PROPOSED LEGISLATION REGARDING BANK HOLDING COMPANIES

STATEMENT OF THOMAS B. McCABE, CHAIRMAN, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, BEFORE SENATE BANKING AND CURRENCY COMMITTEE, MARCH 1, 1950

Mr. Chairman and Members of the Committee:

I believe I could never forget the bank holding company legislation, because when your Committee in the spring of 1948 was considering my nomination as a member of the Federal Reserve Board, one of your chief concerns was with the holding company bill then pending in Congress. Some of you will recall that after being questioned at some length I was told to go back and take a sort of a post-graduate course on bank holding company matters and to report back to the Committee after my homework was completed. At that time bank holding company legislation had been carefully considered by this Committee and had been favorably reported; and, in this connection, I would like to request that the report of this Committee with respect to S. 829, the bank holding company bill in the last Congress, be inserted in the record. Your careful study of that bill, together with the fact that the present bill (S. 2318) is in large part similar to it, would almost seem to render unnecessary any comprehensive statement on the subject at this time. However, in view of the many other matters which continuously press upon the members of this Committee for attention and the fact that there has been some change in the Committee membership, I am going to assume that you may not have clearly in mind some of the points regarding this legislation, and I will proceed to state as briefly as I can the more recent developments in connection with the proposed legislation and the reasons why the Board feels that its enactment is necessary and important.

Since S. 829 was under consideration by the 80th Congress, the legislation has undergone further careful consideration by the Board, and over a period of a year and a half we have had numerous informal conferences with representatives of a number of groups who are interested. These include the American Bankers Association, the Reserve City Bankers Association, the National Association of Supervisors of State Banks, the Independent Bankers Associations, and various bank holding companies. These meetings, in most instances, were attended by the Comptroller of the Currency and the Chairman of the Federal Deposit Insurance Corporation or their representatives. As a result of these discussions, various changes have been made in the bill so as to take into account and give effect to the best and most constructive suggestions received as well as we have been able to appraise them. I have never known a bill which had more careful and extended study and consideration by all parties who might be interested or affected than has this bill.

You will recall that the principal purposes of this legislation are (a) to overcome the inadequacies of the present law relating to holding company affiliates, (b) to regulate the expansion of bank holding companies, (c) to require bank holding companies to give up their investments in nonbanking companies, and (d) to require bank holding companies to register, make reports, and submit to examination. In other words, the basic objectives of S. 2318 are the same as those of S. 829 which your Committee reported favorably in the last Congress. Although the Senate Calendar was such that it was not possible to act on the bill at that time, you will recall that S. 829 had the support of the Federal Advisory Council of the Federal Reserve System (a statutory body that is composed of a banker representative from each of the twelve Federal Reserve Districts and that acts in an advisory capacity to our Board) and of numerous banking organizations, as well as the majority of the major bank holding companies. In its report on the holding company legislation pending in the last Congress, the Federal Advisory Council pointed out that such legislation was urgently necessary, and I would like to submit for the record at this point a letter received in the last few days from the Council, which indicates its general approval of the pending bill.

The need for the enactment by Congress of appropriate and effective bank holding company legislation has been recognized by the American Bankers Association and has been reiterated by the Independent Bankers Associations. Moreover, I am advised by the Director of the Bureau of the Budget that the President favors legislation designed to

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provide for more effective control of bank holding companies, although he has not approved any particular draft of a bill.

I should like to emphasize that this bill is not all-embracing. It does not provide a death sentence for bank holding companies; it does not provide for freezing all companies in their present situations; it does not forbid a bank holding company to establish offices across State lines; it does not bring an individual under the restrictions applicable to bank holding companies; and it does not require holding companies to accumulate any greater reserves than does the present law. On the other hand, the bill does require bank holding companies to rid themselves, with reasonable exceptions, of the ownership of companies not engaged in the banking business; it provides for the regulation of expansion by bank holding companies; and it provides a means of more effective supervision of bank holding companies. The bill is in no sense revolutionary; it is evolutionary.

As I have indicated, S. 2318 is very similar to the bill S. 829 in the 80th Congress, but at this point I think I should mention some of the principal differences between the two:

S. 829 included a preamble which contained the statement that it was the declared policy of Congress "generally to maintain competition among banks and to minimize the danger inherent in concentration of economic power through centralized control of banks." After listening to the various viewpoints expressed as to the desirability of this declaration of policy, it was the Board's feeling that it might properly be omitted from the bill, and it is not included in S. 2318. Some of the groups with whom we discussed the matter, notably the Independent Bankers groups, felt, and I believe still feel, that it would be desirable to retain a provision of this kind. Others, however, felt that it was particularly objectionable and should be omitted.

A related change is that with respect to the provisions of the bill which prescribe certain standards to guide the supervisory agencies in passing upon acquisitions by holding companies or banks of banks or branches. Included among these standards in S. 829 was consideration of "the national policy against restraint of trade and undue concentration of economic power and in favor of the maintenance of competition in the field of banking." In S. 2318 the language has been changed to provide for consideration of "whether or not the effect of such acquisition may be to expand the size and extent of a bank holding company system beyond limits consistent with adequate and sound banking and the public interest." (Sec. 5(d).) I will comment further on this change a little later.

Another important provision in connection with the consideration of the acquisition of banks or branches is that which requires that the appropriate Federal supervisory agency notify the bank supervisor in the State in which the acquiring bank is located of the proposed transaction so that he may submit his views and recommendations on the subject. These must be taken into consideration by the Federal agency in acting upon the proposal. (Sec. 5(e).)

The term "bank holding company" in the new bill includes any company which controls a bank operating four or more branches, rather than a bank operating merely one or more branches as provided in S. 829. We feel that the definition as applied to a bank with one branch is too inclusive. (Sec. 2(a).)

In connection with the authorization to examine bank holding companies and their subsidiaries, S. 2318 contains a provision, not in the previous bill, authorizing use of the reports of examination made by other supervisory authorities to the extent that the information contained therein is adequate for the purposes of the law. (Sec. 3(c).)

S. 2318 also adds a new provision permitting a bank holding company to own up to 5 per cent of a nonbanking company or to own an investment company which in turn owns not in excess of 5 per cent of any nonbanking company. We feel that this provides a reasonable exception to the requirement for the divorcement of nonbanking assets without in any way breaking down the principle which is involved. (Sec. 4(e).)

S. 2318 contains a new section specifically providing that the enactment of the bill "shall not be construed as preventing any State, to an extent not inconsistent with this Act, from exercising the same power and jurisdiction which it now has with respect to banks, bank holding companies, and subsidiaries thereof." This is intended to eliminate any implication that Congress in enacting this legislation is depriving the States of any power which they have in this field, except where such power would be inconsistent with this bill. (Sec. 13.)

There are other differences between S. 2318 and the earlier bill, S. 829, but I believe I have described

the more important of the changes. Now, before discussing in more detail the proposed legislation and the inadequacies of the existing law, a word concerning the nature of bank holding companies might be helpful.

The bank holding company problem is, as you know, not a new one to the Congress. Bank holding companies had a rapid growth during the 1920's, most of the major companies being organized in that period. After extensive hearings which began in 1930, Congress recognized the need for and undertook to provide for the regulation of bank holding companies. This legislation was a part of the Banking Act of 1933. However, the inadequacy of the law soon became apparent, and there were recommendations and proposals for new legislation. For example, in a message to Congress in 1938, President Roosevelt recommended the enactment of legislation to prohibit further expansion of bank holding companies and to require their elimination as soon as practicable. In its annual report for 1943, the Board pointed out in some detail the deficiencies in the existing law and made certain broad recommendations with respect to new legislation. Since then, various bills have been introduced in Congress; and the Board, as well as others, has continued to urge enactment of effective legislation on this subject.

May I say at this point that we do not regard bank holding companies as being necessarily undesirable; in some instances, they have been helpful in providing better management for banks, in assisting them financially, and in encouraging improved banking service. Nevertheless, dangerous abuses are possible in the absence of effective regulation. One of these is the unlimited expansion of control over banks. Of like importance is the combining under the same management of large segments of our banking structure with miscellaneous nonbanking businesses. Basically, our view is that bank holding companies should be regulated in much the same manner as banks themselves are regulated.

A bank holding company is most likely to be a State-chartered corporation organized to own a majority of the stock of a group of banks and to manage or supervise these banks. However, there is a great variety of factual situations in which, by one method or another, organized groups of persons control banks. A holding company is not necessarily a corporation; it may be a business trust, partnership, or some other organized group. In addition to controlling banks, a holding company may be engaged in other businesses, or in the ownership and control of other businesses, unrelated to banking. Holding companies may themselves be banks, including national banks as well as State institutions.

In some instances, there are two or more holding companies controlling the same banks, directly or indirectly. The simplest example of this is where one company owns the controlling stock of another company which, in turn, owns control of a group of banks; but there also are other methods which have been used to establish indirect control. In this connection, it should be mentioned that, without owning any of the stock of the banks, a company may indirectly, or even directly, control a group of banks, as in the case of trust arrangements, as well as in other situations.

Ordinarily, of course, control is based upon stock ownership, but this does not necessarily mean majority ownership; holding companies can and do exercise a controlling influence over banks through the ownership of lesser amounts of stock.

The banks controlled by a bank holding company may include national banks, State member banks and State nonmember banks, whether or not insured; and the major holding company groups usually include more than one class of banks.

Bank holding companies range in size from small organizations to large, nationally known organizations controlling a large number of banks in numerous States. Such companies are to be found in almost every section of the country. The proposed legislation, therefore, deals with a problem nationwide in scope.

Inadequacy of Present Law

A discussion of the major provisions of the proposed legislation will be assisted by some explanation of the present, inadequate law concerning bank holding companies.

As a part of the Banking Act of 1933, Section 5144 of the Revised Statutes was amended by adding several new paragraphs applying exclusively to bank holding companies (called "holding company affiliates") and placing limitations and restrictions upon the right of such companies to vote the stock which they owned in member banks of the Federal Reserve System. This section provides

that a holding company, before it may vote its stock of a member bank, must first obtain a permit to do so from the Board. The Board is authorized in its discretion to grant or deny such a permit. As a condition to the granting of the permit, the holding company, on behalf of itself and its controlled banks, is required to agree to submit to examinations, to establish a reserve fund, and to dispose of all interests in securities companies.

Present law is optional. The amendments to Section 5144 provided a means for bringing some bank holding companies under regulation, but left others, even though meeting the same definitions, free from regulation. This is because the law is based solely upon the voting permit. A holding company becomes subject to the law only if a voting permit is issued. But there is no mandatory requirement in the law that a holding company obtain such a permit. Undoubtedly it was believed that all would do so. Not all have done so, however. This is because in many instances holding companies, as a practical matter, can control the operations of banks whether or not they vote their shares in such banks.

Whenever the Board receives an application for a voting permit, it makes a thorough examination of the holding company and its affiliated nonbanking organizations and reviews reports of examinations of the affiliated banks to determine what corrections, if any, are necessary to meet basic standards. If such corrections appear necessary, they are made a condition to the granting of the voting permit. In one important case, however, when advised of the need for such corrections, the applying company simply abandoned its application for a voting permit. It was able to control its banks without voting the shares which it owned in these banks, and thus was able to avoid regulation.

Clearly the law should apply to all bank holding companies alike. This cannot be accomplished by a law which permits a holding company to elect not to subject itself to regulation. The law must be mandatory to be effective. The present bill provides that all bank holding companies meeting the prescribed definition shall register and shall be subject automatically to all of the regulatory provisions of the statute.

Present definition of holding company is inadequate. Not only does the present law fail to reach those companies which elect not to apply for a voting permit, but it also fails to reach others because of inadequacies in the definition of a "holding company affiliate." The definition in the existing law embraces only those holding companies which control *member* banks. This excludes from any regulation those companies which operate in all respects as bank holding companies, but which control only nonmember banks, even though the latter include insured banks.

Another and more important defect is in that portion of the definition in the existing law which defines a bank holding company as any company "which owns or controls, directly or indirectly, either a majority of the shares of capital stock of a member bank or more than 50 per centum of the number of shares voted for the election of directors of any one bank at the preceding election, ..."

The purpose underlying this part of the statute is to reach those companies which control the management and policies of banks, and with this basic premise we are in agreement. However, as previously pointed out and as Congress and the courts have long recognized, effective control of one company by another does not depend upon the ownership or control of a majority of the voting shares. Thus, the present law in this respect does not cover cases where control is exercised through the ownership of a smaller proportion of the total shares outstanding, or where control is maintained without the ownership of any shares.

Similarly, the number of shares owned or controlled, as compared with the number of shares voted for the election of directors at the preceding election, is an unsatisfactory basis for determining whether a holding company relationship exists. Such a restricted test puts it within the power of the holding company to establish an absence of control when, in fact, it is at the same time exercising most effective control. The case in which regulation is most necessary may very well be the case in which the attempt is made to take advantage of a deficient definition to escape regulation.

The definition of a bank holding company in Section 2(a) of the bill conforms more nearly to the practical realities of intercorporate relationships. The first part of the definition extends automatic coverage to all companies which own 15 per cent or more of the voting shares of two or more banks, or of one bank operating four or more branches, or of one or more other banks in the case of a com-

pany which is a bank. However, provision is made for the exemption of such institutions which would be covered under the definition automatically, if they can demonstrate that they do not exercise a controlling influence over the management or policies of their subsidiary banks. Subsequent provisions of the definition permit the Board to declare an institution to be a bank holding company even though it does not own the 15 per cent of bank stock requisite to automatic coverage under the definition, provided the Board finds, after hearing, that it does in fact control the specified number of banks. This definition we believe is practical, just, and essential in view of the prevailing situations. All institutions similarly situated are affected alike. Each has a ready procedure for escaping regulation by demonstrating that it does not in fact exert the kind of influence upon banks which requires that it be subject to regulation.

Some question has been raised as to that part of the definition of "bank holding company" in the bill which authorizes the Board, after notice and opportunity for hearing, to determine that an institution is a bank holding company even though it does not own 15 per cent of the stock of a bank. I may say that we have studied this point very carefully and have tried to develop a formula which would constitute a satisfactory definition of the term without giving the Board any discretionary authority. We have approached this problem sympathetically but we have been unable to find a definition based solely upon an arithmetical formula which would do the job adequately. We have also asked those who had some question about this in their minds to suggest a satisfactory substitute for the present definition but no one has brought forward a suggestion which seemed to us to meet the situation. The discretionary authority for the determination of a bank holding company is patterned after similar authority which is contained in the Public Utility Holding Company Act and which has been in operation over a period of some 15 years. The rights of all parties will be adequately protected under the provisions of the bill, since the Board can determine that a company is a bank holding company only after notice and hearing and any action taken by the Board is subject under the bill to judicial review.

Nonbanking Activities of Bank Holding Companies

One of the most salutary requirements of the bill is contained in Section 4 and is designed to limit the nonbanking activities of bank holding companies. To that end, a holding company would be required to divest itself of any securities except those in companies which are incidental to its banking operations, those which are eligible for investment by national banks, or those which represent investments of a relatively unsubstantial nature. Such divestment must be accomplished within a period of two years, or within a maximum period of five years if additional time should be deemed necessary to avoid undue hardship.

The reasons underlying this requirement are simple. Accepted rules of law confine the business of banks to banking and prohibit them from engaging in extraneous business, such as owning and operating industrial and manufacturing concerns. The lender and borrower or potential borrower should not be dominated or controlled by the same management. As indicated earlier, however, the holding company device has been used to gather under one management enterprises wholly unrelated to the conduct of a banking business.

In keeping with sound banking principles, it is necessary that a bank holding company should be required by law to divest itself of any substantial interests in nonbanking ventures. The exception in the bill which permits a holding company to own not over 5 per cent of the voting securities of another company directly or through the instrumentality of an investment company, is not incompatible, we believe, with these principles. If, however, this exception should be used to evade the purposes of the law, the bill provides that the holding company may be required to dispose of any such securities.

Where, pursuant to the requirements of Section 4, a holding company distributes its nonbanking assets, such a transaction is given appropriate tax exemption under a provision of the bill prepared with the assistance of the Treasury tax experts. (Sec. 12(f).)

Bank Holding Company Expansion

The problem of how far bank holding company systems should be permitted to expand has long

been of serious concern. It is in this area that one of the greatest potential evils of bank holding company operations exist.

Under existing law, a chartered bank may be prevented by the regulatory agency to which it is subject from expanding its banking offices either by the establishment of new branches or by taking over and operating the offices of other banks as branches. In order to establish branches, national banks must first obtain permission from the Comptroller of the Currency, State member banks from the Board, and nonmember insured banks from the Federal Deposit Insurance Corporation. But a bank holding company is not limited by any such requirements. 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. The holding company device lends itself readily to the amassing of vast resources obtained largely from the public, which can be controlled and used by the relatively few who comprise the management of the holding company, giving them a decided advantage in acquiring additional properties and in carrying out a program of expansion. Such power can be used to acquire independent banks by measures which leave the local management and minority stockholders little with which to defend themselves except their own protests.

Under Section 5 of the bill, this situation would be remedied by preventing bank acquisitions without first obtaining the approval of some agency of the Federal Government. Under this section, any acquisition of the stock or assets of banks by a bank holding company would have to be approved by the Board. If one of the banks in a holding company group wished to acquire the assets of a bank, the acquiring bank, if a national bank, would have to secure the approval of the Comptroller; if a State member bank, it would have to obtain the approval of the Board; if a nonmember bank, it would have to obtain the approval of the Federal Deposit Insurance Corporation.

Section 5(d) of the bill enumerates the standards which would guide the banking agencies in deciding whether to approve any such expansion. First, they would have to consider the financial history and condition of the applicant and the banks concerned; their prospects; character of their management; and the needs of the communities involved. As this Committee pointed out in favorably reporting upon this legislation in 1947, these are in general the considerations now specified in the law as the basis for administrative action in connection with the admission of State banks to membership in the Federal Reserve System and the granting of deposit insurance coverage. However, under the bill the agency concerned would also have to consider whether the proposed expansion of a bank holding company or of any banking subsidiary in a bank holding company group would extend the operation of the holding company group beyond limits consistent with adequate and sound banking and the public interest. In this connection, I should point out that this represents a difference in language from that contained in the bill previously acted upon by this Committee. The earlier bill contained language which was objected to by a number of groups, including nonbanking groups with whom I have met, on the ground that the language was so broad as to present serious difficulties in interpretation. The language which has been inserted in the present bill I believe meets these objections without in any way narrowing the considerations which the supervisory agency may take into account in passing upon questions of holding company expansion. Chief among these considerations, as this Committee pointed out in 1947, is the anti-monopoly principle enunciated in the Sherman and Clayton Acts.

In the discussions which we have had on this bill with the interested groups, the suggestion was made, particularly by the State bank supervisors, that it would be well for the Comptroller, the Federal Deposit Insurance Corporation, or the Board, in considering any proposal for the acquisition of banks or the establishment of branches under this bill, to consult with the appropriate State bank supervisory authority and get his consent before approving the transaction. We discussed this at great length with various groups and among ourselves and with others and we did not feel that it would be practicable to go so far as to give to the State supervisor what in effect would be a veto in the matter. We have included in the bill a provision which requires that in any such case the bank supervisor in a State must be notified and given 30 days in which to submit his views and recommendations. (Sec. 5(e).) As a practical matter, in emergency cases the State supervisor

would, of course, be expected to submit his views very promptly. These must be taken into account by the Federal agency in acting upon the matter and they become a part of the record in the case. The views of the State authorities will thus be fully considered in each instance and a decision will be reached only in the light of their recommendations.

S. 2318, like S. 829 in the last Congress, provides that the Federal Reserve Board shall be the administering agency, because the Board is named as the administering agency in the existing law enacted in 1933 relating to holding company affiliates. However, we are more concerned in this bill with the principles which would be established by it than we are with the question of what agency administers it. It is our view that, regardless of what agency is selected for the purpose, only one agency should be charged with the responsibility for administering it. We are unalterably opposed to the administration of this Act by a board made up of various supervisory agencies for the obvious reasons of efficiency and economy as well as time saving on the part of the executives of the different agencies. Only by naming one agency can there be effective administration of the legislation and responsibility clearly fixed for the carrying out of the Congressional purpose.

Section 3(c) of the bill authorizes the Board to make such examinations of a holding company and of its subsidiaries, including bank subsidiaries, as shall be necessary to disclose fully the relations between the holding company and its subsidiaries, but it also provides that the Board may use reports of examination made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority to the extent that the information contained therein is adequate. As a matter of practice, of course, so far as banks are concerned, we would expect to rely almost wholly upon reports of examinations made by these agencies, instead of making the examinations ourselves. Accordingly, if the Committee should consider it advisable, the Board would have no objection to putting a provision in the bill which would require that the Board obtain the consent of the Federal Deposit Insurance Corporation before it makes an examination of any nonmember insured bank that is a subsidiary of a bank holding company, and the consent of the appropriate State supervisory authority for an examination of a subsidiary nonmember uninsured bank. As to national banks, the examination practice and the relationship between the Comptroller of the Currency and the Board in that regard have been long established under existing provisions of the law; this has worked very satisfactorily and the present provisions of the bill would not change the effect of existing law.

Other Aspects of Proposed Legislation

Under the present law, the only provision which implies a degree of administrative supervision of bank holding companies relates to such examinations "as shall be necessary to disclose fully the relations between" the holding company and its controlled banks, and the further provision that, for violation of the statute or of its agreement with the Board prerequisite to its obtaining a voting permit, such permit of a holding company may be revoked. In that event, certain penalties affecting the banks in the holding company system may be applied. When considered in the light of the voluntary aspects of the existing law, such provision falls far short of providing effective regulation. In the first place, the Board's right to examine a holding company is not coupled with the specific power to require corrections. Secondly, the penalties for violation of the statute or of a holding company's agreement with the Board are directed principally at the controlled banks, rather than at the bank holding company.

The provisions of the present bill, as previously indicated, would require registration of all bank holding companies (Sec. 3(a)). A bank holding company would be required to file periodic reports. (Sec. 3(b).) It, as each of its subsidiaries, would be subject to examination. (Sec. 3(c).) The more important requirements of the present statute regarding reserve funds of bank holding companies are included as a part of the bill (Sec. 8). Investments by a subsidiary bank in the capital stock of its bank holding company would be forbidden and loans by such a bank to its holding company or its other subsidiaries would be regulated (Sec. 6(a) and 6(c)). The terms of any management or service contracts between a holding company and its bank would be open to surveillance (Sec. 7). Finally, the Board would be authorized to make such rules, regulations, and orders as might be necessary to enable it to administer and carry out the purposes of the Act. (Sec. 9.)

With respect to its effective administration, the bill provides certain sanctions believed to be necessary to assure compliance with its provisions. Thus, if it is found, after notice and hearing, that a bank holding company has willfully violated the Act or any rules, regulations, or orders issued thereunder, the holding company may be forbidden to pay the salary of its officials who participated in the violation, to receive dividends or management or service fees from its subsidiary banks, or to participate in any way in the management or control of any subsidiary bank (Sec. 11(a)). In addition, the bill provides for the criminal prosecution of willful violators (Sec. 11(b)).

The bill extends a statutory right of judicial review to anyone aggrieved by any action of the Board taken under any of the various regulatory provisions of the bill (Sec. 10(d)). This provision is similar to that contained in comparable legislation in other fields.

At this time I would like to suggest for the consideration of the Committee two proposed amendments to the bill which we believe are desirable changes. These amendments, which are of a technical nature and consistent with the general purposes of the bill, reflect the results of further consultation with interested parties.

Under the first proposed amendment, a bank would not be a "bank holding company" merely because it may have a subsidiary trust company located in the same city or town. In such a situation, the subsidiary stands in much the same position as a bank's own trust department.

The second proposed amendment would exclude from the definition of "bank," those organizations which are engaged principally in international or foreign banking and in whose shares national banks may invest with the Board's permission. This proposal is merely a clarification of the provision already in the bill excluding banks which do not do business within the United States.

I ask that these two proposed amendments which I now submit be included in the record.*

Before concluding this statement, I would personally like to express my deep appreciation to the various banking groups and individuals who have given so much of their time and attention to the consideration of the various points in connection with this proposed legislation and have united with us in trying to bring forth a sound and effective bill which would meet the views of as many varying interests as possible. They have all been most helpful in the discussions of the matter and in submitting constructive suggestions. We are also most appreciative of the helpful consideration which we have had from the Attorney General's office, the Bureau of the Budget, and other Government agencies. We have felt free to call upon any and all of these groups and agencies at any time for their points of view. Their assistance has been most generously given and our discussions have been carried on in a most cordial atmosphere.

As I said at the commencement of this statement, the bank holding company problem first came forcibly to my attention when I was before this Committee nearly two years ago. In view of the intense interest of this Committee in the subject, I have made an extensive and what I consider a completely objective and fresh approach to the problem without personal prejudice in the subject, and have reached the conclusion on my own that legislation on this subject is highly desirable from the standpoint of the public interest. It is also desirable in my judgment in order to give the bank holding companies a sort of yardstick by which they can operate, so that they will know what they are lawfully permitted to do and what they may not do. The necessity for appropriate legislation in the field is generally recognized and on behalf of the Board, therefore, I respectfully urge upon your Committee the desirability of prompt and favorable action.

S. 2318, A BILL TO PROVIDE FOR CONTROL AND REGULATION OF BANK HOLDING COMPANIES, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bank Holding Company Act of 1949."

SEC. 2. DEFINITIONS.—(a) "Bank holding company" means (1) any company which directly or indirectly owns, controls, or holds with power to vote 15 per centum or more of the voting shares of each of two or more banks or of a company which is a bank holding company by virtue of this section, or any company which is a bank and which directly or indirectly owns, controls, or holds with power to vote 15 per centum or more of the voting

* For full text of proposed amendments, see p. 16.

shares of one or more other banks, or any company which directly or indirectly owns, controls, or holds with power to vote 15 per centum or more of the voting shares of one bank provided such bank operates four or more branches, unless the Board as hereinafter provided by order declares such company not to be a bank holding company; (2) any company which the Board determines, after notice and opportunity for hearing, directly or indirectly, exercises (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of two or more banks or of only one bank if such bank operates four or more branches as to make it necessary or appropriate in the public interest or for the protection of investors or depositors that such company be subject to the obligations, duties, and liabilities imposed in this Act upon bank holding companies; and (3) any company which is a bank and which the Board determines after notice and opportunity for hearing, directly or indirectly, exercises (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of one or more other banks as to make it necessary or appropriate in the public interest or for the protection of investors or depositors that such company be subject to the obligations, duties, and liabilities imposed in this Act upon bank holding companies.

The Board, upon application, shall by order declare that a company is not a bank holding company under clause (1) above if the Board finds that the applicant does not, either alone or pursuant to an arrangement or understanding with one or more other persons, exercise such a controlling influence over the management or policies of the stated number of banks as to make it necessary or appropriate in the public interest or for the protection of investors or depositors that such company be subject to the obligations, duties, and liabilities imposed in this Act upon bank holding companies.

(b) "Bank" means any national bank, or any State bank, banking association, savings bank, or trust company, but shall not include any organization which does not receive deposits nor conducts a trust business within the United States. "State member bank" means any State bank which is a member of the Federal Reserve System. "District bank" means any State bank organized or operating under the Code of Law for the District of Columbia.

(c) "Company" means any bank, corporation, partnership, joint-stock company, business trust, voting trust, association, or any similar organized group of persons, whether incorporated or not, or any receiver, trustee, or other liquidating agent of any of the foregoing in his capacity as such; excluding, however, any such company which is owned by the United States.

(d) "Board" means the Board of Governors of the Federal Reserve System.

(e) "Subsidiary," with respect to a specified bank holding company, means (1) any company 15 per centum or more of whose outstanding voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is owned or controlled by such bank holding company, unless the Board as hereinafter provided by order declares such company not to be a subsidiary of such bank holding company; or (2) any company the management and policies of which the Board determines, after notice and opportunity for hearing, are subject to a controlling influence by the specified bank holding company.

The Board, upon application, shall by order declare that a company is not a subsidiary company of a specified bank holding company under clause (1) above if the Board finds that the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such bank holding company (either alone or pursuant to an arrangement or understanding with one or more other persons).

(f) For the purposes of this section there shall be excluded from consideration all voting shares of banks acquired or held by mutual savings banks; also, there shall be excluded from consideration all voting shares of banks or other companies acquired or held by a bank in a fiduciary capacity; except where such voting shares are acquired or held for the benefit of all or a majority of the persons beneficially interested in such bank or except where the Board, after notice and opportunity for hearing finds that such acquisition or holding is resulting in the violation or evasion of any of the purposes or provisions of this Act.

SEC. 3. REGISTRATION, REPORTS, AND EXAMINATIONS.—(a) Within ninety days after the effective date of this Act, or within ninety days after becoming a bank holding company, whichever is later, every bank holding company shall register with the Board on forms prescribed by the Board, which shall include, with such other information as the Board may require, statements showing (1) its financial condition at the end of its fiscal year last preceding the date of registration, including therein the amount of its accumulated net income at such time; (2) name and address of each of the bank holding company's subsidiary banks and address of each branch of each such bank; (3) name and address of each other bank of which the bank holding company or its subsidiaries own shares; (4) number of shares of each class of stock of each bank

owned by the bank holding company or its subsidiaries; (5) information concerning the manner in which such shares are owned; (6) name, address, and nature of business of each of the bank holding company's subsidiaries, other than banks, and the manner in which the relationship arises; and (7) such information as the Board may deem necessary or appropriate.

The Board may, in its discretion, extend the time within which a bank holding company shall register and file the requisite statement.

(b) Each bank holding company shall furnish to the Board from time to time such reports as may be required by the Board and in such form and detail as the Board may prescribe. Such reports shall contain such information concerning the bank holding company and its subsidiaries as the Board shall deem necessary to disclose fully the relations among such companies, the effect of such relations upon the affairs of the subsidiary banks, and whether the provisions of this Act have been complied with.

(c) Each bank holding company and each subsidiary thereof shall be subject to such examinations by examiners selected or approved by the Board as shall be necessary to disclose fully the relations between such bank holding company and its subsidiaries, the effect of such relations upon the affairs of the subsidiary banks, and whether the provisions of this Act or of the Board's orders, rules, or regulations have been complied with; and the examiner making such an examination shall have power to administer oaths and to examine any of the officers, directors, employees, and agents of such bank holding company or subsidiary under oath. The expenses of any such examination may, in the discretion of the Board, be assessed against the bank holding company and, when so assessed, shall be paid by such bank holding company. To the extent that the information contained therein is adequate for the purposes of this section the Board is authorized to use the reports of examination made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority.

SEC. 4. INTERESTS IN NONBANKING ORGANIZATIONS.—(a) Except as otherwise provided in this Act, it shall be unlawful for any bank holding company, after two years after the effective date hereof, to own any shares or other securities or obligations of any company other than a bank or to engage in any business other than that of banking or managing or controlling subsidiary banks. The Board is authorized, upon application by a bank holding company, to extend this period from time to time as to such company for not more than one year at a time if, in its judgment, such an extension would not be detrimental to the public interest. However, nothing herein provided shall be construed to authorize the Board to extend any such period beyond a date five years after the enactment hereof.

(b) The prohibitions in this section shall not apply to shares or other securities or obligations owned or acquired by a bank holding company in any company engaged solely in holding and operating property in which the bank premises are located, or engaged solely in conducting a safe-deposit business, or engaged solely in the business of furnishing managerial, auditing, supervisory, purchasing, and other similar services to such bank holding company and its subsidiaries, or solely in the business of liquidating assets acquired from such bank holding company and its subsidiaries, or in any other company all the activities of which the Board has determined are so closely related to the business of managing, operating, or controlling banks as to be a proper incident thereto.

(c) Nor shall the prohibitions in this section apply to shares or securities or obligations acquired by a bank holding company from any of its subsidiaries which have been requested to dispose of such voting shares, securities, or obligations by any Federal or State authority having statutory power to examine such subsidiaries or which have been acquired from such subsidiaries with the prior approval of the Board; but such bank holding company shall dispose of such shares, securities, or obligations within a reasonable time. If, while such bank holding company owns or controls such shares, securities, or obligations, the Board, after notice and opportunity for hearing, determines that the ownership or control of such shares, securities, or obligations is resulting in the violation or evasion of any of the purposes or provisions of this Act, it may by order require such bank holding company to dispose of all or any part thereof forthwith.

(d) Nor shall the prohibitions of this section apply to shares or other securities or obligations which are held or acquired by a bank, which is a bank holding company, in a fiduciary capacity or which are otherwise lawfully owned by such bank or any of its wholly owned subsidiaries on the effective date of this Act; nor as to any bank holding company shall the prohibitions in this section apply to investment securities of the kinds and amounts eligible for investment by national banks under the provisions of section 5136 of the Revised Statutes. If, while such bank or bank holding company owns or controls such shares, securities, or other obligations, the Board, after notice and opportunity

for hearing, determines that the ownership or control of such shares, securities, or obligations is resulting in the violation or evasion of any of the purposes or provisions of this Act, it may by order require such bank or bank holding company to dispose of all or any part thereof forthwith.

(e) Nor shall the prohibitions of this section apply to the ownership by a bank holding company of shares or other securities or obligations of any company which do not include more than 5 per centum of the outstanding voting securities of such company, and do not have a value greater than 5 per centum of the value of the total assets of the bank holding company, as determined under regulations prescribed by the Board; nor shall they apply to the ownership by a bank holding company, in excess of such limitations, of shares or other securities or obligations of an investment company which is not engaged in any business other than investing in securities if the bank holding company and all such investment companies (in which the bank holding company has investments in excess of such limitations) do not together own shares or other securities or obligations of any one other company which are in excess of the foregoing limitations. If, while such bank holding company owns or controls such shares, securities, or obligations, the Board, after notice and opportunity for hearing, determines that the ownership or control of such shares, securities, or obligations is resulting in the violation or evasion of any of the purposes or provisions of this Act, it may by order require such bank holding company to dispose of all or any part thereof forthwith.

SEC. 5. ACQUISITIONS OF BANK SHARES OR BANK ASSETS.—(a) No plan, undertaking, or agreement by or on behalf of any company which would result in that company becoming a bank holding company, as defined in section 2 (a) (1) of this Act, and no plan, undertaking, or agreement by or on behalf of any bank holding company to acquire either directly or indirectly any voting shares of a bank, shall be consummated, effectuated, or completed except with the prior approval of the Board: *Provided, however,* That nothing herein contained shall be construed to apply to the acquisition by a bank holding company of any additional voting shares of a bank in any case where such bank holding company, prior to such acquisition, owned a majority of the voting shares thereof.

(b) No plan, undertaking, or agreement by or on behalf of any bank holding company or any of its nonbanking subsidiaries to acquire all or substantially all of the assets of any bank shall be consummated, effectuated, or completed except with the prior approval of the Board.

(c) No plan, undertaking, or agreement by or on behalf of a banking subsidiary of a bank holding company to acquire all or substantially all of the assets of any bank shall be consummated, effectuated, or completed except with the prior approval of (1) the Comptroller of the Currency if the acquiring bank is a national bank or district bank; or (2) the Board if the acquiring bank is a State member bank, or (3) the Federal Deposit Insurance Corporation in the case of any other acquiring bank. Nor shall any State member bank (not including a district bank) which is a subsidiary of a bank holding company, establish any branch within the limits of the city, town, or village in which the head office of such bank is located except with the prior approval of the Board.

(d) In determining whether to approve any acquisition subject to paragraphs (a), (b), or (c) of this section consideration shall be given to the financial history and condition of the applicant and the banks concerned; their prospects; the character of their management, the convenience, needs, and welfare of the communities and the area concerned; and whether or not the effect of such acquisition may be to expand the size and extent of a bank holding company system beyond limits consistent with adequate and sound banking and the public interest. The factors stated in this section shall likewise be considered by the Board, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation in determining whether to approve an application of any bank, which is a part of a bank holding company system, to establish a branch or branches of such bank.

(e) Before determining whether to approve any acquisition or application pursuant to this section, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board, as the case may be, shall notify the bank supervisory authority in the State in which the acquiring or applying bank is located and shall afford such State banking authority a period of thirty days within which to submit a written statement of his views and recommendations as to whether such acquisition or application should be approved. Such statement and recommendation shall be taken into consideration by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board, as the case may be, in determining whether to approve any acquisition or application pursuant to this section, and such statement and recommendation shall be made a part of the record upon which such acquisition or application is approved or rejected.

SEC. 6. BORROWING BY BANK HOLDING COM-

PANY OR ITS SUBSIDIARIES.—(a) No bank shall invest any of its funds in the capital stock of (1) a bank holding company of which it is a subsidiary, or (2) a subsidiary of such bank holding company.

(b) No bank shall accept the capital stock of (1) a bank holding company of which it is a subsidiary, or (2) a subsidiary of such bank holding company as collateral security for advances made to any person, partnership, association, or corporation: *Provided, however,* That any bank may, with the prior approval of the Board, accept such capital stock as a security for debts previously contracted.

(c) No bank shall (1) make any loan or any extension of credit to, or purchase securities under repurchase agreement from, (a) a bank holding company of which it is a subsidiary, or (b) a subsidiary of such bank holding company; or (2) invest any of its funds in the bonds, debentures, or other such obligations of any such bank holding company or subsidiary; or (3) accept the bonds, debentures, or other such obligations of any such bank holding company or subsidiary as collateral security for loans or advances made to any person, partnership, association, or corporation, if, in the case of all such bank holding companies and subsidiaries, the aggregate amount of such loans, extensions of credit, repurchase agreements, investments, and advances against such collateral security will exceed 20 per centum of the capital stock and surplus of such bank. Non-interest-bearing deposits to the credit of a bank shall not be deemed to be a loan or advance to the bank of deposit, nor shall the giving of immediate credit to a bank upon uncollected items received in the ordinary course of business be deemed to be a loan or advance to the depositing bank. Within the foregoing limitations, each loan or extension of credit of any kind or character to such bank holding company or subsidiary shall be secured by collateral in the form of stocks, bonds, debentures, or other such obligations having a market value at the time of making the loan or extension of credit of at least 20 per centum more than the amount of the loan or extension of credit, or of at least 10 per centum more than the amount of the loan or extension of credit if it is secured by obligations of any State or of any political subdivision or agency thereof: *Provided,* That no margin of collateral shall be required when such loan or extension of credit is secured by obligations of the United States Government, the Federal intermediate credit banks, the Federal land banks, the Federal home-loan banks, or the Home Owners' Loan Corporation, or by such notes, drafts, bills of exchange, or bankers' acceptances as are eligible for rediscount or for purchase by Federal Reserve banks.

(d) The provisions of this section shall not apply to (1) any company of the types described in section 4 (b) of this Act, or (2) any company whose subsidiary status has arisen out of a bona fide debt to the bank contracted prior to the date of the creation of such status, or (3) any company whose subsidiary status exists by reason of the ownership or control of voting shares thereof by the bank as executor, administrator, trustee, receiver, agent, or depositary, or in any other fiduciary capacity, except where such shares are held for the benefit of all or a majority of the stockholders of such bank.

SEC. 7. SERVICE FEES OR BENEFITS.—The Board is authorized, if in its opinion such action is necessary or appropriate for the protection of depositors or investors and after appropriate notice and opportunity for hearing, to determine the reasonableness of any service, management, or similar charge or fee or benefit obtained by a bank holding company or any of its subsidiaries from a subsidiary bank of such bank holding company, and to order that all or any part of such charges or fees or benefits which it finds to be unreasonable shall be discontinued. It shall be unlawful for such bank holding company or any of its subsidiaries thereafter to assess or obtain any such charge or fee or benefit in contravention of the Board's order.

SEC. 8. RESERVE FUND.—After the effective date of this Act, every corporate bank holding company shall use all its net earnings over and above 6 per centum per annum of the book value of its own shares to accumulate a fund, and every noncorporate bank holding company shall accumulate a fund in accordance with the terms prescribed by the Board, in an amount equal to at least 12 per centum of the aggregate par value of all bank shares owned by it. Such fund shall consist of readily marketable assets, other than bank stocks, and shall be identified in an appropriate manner and kept free and clear of any lien, pledge, or hypothecation of any kind or nature. Such assets may be used by the bank holding company to replace capital of its subsidiary banks and to eliminate losses and depreciation from the assets of such banks, and, with the prior approval of the Board, to increase the capital or surplus of its subsidiary banks, but, except as permitted by the Board, shall not be used by the bank holding company for any other purpose, and any deficiency in such assets resulting from such use shall be replaced in the same manner as above provided.

SEC. 9. REGULATIONS.—The Board shall have the authority to make and issue such rules, regulations, and orders, not inconsistent with the provisions of this Act, as may be necessary to enable it to administer and carry out the purposes of this Act and prevent evasions thereof and it shall likewise have

authority to amend, modify, or rescind any such rules, regulations, or orders so made or issued. All powers and functions of the Board prescribed by this Act, other than the issuance, amendment, modification, or rescission of rules, regulations, and orders and the determination of matters of general policy, may be performed through such members of the Board or such officers and employees thereof or such Federal Reserve banks or officers or employees thereof as the Board may deem advisable in order to facilitate the administration of this Act.

SEC. 10. HEARINGS, INVESTIGATIONS, AND COURT REVIEW OF ORDERS.—(a) In addition to the hearings authorized in this Act, the Board also shall have authority to make such investigations as may be necessary to determine whether any proceeding under this Act should be instituted against a particular person or persons, or with respect to a particular transaction or transactions; and the Board shall keep appropriate records of all hearings and investigations.

(b) For the purpose of any hearing or investigation under this Act, any member of the Board, or any officer thereof designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, records, or other papers which are relevant or material to the inquiry. Such attendance of witnesses and the production of any such papers may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place where such a hearing is being held or investigation is being made.

(c) In case of refusal to obey a subpena issued to, or contumacy by, any person, the Board may invoke the aid of any court of the United States within the jurisdiction of which such hearing or investigation is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, records, or other papers. And such court may issue an order requiring such person to appear before the Board or member or officer designated by the Board, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. No person shall be excused from attending and testifying or from producing books, records, or other papers in obedience to a subpena issued under the authority of this Act on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. Any person who without just cause shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, records, or other papers in obedience to the subpena of the Board, if in his or its power so to do, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(d) Any person or party aggrieved by any final action of the Board under this Act may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Board be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Board or upon the Board's secretary at its offices in the City of Washington, and thereupon the Board shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Board shall be considered by the court unless such objection shall have been urged before the Board or unless there were reasonable grounds for failure so to do. The finding of the Board as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there are reasonable grounds for failure to adduce such evidence in the proceeding before the Board, the court may order such additional evidence to be taken before the Board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new find-

ings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Board shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code. The commencement of proceedings to review an order of the Board issued under this Act shall not operate as a stay of the Board's order unless the court otherwise orders.

SEC. 11. PENALTIES.—(a) If, after notice and opportunity for hearing, the Board finds that a bank holding company has willfully violated any of the provisions of this Act, or of any rules, regulations, or orders of the Board issued pursuant thereto, or has knowingly permitted or assented to or participated in any such violation by any subsidiary, the Board may issue an order, effective for such period as may be fixed by the order and containing any one or more of the following prohibitions: (i) That such bank holding company shall not pay any salary or other remuneration to any officer or director of the company found by the Board to have willfully participated in such violation or violations and who was made a party to such hearing by the Board; (ii) that no subsidiary bank of such bank holding company shall pay dividends on shares owned by such bank holding company or pay or become liable to pay to such bank holding company or any of its subsidiaries any service, management, or similar charges or fees, or render any specified benefit; and (iii) that such bank holding company shall not directly or indirectly vote the shares owned by it or otherwise participate in the management or control of any subsidiary bank.

(b) Any person who willfully violates any provision of this Act or any rule, regulation, or order issued by the Board pursuant thereto shall upon conviction be fined not more than $10,000 or imprisoned not more than two years, or both. Every officer, director, agent, and employee of a bank holding company shall be subject to the same penalties for false entries in any book, report, or statement of such bank holding company as are applicable to officers, directors, agents, and employees of member banks for false entries in any books, reports, or statements of member banks under section 1005 of title 18, United States Code.

SEC. 12. TECHNICAL AMENDMENTS.—(a) The last sentence of the sixteenth paragraph of section 4 of the Federal Reserve Act, as amended, is amended by striking out all of the language therein which follows the colon and by inserting in lieu thereof the following: *"Provided,* That whenever any member banks within the same Federal Reserve district are subsidiaries of the same bank holding company within the meaning of the Bank Holding Company Act of 1949, participation in any such nomination or election by such member banks, including such bank holding company if it is also a member bank, shall be confined to one of such banks, which may be designated for the purpose by such bank holding company."

(b) (1) The eighteenth paragraph of section 9 of the Federal Reserve Act is amended by striking out the last sentence of such paragraph.

(2) The twenty-first paragraph of section 9 of the Federal Reserve Act is repealed.

(c) Subsection (c) of section 2 of the Banking Act of 1933, as amended, is repealed.

(d) Section 5144 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 5144. In all elections of directors, each shareholder shall have the right to vote the number of shares owned by him for as many persons as there are directors to be elected, or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and in deciding all other questions at meetings of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him; except that (1) this shall not be construed as limiting the voting rights of holders of preferred stock under the terms and provisions of articles of association, or amendments thereto, adopted pursuant to the provisions of section 302 (a) of the Emergency Banking and Bank Conservation Act, approved March 9, 1933, as amended; (2) in the election of directors, shares of its own stock held by a national bank as sole trustee, whether registered in its own name as such trustee 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 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; and (3) shares of its own stock held by a national bank and one or more persons as 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. Shareholders may vote by proxies duly authorized in writing; but no officer, clerk, teller, or bookkeeper of such bank shall act as proxy; and no shareholder whose liability is past due and unpaid shall be allowed to vote. When-

ever shares of stock cannot be voted by reason of being held by the bank as sole trustee, such shares shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite percentage of shares."

(e) The second paragraph of section 5211 of the Revised Statutes is amended by striking out the second sentence of such paragraph.

(f) (1) Subsection (d) of section 26 of the Internal Revenue Code, as amended, is amended to read as follows:

"(d) BANK HOLDING COMPANIES.—In the case of a bank holding company (as defined in the Bank Holding Company Act of 1949), the amount of the earnings or profits which the Board of Governors of the Federal Reserve System certifies to the Commissioner has been devoted by such company during the taxable year to the acquisition of readily marketable assets in compliance with section 8 of the Bank Holding Company Act of 1949. The aggregate of the credits allowable under this subsection for all taxable years shall not exceed the amount required to be devoted under such section 8 to such purposes, and the amount of the credit for any taxable year shall not exceed the adjusted net income for such year."

(2) Subdivision (3) of subsection (b) of section 27 of the Internal Revenue Code, as amended, is amended to read as follows:

"(3) The bank holding company credit provided in section 26 (d)."

(3) Section 112 (b) of the Internal Revenue Code is amended by inserting at the end thereof the following:

"(11) DISTRIBUTIONS AND EXCHANGES PURSUANT TO BANK HOLDING COMPANY ACT OF 1949.—

"(A) Distributions.—In the case of a distribution of property not permitted to be owned by a bank holding company under the provisions of section 4 of the Bank Holding Company Act of 1949, held by a bank holding company on the date of enactment of such Act or thereafter legally acquired pursuant to such Act, made pursuant to an order of the Board of Governors of the Federal Reserve System authorizing, approving or directing such distribution as effectuating the policy of the Bank Holding Company Act of 1949, to a shareholder in such bank holding company as defined in such Act, without the surrender by such shareholder of stock or securities in such company, no gain to the distributee shall be recognized.

"(B) Exchanges.—No gain or loss shall be recognized if a bank holding company, pursuant to an order of the Board of Governors of the Federal Reserve System authorizing, approving or directing such exchange as effectuating the policy of the Bank Holding Company Act of 1949, transfers property not permitted to be owned by a bank holding company under the provisions of section 4 of such Act, to a corporation organized to receive such property solely in exchange for all of the stock of such transferee corporation and such stock is distributed forthwith in a distribution subject to the provisions of subparagraph (A).

"(C) Application of subparagraphs (A) and (B).—The provisions of subparagraphs (A) and (B) of this paragraph shall not apply unless the Board of Governors of the Federal Reserve System shall certify that such distribution or exchange was of property not permitted to be owned under the provisions of section 4 of the Bank Holding Company Act of 1949 and was necessary or appropriate to effectuate the provisions of such Act. In such certification, the Board of Governors of the Federal Reserve System shall specify and itemize the stock, securities or other property so distributed or exchanged."

(4) Section 113 (a) of the Internal Revenue Code is amended by inserting at the end thereof the following:

"(23) PROPERTY ACQUIRED IN DISTRIBUTION PURSUANT TO BANK HOLDING COMPANY ACT OF 1949.—

"(a) If property other than stock or securities is acquired in a distribution subject to the provisions of section 112 (b) (11), then the basis of such property shall be the same as it would be in the hands of the company distributing such property; and an amount equal to the adjusted basis which such property had in the hands of such distributing company at the time of such distribution shall be applied against and reduce the adjusted basis of the stock in respect of which the distribution was made, and if in excess of such basis, such excess shall be taxable in the same manner as a gain from the sale or exchange of property.

"(b) If stock or securities is acquired in a distribution subject to the provisions of section 112 (b) (11), then the basis in the case of the stock in respect of which the distribution was made shall be apportioned, under regulations prescribed by the Commissioner with the approval of the Secretary, between such stock and the stock or securities acquired in such distribution.

"(c) Where stock or securities and property other than stock or securities are acquired in a distribution subject to the provisions of section 112 (b) (11), subparagraph (a) of this paragraph shall be applied before subparagraph (b).

"(d) If stock is acquired by a bank holding company in an exchange subject to the provisions of section 112 (b) (11) (B), then the basis of such stock shall be the same as in the case of the property exchanged; and when, in a distribution subject to the provisions of section 112 (b) (11) (A), such stock is acquired by a distributee of such company, then the basis shall be determined as though the stock were property other than stock or securities.

"(e) If property is acquired by a corporation in a transfer from a bank holding company subject to the provisions of section 112 (b) (11) (B), then the basis of such property shall be the same as it would be in the hands of such bank holding company."

(g) (1) Paragraph 4 of subsection (c) of section 3 of the Investment Company Act of 1940 is amended to read as follows:

"(4) Any bank holding company which is registered with the Board of Governors of the Federal Reserve System pursuant to the Bank Holding Company Act of 1949, or any banking subsidiary or any other subsidiary thereof which is exempt from section 4 by reason of the provisions of subsection (b) thereof as defined in said Act."

(2) Paragraph (11) of subsection (a) of section 202 of the Investment Advisers Act of 1940 is amended by changing the words "or any holding company affiliate, as defined in the Banking Act of 1933" to read "or any bank holding company, as defined in the Bank Holding Company Act of 1949, or any banking subsidiary or any other subsidiary thereof which is exempt from section 4 by reason of the provisions of subsection (b) thereof as defined in said Act."

(h) Subsection (b) of section 2 of the Banking Act of 1933, as amended, is amended by adding the following paragraphs:

"(4) which owns or controls, directly or indirectly, either a majority of the shares of capital stock of a member bank or more than 50 per centum of the number of shares voted for the election of directors of any one bank at the preceding election, or controls in any manner the election of a majority of the directors of any one bank; or

"(5) for the benefit of whose shareholders or members all or substantially all of the capital stock of a member bank is held by trustees."

SEC. 13. RESERVATION OF RIGHTS TO STATES.—The enactment by Congress of the Bank Holding Company Act of 1949 shall not be construed as preventing any State, to an extent not inconsistent with this Act, from exercising the same power and jurisdiction which it now has with respect to banks, bank holding companies and subsidiaries thereof.

SEC. 14. SEPARABILITY OF PROVISIONS.—If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

AMENDMENTS PROPOSED BY CHAIRMAN McCABE TO S. 2318

I. Amend subsection (a) of section 2 by inserting between the first and second paragraphs thereof a new paragraph reading as follows:

"Notwithstanding the foregoing, no company shall be a bank holding company by reason of the fact that one bank (or stockholders of such bank or trustees for their benefit) owns, controls, or holds voting shares, or exercises a controlling influence over the management or policies, of one other bank, if the principal offices of both banks are located in the same municipality and one of them is a trust company principally engaged in trust business, is not substantially engaged in commercial banking business, and operates no branches outside of such municipality."

II. Amend the first sentence of subsection (b) of section 2 to read as follows:

" 'Bank' means any national bank, or any State bank, banking association, savings bank, or trust company, but shall not include any organization operating under section 25 or 25(a) of the Federal Reserve Act or any organization which does not do business within the United States."