Statement

of

Chairman K. A. Randall

Federal Deposit Insurance Corporation

before the

Committee on Banking and Currency

House of Representatives

on

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Thank you very much for the opportunity to present the views of the Federal Deposit Insurance Corporation on H.R. 6778 and other bills pertaining to the regulation of one-bank holding companies.

The Corporation agrees that the current discussions about one-bank holding companies and the related issues are most important. The proposed legislation has received careful study--notably Chairman Patman's H.R. 6778 and H.R. 9385 introduced by Congressman Widnall for the Administration. Accordingly, our comments are directed primarily to these two bills.

The Corporation wishes to stress at the outset the need to view the development of one-bank holding companies in the proper perspective. Banks constitute one of the major segments of the economy contributing to the growth and economic development of our country. Banks play an essential role in the adjustment of the economy to rapidly changing economic and social needs. Banks have demonstrated over the past fifteen years in particular their ability to adapt to the developing financial needs of the nation by providing new types of credit facilities and services. Their ability to serve the public therefore should not be unnecessarily constricted; to fulfill their function effectively, banks must evolve along with the economy as a whole.

Recently, the formation of bank-initiated one-bank holding companies has accelerated sharply and nonbank conglomerates have displayed a growing interest in the acquisition of banks. Almost all of the one-bank holding companies now in existence, however, were established years ago under very different circumstances. Typically, these "traditional" one-bank holding

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companies were small and they created few problems for their supervisors. In addition, their economic impact was usually rather limited, even within the local community.

In the case of the large one-bank holding companies, however, the effect on banking and on the economy could be much more significant. The task of this Committee would be much easier and more sharply defined if the economy were confronted with well-documented and clearly recognized abuses. Elimination of definite abuses by remedial legislation then would be the central task for this Committee.

Legislation directed primarily at one-bank holding companies at this stage of their development must anticipate wrongdoing and misuse of bank resources of a specific nature and before it occurs. The Corporation recommends that Congress exercise caution in its legislative approach to what is still a potential--and not an existing--problem, and that legislation allow the necessary degree of freedom for bank supervisors to exercise their judgment to deal with the development as it evolves.

Both H.R. 6778 and H.R. 9385 would remove the exemption for one-bank holding companies and partnerships from the Bank Holding Company Act of 1956 and thereby bring these two categories under Federal supervision. There are major differences, however, between the two bills in regard to the types of activities in which the bank holding companies would be permitted to engage, in the emphasis on the possible anti-competitive aspects of proposed holding company acquisitions or activities, and in the division of supervisory responsibilities among the Federal banking agencies. The Corporation supports H.R. 9385 in particular because the

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provisions of this bill dealing with these central issues achieve the objectives being sought by the Corporation for bank holding company legislation. H.R. 6778 does not provide a satisfactory answer to the problems facing us in this area.

Since the economy and its financial requirements are changing, the Corporation considers it essential that banks--as one of the major financial intermediaries in this country--be allowed to continue to assist in the nation's economic development as they have in the past. It is necessary as a consequence that banks be allowed to engage in new types of activities not previously offered but now needed in today's environment. The amendments to Section 4(c)(8) of the Bank Holding Company Act of 1956 proposed by H.R. 9385 would provide the language to accomplish this objective. The Federal banking agencies agree that the present language of the Bank Holding Company Act relating to permissible activities is unnecessarily restrictive. Furthermore, Section 4(c)(8) of the Act would be further strengthened by the inclusion in that section of H.R. 9385 of the language that would require activities of a bank holding company or its subsidiaries "to be in the public interest" (italics added). Broad considerations of "public interest" would insure that banks or bank holding companies would not move into areas not appropriate to their operations.

The preservation of a competitive environment is also dealt with in a direct manner in H.R. 9385. Section 4(c)(8) of the Act as it would be amended by H.R. 9385 specifically sets forth the requirement that the Federal banking agencies consider "any potential anti-competitive effects of a bank holding company engaging in any proposed type of activity."

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Section 3 of H.R. 9385 would further prohibit "tie-in" arrangements between a bank holding company or subsidiary of a bank holding company and its customers in the extension of credit, the lease or sale of property, or the furnishing of services.

The allocation of supervisory responsibilities for bank holding companies among the Federal banking agencies is another issue posed by this legislation. Several very practical considerations must be taken into account in evaluating the supervisory structure envisioned by H.R. 9385. Up to now, the present arrangements for bank supervision have worked well--although admittedly not perfectly. Banks under our present system are able to choose their Federal supervisor by opting for a national charter, Federal Reserve membership, or a state charter combined with Federal deposit insurance. Multi-bank holding company supervision under the Federal Reserve is an exception. With the establishment of the one-bank holding company, the fact remains that only one bank is involved and, the experience in supervising the bank is particularly relevant. Accordingly, the provisions of H.R. 9385 endeavor to preserve the present supervisory structure over banks.

Over one-half of the banks in the United States are under FDIC supervision and, from this standpoint, the Corporation must be concerned and involved in the evolution of bank holding companies. The Corporation also needs to be able to look at the whole holding company structure within which an insured nonmember bank is involved to determine the interrelationships between the holding company and the bank and to

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assess their impact. In this connection, it is worthwhile to point out that the focus for the bank supervisory agencies is their authority to regulate the activities of the bank holding companies insofar as they affect the bank (including its relations with depositors, borrowers, and the public generally)--and not the desire to regulate the holding company itself.

Another desirable feature of H.R. 9385 is the so-called "grandfather clause," which would permit bank holding companies in existence on June 30, 1968 to retain shares acquired and owned on that date in firms engaged in nonbanking activities, so long as such firms are not engaging and do not engage in any business or activities other than those in which they or the bank holding company or subsidiaries thereof were engaged on June 30, 1968. The majority of one-bank holding companies in existence prior to June 30, 1968 are not large and do not control extensive diversified business holdings. If these holding companies wish to expand their activities in nonbanking fields, they are required by H.R. 9385 to divest themselves of the banking institution. The June 30, 1968 date is also desirable from an administrative standpoint. This is the best means of dealing with those holding company situations with nonbanking activities acquired prior to the grandfather date which have not been a cause for supervisory concern. The Federal bank supervisory agencies would, moreover, still be able to exercise supervisory powers over the holding company and bank under the provisions of H.R. 9385 to prevent abuses.

For the above reasons, again let me stress the Corporation's endorsement of H.R. 9385. The Corporation believes that H.R. 9385 contains

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provisions relating to the development of one-bank holding companies that are more realistic, practical, and more conducive to a dynamic banking system than those contained in H.R. 6778. As I emphasized earlier in my testimony, banks must help in financing our economy's balanced growth--and this objective is best implemented by passage of H.R. 9385. H.R. 6778 would not give banks the essential flexibility they must have--under proper supervisory safeguards--to contribute effectively to our nation's economic progress.

At the same time, we would like to offer some additional comments on H.R. 6778.

(1) Partnerships are brought within the scope of the Bank Holding Company Act of 1956 by elimination of the express exemption for "any partnership" in both H.R. 6778 and H.R. 9385. H.R. 6778, however, fails to make clear whether partnerships would be included within the classes of organizations embraced with the definition of the term "company." The Corporation therefore favors the inclusion of partnerships within the definition of bank holding companies and adoption of the language of H.R. 9385:

> "...'Company' means any corporation, partnership, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by any State."

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(2) The Corporation supports the recommendation of the Chairman of the Board of Governors of the Federal Reserve System that hearings presently required under Section 4(c)(8) of the Bank Holding Company Act of 1956 be required only upon the request of an interested party.

(3) H.R. 6778 would require insured banks to file quarterly reports with the Securities and Exchange Commission setting forth the descriptions and amounts of any securities held in a fiduciary capacity. The Corporation understands that the Securities and Exchange Commission, pursuant to Congressional authority, now is conducting a detailed study of the nature and extent of reporting that should be required of all institutional investors--including banks--as part of its study on institutional investing. This requirement for reports is quite apart from the one-bank holding company issue. Owing to the importance of the subject, we respectfully suggest that consideration of the reporting requirement be deferred until the Securities and Exchange Commission study has been completed and the recommendations have been submitted to the Congress.

(4) The Corporation favors the enactment of legislation to proscribe "tie-in" transactions along the lines provided in H.R. 9385. H.R. 6778 would prohibit any insured bank, bank holding company, or subsidiary of a bank holding

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company from extending credit, leasing or selling property of any kind, or furnishing any service, or fixing or varying the consideration for any of the foregoing, on the condition, agreement, or understanding --

"(A) that the customer shall obtain some other credit, property, or service from the institution itself or, if the institution is a bank holding company or subsidiary of a bank holding company, from either that company or any subsidiary of that company; or

"(B) that the customer shall not obtain credit, property, or services from a competitor of the institution itself or, if the institution is a bank holding company or a subsidiary of a bank holding company, from a competitor of either that company or any subsidiary of that company."

The bill would provide for injunctive relief, at the instance of either the United States or private parties, against violations or threatened violations of these prohibitions and would authorize actions by injured parties to recover treble damages for injuries to business or property resulting from such violations. H.R. 9385 contains similar provisions, applicable, however, only to bank holding companies and to subsidiaries thereof.

Proscription of "tie-in" transactions is an important matter and the precise terms of the legislation should be scrutinized carefully. To be avoided is language susceptible to a construction that would prohibit well-established correspondent relationships between banks, between banks and savings and loan associations, or between banks and

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other financial intermediaries. Such correspondent relationships are a basic part of our financial structure. In some instances, they provide the only means by which smaller "country" banks and other financial institutions are able to offer essential services to their customers.

(5) Section 2 of H.R. 6778 would amend section 18(c)(1) of the Federal Deposit Insurance Act, relating to mergers and similar transactions between insured banks and non-insured institutions, to require approval by the Board of Governors of the Federal Reserve System, rather than by this Corporation, if the insured bank involved in the transaction was a bank holding company or a subsidiary of such a company. Similarly, section 18(c)(2) of the Act, relating to mergers and similar transactions between insured banks, would be amended to require approval by the Board of Governors, instead of by the agency having primary supervisory responsibility for the resulting bank, if such bank was a bank holding company or subsidiary thereof. The Board of Governors of the Federal Reserve System would also be empowered to approve reductions in capital stock and retirements of capital notes and debentures by insured nonmember banks and the conversion of insured banks into insured State banks with reduced capital stock or surplus where the banks involved were bank holding companies or subsidiaries thereof.

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The Corporation strongly opposes the foregoing amendments to the Federal Deposit Insurance Act relating to merger procedures. These amendments constitute major changes in Federal supervisory responsibilities. Such substantive changes should be made only after careful consideration of all aspects of the merger question and in the proper context. We know of no compelling need for a change in the present supervisory structure regarding mergers, reductions in capital, or retirement of capital notes and debentures.

The Bureau of the Budget has advised the Federal Deposit Insurance Corporation that there is no objection to the presentation of this statement from the standpoint of the Administration's program, and that enactment of H.R. 9385 would be in accord with the President's program.

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