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Statement by

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before the

Committee on Banking and Currency
United States Senate
May 15, 1970

Mr. Chairman, I appreciate the opportunity you have afforded me to present the views of the Federal Deposit Insurance Corporation with respect to certain bills now before the Committee which propose amendments to the Bank Holding Company Act of 1956.

Each of the bills before the Committee seeks to prevent an unhealthy concentration of the economic resources of the country, and each seeks, as a necessary corollary, to delineate the boundary lines of competition within the economy for companies that own commercial banks.

The impetus for additional legislation at this time has been the rapid increase since 1967 in the number of one-bank holding companies formed by the nation's largest commercial banks and the growing interest in the acquisition of commercial banks by large nonbank conglomerates. In each case, the attractiveness of one-bank holding companies as a competitive vehicle can be traced back to July 1, 1966, the effective date of the most recent amendments to the Bank Holding Company Act of 1956 which affirmed, after extensive hearings, the existing exemption for companies owning only one bank (Public Law 89-485, 80 Stat. 236). Widespread public interest in reexamining the exemption began, however, in the Spring of 1968 with the announcement by First National City Bank, New York City, of its intention to form a one-bank holding company and with the quickening pace thereafter of similar announcements by other large banks throughout the country.

Few acquisitions have actually been completed by these recently formed one-bank holding companies, and almost all are in bank-related fields that would have fallen within the scope of Federal Reserve Board precedents established under the 1956 Act. Because of this, and because the more traditional one-bank holding companies in existence prior to the 1966 amendments have presented few problems, the task of this Committee must be considered preventive in nature rather than remedial of proven abuse. When Chairman Randall appeared before the House Committee in May last year, he made the following comment on this point:

> "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."

The Federal Deposit Insurance Corporation believes that the activities of one-bank holding companies should be brought promptly under effective regulatory control at the Federal level in order to prevent an unhealthy concentration of the nation's economic resources and to control possible anticompetitive practices in the allocation of credit and financial services within the nation's economy. It continues to believe, however, that caution should govern the imposition of new restrictions on bank holding companies and their affiliates -- particularly restrictions that limit their ability

to compete fairly with others in offering bank-related financial services to the public at competitive prices. As Mr. Randall stated last May, in expressing the Corporation's endorsement of the Administration's bill (S. 1664, H.R. 9358):

> "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 15 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."

The Corporation continues to believe, with serious reservations as to the administrative provisions suggested, that S. 1664 is a realistic, practical and constructive way to deal with these problems and yet preserve a dynamic banking system able to compete fairly in providing bank-related financial services to the public in the years ahead.

Among other things, S. 1664 would eliminate the exemption from the Bank Holding Company Act of 1956 for companies owning or controlling only one bank; it would eliminate the exemption for partnerships that own one or more banks; and it would bring within the scope of regulation any company which has power in fact to control the management or policies of any bank, even though that power may exist through ownership or control of less than 25 percent of the voting shares of the bank. In the Corporation's view, the potential for unhealthy concentration of economic resources and for

anticompetitive practices in the allocation of credit and financial services is just as real with one-bank holding companies, partnerships and other control situations as it is when one company owns 25 percent or more of the voting shares of two or more banks. All of the bills before you contain similar provisions, with greater or lesser elaboration of special situations that should continue to be exempt. The Corporation supports the three basic extensions of coverage to which I have referred, and interposes no objection to the limited exceptions contained in the House-passed bill or suggested yesterday by Dr. Burns.

The Corporation also supports as realistic and essentially equitable the June 30, 1968 "grandfather clause" contained in S. 1664 and proposed Amendment No. 10. This provision would authorize any company which might become a bank holding company by virtue of the enactment of S. 1664, and which would have been a bank holding company on June 30, 1968 if the proposed "Bank Holding Company Act of 1969" had been enacted on that date, to retain shares lawfully acquired and owned by it or by a subsidiary on June 30, 1968 --

> ". . . so long as the company issuing such shares is not engaging and does not engage in any business or activities other than those in which it or the bank holding company (or its subsidiaries) was lawfully engaged on June 30, 1968; . . ."

The bill would also authorize any such company to engage in any business or activity in which it was lawfully engaged on June 30, 1968, and in which it has been continuously engaged since that date.

While any "grandfather" date finally agreed upon may be somewhat arbitrary, few of the one-bank holding companies in existence prior to

June 30, 1968 are large in terms of total assets and few control extensive diversified business activities. With minor exceptions, moreover, the larger one-bank holding companies formed in recent years had little opportunity prior to June 30, 1968 to complete nonbank acquisitions. If these holding companies should seek to expand into nonbanking fields not permitted by the amended act, they would be required to divest themselves of the banking institution. The Corporation believes the June 30, 1968 date selected will minimize both the divestiture problem and the discriminatory impact that could result from the use of other suggested dates.

The greatest differences -- and the most controversial -- in the bills before you relate to proposed changes in Section 4 of the 1956 Act, governing the nonbank acquisitions of companies that own commercial banks.

Section 4(c)(8) of the Bank Holding Company Act of 1956 now permits a bank holding company to acquire and retain --

> ". . . shares of any company all the activities of which are or are to be of a financial, fiduciary, or insurance nature and which the [Federal Reserve] Board . . . has determined to be so closely related to the business of banking or of managing or controlling banks as to be a proper incident thereto and as to make it unnecessary for the prohibitions of this section to apply in order to carry out the purposes of this Act; . . . ."

The Board of Governors has itself recommended a change in this language, on the basis of its experience with nonbank acquisitions of multibank holding companies registered under the Act, to make the provision less "constricting" and "more useful" in dealing with appropriate bank holding company activities beyond the limited authority spelled out elsewhere in Section 4(c).

S. 1664 would substitute for the quoted language a provision that would authorize the acquisition or retention of shares

> ". . . in any company [other than one dealing in securities] engaged exclusively in activities that have been determined . . . (1) to be financial or related to finance in nature or of a fiduciary or insurance nature, and (2) to be in the public interest when offered by a bank holding company or its subsidiaries."

The House-passed bill would, in addition to enacting a list of prohibited activities, amend section 4 to authorize

> ". . . any activity of a financial or fiduciary nature if the Board finds . . . that the carrying on of the activity in question . . . will be functionally related to banking and can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Inasmuch as the economy and its financial requirements are constantly changing, the Corporation considers it essential that banks and bank holding companies have the flexibility to engage in new types of bank-related activities that may be needed now and in the future if the financial needs of the people are to be met efficiently, competitively and at reasonable cost. Likely changes in technology, the nature of financial competition and the economic and legal functions of commercial banking all lead to a conclusion that retaining such flexibility is the wise course for the future.

The prohibitions listed in the House-passed bill run directly counter to this need for flexibility. They extend, moreover, to subsidiary banks

of bank holding companies even though many such banks, being state-chartered, are specifically authorized by the law of their home states to engage in one or more of the prohibited activities. The language of the House-passed bill, and certain remarks made on the floor of the House in debate, also lend themselves to the view that what was intended was a set of prohibitions applicable not only to bank holding companies and their subsidiary banks, but to all banks whether or not they are subsidiaries of holding companies. In so doing, the House-passed bill goes well beyond the immediate problems of economic concentration and anticompetitive practices which might result from one-bank holding company activities, and attempts to define the business of banking for all banks. The Corporation believes that the enactment of such prohibitions would have a seriously adverse effect on the ability of commercial banks, regardless of their form of organization, to contribute effectively to the future economic progress of the country.

The business of banking and the competition to which banks are subject is never static in a dynamic economy. Many bank holding companies and subsidiaries thereof are currently engaging, and have long engaged, in some of the activities which the House-passed bill would proscribe. Although equipment leasing and factoring may at one time have been considered alien to the business of banking, numerous State legislatures have in recent years expressly authorized the offering of those services by State-chartered banks, while the Comptroller of the Currency has authorized the offering of similar services by national banks. More and more banks are also offering a variety

of computer services, mortgage banking operations, and travel agency services. As recently as 1968, there were some who questioned whether the issuance by banks of credit cards constituted an activity which could be considered incidental or related to the business of banking. Since that time, many State legislatures have enacted statutes which either expressly or by implication recognize the legality of bank credit card operations. Exactly one month ago, the Senate passed a bill which, by regulating the issuance of unsolicited credit cards and imposing limits on the liability of cardholders for the unauthorized use of credit cards, could also be interpreted as recognizing the authority of banks to issue credit cards. These historical and evolutionary developments underscore the Corporation's view that great care should be taken to avoid for the future a rigid legislative enumeration of the kinds of activities banks or bank holding companies can perform.

For the reasons stated, the Corporation opposes the enactment of the list of prohibited activities contained in the House-passed bill. It supports the more flexible language for amending Section 4 of the 1956 Act proposed in S. 1664.

As I indicated earlier, the Corporation has serious reservations about the administrative provisions contained in S. 1664. Those provisions would require the three Federal banking agencies, subject to certain statutory standards, to agree unanimously on "guidelines" as to the nonbank activities

which would be authorized for all bank holding companies, and would then disperse the authority for administering those guidelines to one of the three agencies depending on which agency supervises the largest proportion of banking assets within the holding company. No acquisitions would be permitted "except pursuant to and in accordance with" such guidelines.

In such a sensitive area as the competitive powers of the nation's commercial banks, where the views of reasonable men can differ and where opinions can be strongly held, it might be extremely difficult to achieve unanimity among the three agencies. An uncompromising, but sincerely held, position by any one of the three agencies could prevent the adoption of any guidelines at all. If, to reach unanimous agreement, compromises were made or general language of imprecise meaning was employed to gloss over differences between the agencies, the resulting guidelines, separately administered, could lead to widely varying results on actual acquisitions, depending on which agency had jurisdiction over the holding company for this purpose. Any such eventuality could have immediate and severe repercussions for the nation's dual banking system if the results prompted a large number of charter conversions within the system.

Having a single agency administer the provisions of Section 4(c)(8) for all holding companies is one solution -- and the easiest -- but for one-bank holding companies in particular, it could be disruptive of established supervisory relationships over the subsidiary bank. The other extreme is

totally separate administration of Section 4(c)(8) without the benefit of prior guidelines -- a solution which could magnify the likelihood of disparate results in practice.

There may be more workable intermediate solutions between these two extremes than the one proposed in S. 1664. One agency, for example, could be responsible for the regulations governing nonbank acquisitions, with all three agencies participating in their administration. The Federal Truth-in-Lending legislation adopted this approach two years ago. Another possibility would be a provision permitting the adoption of guidelines by vote of an extraordinary majority, say seven, of the ten individuals having statutory responsibility for the operation of the three agencies, with representatives of at least two such agencies among the required majority. Again, each agency could be authorized to administer the guidelines so developed.

If past history on bank mergers is a guide, however, the requirement for consideration by each agency of the likely competitive impact of a particular acquisition is almost certain to produce different results in situations involving very similar sets of circumstances, even with the benefit of previously adopted guidelines. This consideration alone might well lead the Committee to the conclusion that all regulatory authority over nonbank acquisitions, even for one-bank holding companies, should be in a single agency, rather than dispersed among the three agencies, regardless of existing and traditional supervisory relationships involving the subsidiary banks.

The Committee also has for consideration three other bills in addition to S. 1664 and the House-passed bill which propose amendments to the Bank Holding Company Act of 1956. One of these bills -- S. 1211 -- proposes to regulate tender offers for banks and bank holding companies. With respect to that bill, the Corporation merely notes that enactment of S. 1664 in substantially its present form would obviate the need for enactment of S. 1211.

Another of these bills, S. 1052, would extend the existing provisions of the Bank Holding Company Act of 1956 to one-bank holding companies and would establish a National Commission on Banking whose function would be to study the need for changes in our financial institutions and regulatory structure. The pending appointment of a Presidential Commission on Financial Structure and Regulation would seem to preclude the need for the statutory commission suggested. S. 1052, moreover, would make no changes in the present language of Section 4(c)(8) even though the agency administering these provisions has itself suggested a liberalization.

With the Committee's approval, I would prefer to defer comment on S. 3823 -- the bill introduced by Senator Brooke on May 12, 1970 -- until such time as the Corporation's staff has had a better opportunity to review its provisions and to determine the impact of its enactment.

In closing, I would like to assure the Committee of the Corporation's desire to be as helpful as possible in the Committee's deliberations and of our willingness to undertake any relevant factual survey desired by the Committee on this important subject.