Statement of K. A. Randall
Chairman, Federal Deposit Insurance Corporation
Before the Committee on Banking and Currency
House of Representatives

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Mr. Chairman, I am pleased to have this opportunity to present the views of the Federal Deposit Insurance Corporation with respect to H.R. 13884, 90th Congress, a bill "To prohibit federally insured banks from voting their own stock and to provide for cumulative voting in federally insured banks."

This bill would add to the Federal Deposit Insurance Act two new sections relating to the voting of the stock of insured banks, including both national banks and State banks. These sections, incidentally, are numbered 21 and 22 in the bill but, due to amendments to our Act enacted subsequent to the introduction of the bill, the correct numbers would now be 23 and 24.

One new section would provide that shareholders shall have the right to use cumulative voting in elections of directors of all insured banks. This provision would be identical to an existing provision of section 5144 of the Revised Statutes of the United States (12 U.S.C. 61) covering national banks, except that it would also apply to insured State banks.

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The other new section would prohibit any insured bank from voting or controlling the voting of any of its own shares of stock for any purpose. While it could have much wider applicability, this prohibition presumably is directed primarily at the voting of stock held in fiduciary capacities. It has been suggested, moreover, that the potential conflicts of interest which are inherent in the right of a bank to vote its own stock may result in abuses which could result in losses to insured banks and ultimately in losses to this Corporation.

The right of a national bank to vote its own stock is now limited by certain provisions of section 5144 of the Revised Statutes. It is there provided that in the election of directors of a national bank, shares of the bank's stock held by the bank as sole trustee, whether registered in its own name 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 by the sole trustee 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. It is further provided in the same section that, in the election of directors, shares of a national bank's own stock held by the bank and one or more persons as co-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.

Insofar as national banks are concerned, the proposed legislation would in effect substitute for the present restrictions upon the

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voting of stock held in a fiduciary capacity a more comprehensive prohibition against a bank's voting or controlling the voting of its own stock in any circumstances. The present statutory provisions, however, have been in effect for national banks for over 30 years, and we are not aware of any evidence that they have not proven adequate.

The voting rights of shareholders of State banks are now governed by State, rather than Federal, law. Legislation on this subject involves the regulation of internal corporate affairs, which has traditionally been an area subject to State determination in the case of State-chartered institutions. Our records do not indicate that existing State provisions on this subject have contributed to significant losses to insured banks or to the Federal Deposit Insurance Corporation as insurer. In view of this fact and in the absence of evidence that the voting rights of shareholders in State-chartered institutions are not being adequately protected under existing State law, Federal legislation could be regarded as an unnecessary intrusion.

The holding by banks of their own stock as trustee is to a large extent due to the fact that the owners of bank stock naturally utilize the services of their own institutions in the management of their property and in its distribution to members of their families or other beneficiaries. A recent review of insured nonmember banks examined by the Corporation indicated that a major portion of bank stock held in a fiduciary capacity in these banks is beneficially owned by current and former officers, directors, and employees of

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the institution and their beneficiaries and is voted in accordance with instructions from -- or with the knowledge of -- the owners. No reports of abuses of this power in insured nonmember banks have been brought to our attention.

If the need for legislation at the Federal level governing voting rights of shareholders of insured banks can be demonstrated, the Corporation favors the adoption of language covering insured State-chartered institutions similar to that now applicable to national banks -- as contained in the provisions of section 5144 of the Revised Statutes relating to the voting of stock held by banks as trustees.

The Corporation, furthermore, has received no indications of a need for cumulative voting provisions in the election of directors of insured State banks not members of the Federal Reserve System. Accordingly, we are not prepared at this time to recommend to Congress the proposal providing for cumulative voting in elections of directors of all insured banks.

The proposal relating to the voting of bank stock by insured banks contained in H.R. 13884 is similar to one of the recommendations of the staff of the Subcommittee on Domestic Finance of the House Banking and Currency Committee in their report on "Commercial Banks and their Trust Activities" that there be a

> "[p]rohibition against all insured banks holding or voting their own stock held in their trust departments."

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The recommendation was advanced on the grounds that the prohibition "would discourage the widespread use of such stockholdings to perpetuate the officers of these banking institutions in office and would apply the general rule of corporation law that corporations are prohibited from voting stock held in the corporation's treasury."

As a matter of fact, concrete evidence of widespread abuse in the exercise of voting power that the proposed legislation is designed to correct is not set forth in the Subcommittee's report, nor, to our knowledge, in any other studies on the subject. Enactment of legislation along these lines therefore might be deferred at this time.

Nevertheless, the Subcommittee's report is concerned with an economic problem of fundamental importance, and one that is certainly deserving of further study. In its report the staff of the Subcommittee attempts to analyze the interrelationships between major banking institutions and other financial institutions and interlocking relationships between banks and major industrial corporations. Concern also is voiced with respect to shifts that have taken place over the past 25 years toward increasing concentration of economic power and its "implications for the continued viability of our competitive free enterprise economy." Obvious changes have occurred in our economic institutions during this period as the economy has grown and prospered. Banks as well as business firms are larger. At the same time, transportation and communication facilities and mobility of manpower and other resources have improved. The implications of these developments

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on economic power are a subject that requires intensive factual study in order to carry on an informed discussion regarding their consequences for the economy.

The possible problems that might arise as a consequence of banks voting their own stock and thereby perpetuating undesirable management are really but one -- and a relatively minor -- aspect of the much more important problem -- whether the current trends in concentration of economic power are desirable or not. Accordingly, the bill under consideration might best be considered in a broader context of the complete study's findings and conclusions.

As indicated earlier, the Corporation to date has no evidence that the protection afforded shareholders of insured nonmember banks is inadequate under present State laws, particularly in relation to the fiduciary activities of banks. Nevertheless, we realize that the trust activities of banks have been expanding recently, and these developments are under continuing study here at the Corporation.

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