AMENDMENTS TO H. R. 3351 WHICH ARE RECOMMENDED BY THE BOARD

Amend Section 3 as follows:

Change the figure "10" appearing on page 2, line 20, to the figure "15".

Insert the following after the comma on page 2, line 21:

"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 one or more branches,"

Strike the word "and" appearing on page 2, line 23.

After the word "banks" on page 3, line 3, add the following:

"or of only one bank if such bank operates one or more branches"

Substitute a semicolon for the period on page 3, line 7, and add the following:

"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."

Strike the words "two or more" appearing on page 3, line 13, and substitute therefor "the stated number of".

Change the figure "10" appearing on page 4, line 8, to the figure "15".

Add new subsection (f) as follows:

"(f) For the purposes of this section 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 being employed as a device for avoiding the provisions of this Act."

Amend Section 5 as follows:

Add the words "banking or" on page 7, at the end of line 4.

Add the following after the comma on page 7, line 14:

"or engaged in the business of furnishing managerial, auditing, supervisory, purchasing, and other similar services solely to such bank holding company and its subsidiaries, or in the business of procuring and servicing solely for such bank holding company and its subsidiaries investments and paper eligible for bank investment, or in the business of liquidating assets acquired from such bank holding company and its subsidiaries,"

Strike the words "at the request of" appearing on page 7, lines 20 and 21, and substitute therefor the following:

"which have been requested to dispose of such voting shares, securities or obligations by"

After the word "subsidiaries" and before the semicolon appearing on page 7, line 22, add the following:

"or which have been acquired from such subsidiaries with the prior approval of the Board"

Add new subsection (d) as follows:

"(d) Nor shall the prohibitions of this section apply to voting 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 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 being employed as a device for avoiding the provisions of this Act, it may by order require such bank or bank holding company to dispose of all or any part thereof forthwith."

Amend Section 6 as follows:

Strike the words "owning, either directly or indirectly, 10 per centum or more of the voting shares of each of two or more banks," appearing on page 8, lines 10 and 11, and substitute therefor the following:

"becoming a bank holding company, as defined in Section 3(a)(1) of this Act,"

Change the period on page 8, at the end of line 15, to a colon, and add the following:

"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."

Change the period on page 9, at the end of line 13, to a colon and add the following:

"Provided, however, That nothing herein contained shall be construed to authorize the approval of any acquisition subject to paragraphs (a), (b), or (c) of this section where, regardless of its competitive or other aspects, 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."

Amend Section 7 as follows:

Change the period on page 9, at the end of line 23, to a colon and add the following:

"Provided, however, That any bank may, with the prior approval of the Board, accept such capital stock as a security for debts previously contracted."

Change the figure "10" to the figure "20" on page 10, line 12.

Add the following sentence after the period on page 10, line 13:

"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."

Amend Section 9 as follows:

Change the word "par" appearing on page 12, line 8, to the word "book".

After the comma following the word "banks" appearing on page 12, line 18, add the following:

"and, with the prior approval of the Board, to increase the capital or surplus of its subsidiary banks,"

Amend Section 13 as follows:

Strike the figure "(1)" appearing on page 19, line 13.

Strike everything from line 3 to line 24, inclusive, on page 21, and substitute therefor the following:

"(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 1947), 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 9 of the Bank Holding Company Act of 1947. 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 9 to such purposes, and the amount of the credit for any taxable year shall not exceed the adjusted net income for such year.'"

Strike out everything from line 1 to line 7, inclusive, on page 22, and substitute therefor the following:

"(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 1947.

(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 5 of the Bank Holding Company Act of 1947, 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 1947, 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 1947, transfers property not permitted to be owned by a bank holding company under the provisions of section 5 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 Subsection.--The provisions of this subsection 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 5 of the Bank Holding Company Act of 1947 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 1947.

(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 subsection 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.'"

Before the quotation marks appearing on page 22, line 13, add the following:

"or any subsidiary thereof as defined in said Act"

Before the quotation marks appearing on page 22, line 19, add the following:

"or any subsidiary thereof as defined in said Act"

Add new paragraph at the end of line 19 on page 22 as follows:

"(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.'"

EXPLANATION OF SUGGESTED AMENDMENTS

Section 3

In Section 3(a) the definition of a bank holding company was changed from one which owns 10% or more of the voting shares of two or more banks to one which owns 15%. This was done to meet the recommendations of the Reserve City Bankers and the Federal Advisory Council (the resolutions of which are both in the Record), both organizations feeling that the 10% total would reach too many situations of a wholly incidental and noncontrolling status.

The definition of a bank holding company was also changed to include those situations where either the holding company is itself a bank and owns 15% of the stock of only one bank or where the holding company (not a bank) owns 15% of the stock of only one bank which operates branches. The theory underlying these changes was to give full effect to the purpose of the original definition, namely, to reach all situations where one company in effect controls the operations of two or more banking offices. A technical change in the second paragraph of Section 3(a) was made to give effect to these changes.

The term "subsidiary" (Section 3(e)) was changed to adjust the figure 10% to 15% in conformity with the change in the definition of a holding company.

Section 3(f) is a new section and was added so that a bank will not be held to be a bank holding company in those cases where the bank's ownership of the shares of other banks arises as a result of legitimate business in its trust department. Appropriate exceptions are made when the shares are held for the majority of the bank's stockholders or when the fiduciary arrangement is merely a device for avoiding the Act.

Section 5

The prohibition contained in Section 5(a) was changed by adding the words "banking or" on line 21, page 7. This was done to protect a bank which is a bank holding company in the continued operation of its own banking business.

The itemization of additional companies in Section 5(b) is to include by name those which are already included in those "so closely related to the business of managing, operating, or controlling banks as to be a proper incident thereto", but which a number of the holding companies desired to have specifically included in the legislation.

The change in Section 5(c) was suggested by questions asked of Mr. Eccles at the time of the Committee hearing in the Senate. It was pointed out that the "request" appearing in the original version of the bill would appear to have to be made by the banking authorities of the holding company -- an authority which the banking agencies probably do not have. As changed, the holding company is permitted to take from its banks those securities which the banking authorities have requested the bank to get rid of, or which the Board approves.

Section 5(d) is a new section and was added in order to carry out the previous amendment respecting the ownership of bank shares in a fiduciary capacity and to protect those relatively few situations where a member bank already lawfully owns, directly or indirectly, some voting shares of nonbanking companies. For example, the Georgia Trust Company, which is itself a bank holding company, owns both directly and indirectly a number of corporate shares. These shares were lawfully acquired by the bank prior to its admission to the Federal Reserve System. While the bank cannot acquire any additional shares, it nevertheless is permitted as a member bank to retain those which it had thus previously lawfully acquired. The amendment simply continues the status quo of this and similar situations. Section 5(d) also allows bank holding companies to invest their surplus funds in such securities as are eligible for investment by a national bank. It provides, however, that if at any time the Board finds that the ownership of such shares is being employed as a device for avoiding the Act, the holding company can be required to dispose of the shares immediately.

Section 6

Section 6(a) has been amended to give effect to the changes in the definition of a bank holding company. Another amendment permits a bank holding company, which already owns a majority of the shares of a bank, to purchase minority stock interests in such bank without prior approval of the Board.

Section 6(d), which contains the standards for agency action in deciding whether to approve bank holding company expansion, has been amended to include a provision which would prohibit such expansion, even though no monopolistic development be involved, if the banking operations of the holding company are so geographically extensive as to be inconsistent with adequate and sound banking in the public interest. This amendment was suggested by the Reserve City Bankers and the Federal Advisory Council. The amendment also makes identical standards applicable to agency action in permitting the establishment of branches of a bank which is a part of a holding company system.

Section 7

By amendment to Section 7(b) a bank, which is otherwise prohibited from accepting the stock of a bank holding company or any of its subsidiaries as collateral for credit extended, is permitted with the approval of the Board to accept such collateral for any debts which have previously been contracted.

Section 7(c), which defines the maximum aggregate amount of loans which any bank may make to a bank holding company and its subsidiaries, is amended to exclude from the total of any such loans non-interest-bearing deposits and credit allowed for uncollected items received in the ordinary course of business by such bank. This amendment was recommended by representatives of the bank holding companies who felt that without such a proviso it might be possible to construe the remaining language in the section to include this run-of-the-mine banking business in calculating the total amount of credit permitted by the section.

Section 9

Section 9 was designed to continue in force the present provisions of the law respecting reserve requirements. The word "par" appearing on line 25, page 14, was changed to "book" in order to carry out that intention. The word "par" was merely a clerical mistake in the original draft. The section is also amended to allow the use of the reserve fund to increase the capital or surplus of subsidiary banks with the approval of the Board. This change was made at the request of the representatives of the bank holding companies who urged that there might be situations where no capital impairments of any of their banks might exist (in which event the law permits them to replace capital), but where, nevertheless, it might be desirable and appropriate for the holding company to increase the capital or surplus of such banks.

Section 13

The changes in Section 13(f)(1) and Section 13(f)(2) are purely technical and were suggested after discussions with the technical taxing staff of the Treasury Department.

Section 13(f)(3) and Section 13(f)(4) were added (also after discussion with the Treasury officials) in order to provide appropriate tax protection in the case of distributions in kind by bank holding companies under the provision of Section 5 of the Act. Similar provisions were enacted in 1935 to cover comparable situations occurring as a result of the death-sentence requirements of the Public Utility Holding Company Act of 1935.

Section 13(g)(1) and Section 13(g)(2) were amended to include in the exemption from the Investment Company Act and the Investment Advisers' Act "subsidiaries" of bank holding companies as well as bank holding companies themselves. This was done to prevent possible dual regulation of such companies as are itemized in Section 5(b), which perform services solely for the bank holding company and its subsidiaries. In his letter to Chairman Tobey of May 23, 1947, the Chairman of the Securities and Exchange Commission pointed out that "The Commission agrees that there is no need for regulation under the Investment Company Act or the Investment Advisers' Act of companies which will be subject to regulation under the Bank Holding Company Act ..."

Section 13(h) was added to prevent a technical loophole from developing in existing law, which might permit those companies which are presently "bank holding company affiliates" but which might not be "bank holding companies" under this Act to engage in the securities business or to borrow from a subsidiary bank in excess of statutory limitations.