Statement by Governor R. M. Evans of the Board of Governors
of the Federal Reserve System regarding
Bank Holding Company Legislation
[S.76 and S.1118, June 10, 1953]

After very careful consideration, I feel compelled to register my dissent from the views expressed on behalf of a majority of the members of the Board of Governors regarding bank holding company legislation. We are in complete agreement that bank holding company legislation is a necessity. We differ in two particulars, which I believe are very important and essential to effective bank holding company legislation.

In the first place, legislation like that recommended by the Board does not recognize a fundamental fact, namely, that, through the corporate device, holding companies have been and still could be used to evade State branch banking laws and thus defeat the declared policies of the States and national Government regarding branch banking. Despite all that has been said about the distinction between bank holding company groups and branch banking systems, the fact remains that both accomplish the same thing--the operation of a number of banking units under one control and management.

It was recognized by the Board of Governors in 1943 when in its Annual Report the Board said:

> "The Federal supervisory authorities now have authority to control the direct establishment of branches of banks under their respective jurisdictions. * * * Through the corporate device of the holding company, however, these controls are defeated and the holding company can do what

the bank cannot do directly. Thus the same management which is restricted in its operation under a bank charter can, through the holding company device, acquire unit banks, operate them in the same manner branches would be operated, and thus defeat the expressed will of Congress regarding the establishment of branches."

That holding companies may be used to evade branch banking laws was again recognized when Chairman McCabe of the Board of Governors testified in 1950 before the Senate Banking and Currency Committee that:

"Through the acquisition by the holding company of the stock of an existing bank which thereafter may be operated, for all practical purposes, as a branch of the holding company system, the denial of a branch application of a controlled bank may become almost meaningless."

There has been no change in the general situation since 1943 or 1950. Under legislation of the kind now suggested by the Board, it would be possible for a holding company group to operate any number of separate banking offices within a State in complete disregard and violation of the clearly declared policy of that State against branch banking. It could also operate in two or more States notwithstanding the fact that no subsidiary bank could have branches in those States.

Under legislation previously passed by Congress, national banks are expressly prohibited from establishing branches in States where branch banking is prohibited by State law. Evidently, Congress intended to preserve the State's rights in an effective manner at that

time. Yet, if this program is passed by Congress, the bank holding companies could operate in States where branch banking is prohibited by State law. It seems to me this would put Congress in a very inconsistent position.

The second reason I am unable to concur in the Board's position is the inadequacy of the definition of "bank holding company" which the Board has proposed. That definition would perpetuate the long recognized deficiencies of the definition of the term "holding company affiliate" now contained in present law. This definition is based primarily on ownership or control of a majority of the shares of a bank or of the shares voted in the last election of directors of a bank. However, everyone knows, and Congress and the courts have recognized the fact, that control is often exercised through ownership of much less than a majority of the shares of a corporation. Similarly, ownership of a majority of the shares voted at the preceding election of directors is equally unrealistic.

Going back again to the Board's 1943 Annual Report, it was there stated:

> "In the Board's experience, the case in which regulation is most necessary is likely also to be the case in which advantage has been taken of the gaps in the statutory definition with respect to the number of shares owned or controlled. The Board believes that these gaps should be filled in by incorporating in the statute a more realistic definition envisaging the manner and means by which effective control actually is exercised."

The type of legislation proposed by a majority of the Board would not cover some existing groups which are in effect bank holding companies. More important, it would not cover arrangements for single control of a number of banking units which, through the corporate mechanism, could easily be devised in the future to escape coverage of the definition proposed by the Board. In my opinion, a realistic definition adequate to meet these possibilities of evasion must be along the line of that which was contained in the bill S. 2318, endorsed by the Board in 1950, or the similar definition provided by the Capehart bill, S. 1118, which is now pending before the Senate Banking and Currency Committee.

While what I have just stated are the two principal subject matters upon which I find myself in disagreement with my fellow Board Members, I should add that I have a difficult time following their position on the so-called States' rights issue. I do not think it necessary to force the State to legislate again on the subject of branch banking. A majority of the States have already done so. Once we acknowledge what has been officially ruled in at least two States--that is, that holding company banking is a type of branch banking--then holding company legislation should do what our present national banking legislation does, namely, permit branches when State law permits them and deny branches when State law does not permit them.

One final point: I believe the welfare of our country is best served when small businesses can operate in a political and economic climate which enables them to prosper as well as the large corporations. Banking is a field in which a small business can prosper.

Now that we have insurance of deposits and the Federal Reserve System, a small unit bank owned and operated by local people has access to all the information necessary for the operation of an efficient and economical banking business.

The weakness of the bill now proposed by the Board in this respect is that it continues to permit a strong holding company to eliminate the competition of one of the most important factors in our banking system, namely, the individually owned and operated local bank.

June 8, 1953.