Fees or Benefits

Proposed Amendment. - The proposal with respect to this matter would strike from the bill all of section 7 extending to the Board discretionary authority to prevent payment by a subsidiary bank of unreasonable service, management, or similar charges or fees to its bank holding company or any other subsidiary of the bank holding company.

Comment. - It is interesting in this connection to note that the Comptroller's suggestion regarding this provision is, instead of

striking it out, to broaden it to include authority over the amount of dividends paid. Some bank holding companies charge service and other fees against their subsidiary banks, and the probability is not at all remote that a bank holding company might charge excessive service fees in order to obtain funds to pay dividends on its own shares. A common criticism of holding companies in various fields in the past has been that they have taken excessive amounts from their subsidiaries through service fees or other similar means. The proposal should not be favorably considered.

Investigations by the Board

Proposed Amendment. - Among other things, section 10 of the bill authorizes the Board to make investigations in order to determine those cases in which it should institute proceedings in order to execute the responsibilities placed in it by the bill. It is proposed to delete entirely this investigatory authority. In furtherance of this proposal, other appropriate technical amendments to section 10 are proposed.

Comment. - Unless the power to conduct investigations remains in the bill, it would be virtually impossible in some cases to determine whether or not a particular company constitutes a bank holding company as the bill defines that term and, therefore, one subject to the bill's regulatory provisions. Moreover, in other respects, the power to examine bank holding companies and their subsidiaries would not serve as a substitute for investigations. In some instances the information necessary to determine statutory compliance could not be found entirely in the books and records of a bank holding company or its subsidiaries. The investigatory authority should be retained.

Criminal Penalty for Refusal to Obey a Subpena

Proposed Amendment. - This proposed amendment would delete from section 10(c) of the bill the criminal penalty for failure to obey a Board subpena issued in connection with any hearing pursuant to the bill's provisions.

Comment. - A similar provision in the FDIC bill was eliminated during the considerations of that measure by the Senate Banking and Currency Committee. It is understood that this was done at the suggestion of the Department of Justice. The particular provision in question probably is not essential and its deletion would be unobjectionable.

Judicial Review

Proposed Amendment. - Section 10(d) of the bill contains the provisions for judicial review of Board action. Under the proposed amendment in this regard, the findings of the Board as to the facts involved in a particular hearing would no longer be conclusive if supported by substantial evidence, and the reviewing court would be given specific jurisdiction to examine into all questions of fact as well as all questions of law. In addition, the proposed amendment would appear to authorize the reviewing court directly to consider any additional evidence which it might order to be taken in a given case upon respondent's application.

Comment. - The accepted practice evidenced by innumerable acts of Congress is that, in the review of administrative action, the courts will not try the cases de novo and the administrative findings will not be reversed where supported by substantial evidence. This is the view expressed in the Administrative Procedure Act. If there is to be a judicial trial de novo, there would appear to be no substantial reason for providing for administrative proceedings in the first place. In this regard, it is significant to note that the United States Supreme Court has on more than one occasion recognized that the judiciary is not so well equipped as the administrative agency concerned to deal with highly specialized and technical problems similar to those which would arise under this bill. The proposal would also provide for the taking of evidence in some cases by the reviewing court. This would incorporate in the bill a very unusual practice and one for which there would appear to be no justification. The Board has indicated that, if after onsidering the matter the Committee feels that some change is necessary to protect persons adversely affected under the bill, there would be no objection to adding language which in effect would make available the judicial review provisions of the Administrative Procedure Act. If this were to be done, however, the provision for trial de novo should certainly be eliminated.

Reservation of Rights to States

Proposed Amendment. - At present, section 13 of the bill provides that its enactment "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." In lieu of this language, a substitute provision is proposed which would provide that

the bill's enactment "shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies and subsidiaries thereof".

Comment. - Unless it is intended that in the case of conflict between the Federal law and the State law, the latter should prevail, then the words "to an extent not inconsistent with this Act" should remain in the bill.

AMENDMENTS PROPOSED BY TRANSAMERICA CORPORATION

Definition of Bank Holding Company

Proposed Amendment. - The definition of "holding company affiliate" contained in the present law would be substituted for the definition of "bank holding company" contained in section 2 of the bill, except that all insured banks would be covered, whereas the present law applies only to member banks of the Federal Reserve System. The essence of the definition in the present law is control of 50 per cent of the stock of a bank or 50 per cent of the stock voted at the preceding election, or control in any other manner of the election of a majority of the bank directors; and this would be retained by the proposed amendment.

Comment. - The proposed amendment would be entirely unsatisfactory because it would retain 50 per cent ownership or control of the stock of banks as the basic test for determining whether holding company relationships exist and would not deal adequately with those cases in which holding companies exercise a controlling influence over banks without owning or controlling a majority of their stock. One of the principal purposes of the proposed legislation is to correct the obviously inadequate definition now contained in the law, and the Transamerica proposal would do nothing in this direction except to make the law apply to the control of insured nonmember banks as well as member banks.

Interests in Nonbanking Organizations

Proposed Amendment. - The proposal here is to eliminate completely from the bill the requirement in section 4 of the bill for the divorcement of nonbanking assets by bank holding companies.

Comment. - The proposed deletion of section 4 would remove a major objective of the bill and would continue to permit bank holding companies to blend with the banking business a wide variety of other businesses in a virtually unrestricted manner. The bill in large part is built on the proposition that the mixture of banking and nonbanking businesses through the holding company device is contrary to fundamental banking concepts and the public interest. It is interesting to observe that the Comptroller of the Currency would favor an even more strict provision with respect to the divorcement of nonbanking interests by bank holding companies.

Acquisition of Bank Shares or Bank Assets

Proposed Amendments. - A number of changes are suggested here. Authority to approve acquisitions by bank holding companies of shares of banks as well as acquisitions by a holding company or its nonbanking subsidiaries of the assets of banks, which authority is vested by section 5 of the bill in the Board, would, by this proposal, be diffused among the Comptroller of the Currency, the Board, and the Federal Deposit Insurance Corporation, according to the nature of the bank to be acquired. There would be no necessity for approval of the purchase of bank stock by a bank holding company unless, as a result, it would own 25 per cent or more of the bank. The provision requiring the consent of the Board for the establishment of a branch by a subsidiary State member bank in the same city as the head office would be eliminated. There would also be eliminated from the bill the requirement that the appropriate supervisory authority, in passing upon proposed expansion by a bank holding company or its banking subsidiaries, consider whether "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 remaining standards (financial condition, management and community need) would be applicable in case of similar approvals for all banks under supervision, whether or not they are part of a holding company group.

Comment. - Most of these proposed changes are the same or similar to those proposed by the A.B.A. and discussed above. For the reasons there stated, it is believed that such proposals are not desirable and should not be incorporated in the bill.

Service Fees or Benefits

Proposed Amendments. - The authority given the Board by section 7 of the bill to regulate service fees or similar benefits obtained by a bank holding company from subsidiary banks would be diffused among the three bank supervisory agencies, according to the nature of the banks involved. Also, whereas the bill now authorizes the regulation of such benefits when necessary "for the protection of depositors or investors", the proposal would eliminate the words "or investors", leaving it merely "for the protection of depositors".

Comment. - For reasons which have been stated in connection with other proposed amendments concerning the further diffusion of administrative authority under the bill, it is believed that the

proposal here in question is equally objectionable. As a practical matter and in the interest of uniform policies, it is necessary that the appropriate authority be vested in one agency. For example, if X holding company owns stock in national bank A, State member bank B, and nonmember insured bank C, it would be anomalous if the payment of excessive service fees by the national bank to X company were regulated by the Comptroller, those payable by the State member bank were regulated by the Board, and those by the nonmember insured bank were regulated by the FDIC. This would be more particularly so should the standards used by the three agencies be at substantial variance. In addition, there is no proper basis for the elimination of the words "or investors" either in this section or in other provisions of the bill. The bill would exempt bank holding companies from the Investment Company Act, which is primarily designed for the protection of investors. Consequently, if adequate expression is to be given to the policy to protect investors, then such protection should be a matter of concern under the bank holding company bill.

Judicial Review and Investigations

Proposed Amendment. - It is proposed that the entire section 10 of the bill, relating to hearings, investigations and court review, be stricken out and different language inserted. The Board's authority to make investigations to determine whether proceedings should be instituted as authorized by the bill, and its authority to subpena witnesses would be eliminated. Instead of the provisions for judicial review contained in the bill, the suggestion would provide for judicial review in accordance with the Administrative Procedure Act, except that the court would hold a trial de novo instead of reviewing and upholding the action of the agency if supported by substantial evidence. Moreover, judicial review might be required at the instance of any shareholder, individual or group "directly interested in any transaction or proposal for which approval is required", apparently without regard to whether such person is or is not adversely affected or aggrieved by the action taken.

Comment. - Unless the authority to conduct investigations is retained, effective administration of the law would be substantially impaired. This view is expressed above in the comment on a similar proposal of the A.B.A. For like reasons, the power to issue subpenas ought to be retained, although, as previously pointed out, there would be no strong objection to the deletion of the criminal provision for violation of the subpena authority.

The provisions of the bill with respect to judicial review are based upon the Public Utility Holding Company Act. It is believed

that these provisions provide adequate protection for persons adversely affected by administrative action; but if the Committee is of the view, after considering this matter with its legal staff, that these provisions do not provide as full protection as the provisions on this subject in the Administrative Procedure Act, there would be no serious objection to providing for judicial review in accordance with that Act. However, for the reasons stated in connection with the A.B.A. proposal in this regard, there is no justification for requiring a judicial trial de novo which, in effect, would duplicate the administrative proceedings under the bill. Such an arrangement would be out of harmony with the Administrative Procedure Act.

Tax Provisions

Proposed Amendments. - There are proposed a number of detailed amendments relating to the provisions in section 12(f) of the bill which are designed to eliminate burdensome taxation upon bank holding companies or their stockholders as a result of action which may be required to be taken by bank holding companies pursuant to this legislation.

Comment. - The proposals in this regard appear to comprise clarifying amendments intended merely to carry out the basic purpose of the tax provisions in the bill. These provisions were placed in the bill in order that the bank holding companies might consummate the necessary divestment of nonbanking interests as required by the bill without subjecting themselves or their stockholders to greater taxation than would otherwise have been the case. In view of the apparent purpose of the proposals in this regard and their apparent consistency with the objectives of the bill's tax provisions, it seems unlikely that there will be any need for the Board to raise objection to these proposals. However, since the tax provisions were drafted in consultation with members of the Treasury Department staff, we are advising the Treasury staff that these amendments have been offered, in order that they may give them such attention as they wish.

[Note: Certain other amendments have been proposed by representatives of the Morris Plan group. These have just been received and are being analyzed. In brief, they constitute proposed amendments to existing law or, in the alternative, a complete revision of the bill.]

March 31, 1950