FDIC FEDERAL DEPOSIT INSURANCE CORPORATION

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Statement on

S. 890, 94th Congress

A bill "To amend the Bank Holding Company Act of 1956, as amended, to provide special procedures for the acquisition of failing banks or bank holding companies and for the acquisition of banks or bank holding companies in emergencies and to provide for the acquisition by bank holding companies of banks outside their State of principal banking operations in emergency situations and situations involving a failing bank or bank holding company."

Presented to

Subcommittee on Financial Institutions
Committee on Banking, Housing and Urban Affairs
United States Senate

by

Frank Wille, Chairman
Federal Deposit Insurance Corporation

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Mr. Chairman, I welcome the opportunity to appear before your Subcommittee today to testify with respect to S. 890.

Basically, the bill can be divided into two parts. I shall first direct my comments to the relatively noncontroversial portion of the bill relating to the procedural requirements for obtaining Federal Reserve approval of bank holding company acquisitions in emergency situations. Presently, the Bank Holding Company Act requires the Federal Reserve to give thirty days' notice to the primary supervisor of any bank involved in a proposed bank acquisition by a bank holding company and to hold a hearing on the matter if the primary supervisor disapproves the acquisition. The Act also provides for another 30-day delay following approval by the Federal Reserve of such an acquisition in order to allow the Attorney General an opportunity to bring an action challenging the acquisition under the antitrust laws. Unlike the Bank Merger Act, no provision is made under present law for waiving these requirements in emergencies or in failing bank situations.

In order to conform Bank Holding Company Act procedures in emergency situations to those presently applicable under the Bank Merger Act, S. 890 would authorize the Federal Reserve (1) to shorten to 10 days the period for submission of views and recommendations by the primary supervisor of a bank involved in a bank holding company acquisition if the Federal Reserve finds "that an emergency exists requiring expeditious action," or (2) to dispense entirely with notice to the primary supervisor or to require immediate submission of his views and recommendations and to disregard any adverse recommendations received from the primary supervisor if the Federal Reserve finds "that it must act immediately . . . in order to prevent the probable failure of a bank or bank holding company involved in a proposed acquisition . . . ." When the Federal Reserve acts pursuant to the 10-day notice procedure described above, the acquisition can be consummated five days after approval thereof; and when the Federal Reserve grants immediate approval, the acquisition can be consummated immediately, with no delay to afford the Attorney General an opportunity to challenge the acquisition prior to its consummation.

The Corporation favors conforming the emergency procedures applicable under the Bank Merger Act and the Bank Holding Company Act and would therefore recommend prompt enactment of that portion of S. 890 which would accomplish this result.

The primary thrust of the remainder of S. 890 is to repeal in part the prohibition against bank acquisitions by bank holding companies across State lines. The bill would authorize the Federal Reserve to approve such acquisitions --

> "if the Board finds that an emergency requiring expeditious action exists with respect to a bank having assets in excess of $500,000,000 or a bank holding company controlling a bank having assets in excess of $500,000,000, or the Board finds that immediate action is necessary to prevent the probable failure of a bank having assets in excess of $500,000,000 or a bank holding company controlling a bank having assets in excess of $500,000,000, and, in weighing the competitive, financial, and other factors . . . , the Board finds that the public interest would best be served if the bank or banks involved . . . were acquired by an out-of-state bank holding company."

Although presented primarily in terms of the Franklin National Bank experience last summer, this part of the bill actually raises some very basic issues about the nation's banking system and its future course which we believe deserve thorough consideration by the Congress, particularly in light of other currently proposed changes in Federal banking regulation.

These issues include the following: (1) the future of interstate banking and interstate branching; (2) the impetus the bill's enactment would give to the concept of 100 percent insurance for all deposits; (3) the financial and legal capacity of the FDIC to work out the problems of a large bank in distress; (4) the role of the Federal Reserve in bank regulation generally; and (5) the treatment to be accorded shareholders and debenture holders of a bank in distress. Each of these issues was discussed in a recent speech which I delivered before the most recent convention of the Conference of State Bank Supervisors, and I am attaching a copy of that speech for the benefit of the Subcommittee.

For the reasons set forth in that speech, the Corporation recommends that S. 890 be amended to require in all cases the prior concurrence of the primary supervisor of the bank to be acquired by an out-of-state bank holding company under the bill's provisions. In those cases where FDIC financial assistance or indemnities are contemplated, we also recommend that the bill be amended to require the prior concurrence of the FDIC as well.

As to the size of banks to which the bill's interstate acquisition provisions should apply, there are two directions in which Congress can go in an effort to avoid or minimize the creation of a two-tier banking system, i.e., one in which a certain category of large banks would, in practical effect, be accorded 100 percent insurance of deposits while all other banks would be insured only up to the statutory limit (presently $40,000 for nonpublic deposits). To avoid this two-tier effect, the dollar cutoff in the bill could be eliminated altogether, thus permitting any failing bank of any size to be acquired by an out-of-state holding company with appropriate regulatory approvals.

The other approach, which would minimize but not eliminate the tiering effect, would be to increase the asset cutoff figure suggested by the Federal Reserve from $500 million to $2 billion. As more fully explained in my speech, I would personally prefer this latter alternative. In my view, modifying the bill's interstate acquisition provisions along these lines would substantially minimize the damage which might otherwise be done to the historical pattern of State primacy in matters of bank structure, to the concept of limited deposit insurance, to the regulatory structure we presently have and to the shareholders and debenture holders of insured banks in distress.

Attachment