STATEMENT BY CHAIRMAN MARTIN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM REGARDING BANK HOLDING COMPANY LEGISLATION BEFORE THE SENATE BANKING AND CURRENCY COMMITTEE ON JUNE 10, 1953

Mr. Chairman and Members of the Committee:

Numerous and widely different proposals for the regulation of bank holding companies have been advanced from time to time over the past 15 years or more. An honest difference of opinion has existed and still exists as to the best approach to this problem. This is well illustrated by the two bills on the subject which are currently pending before this Committee, S. 1118, introduced by Senator Capehart and S. 76, introduced by Senator Robertson. It is not the Board's purpose or desire to endorse or oppose any particular bill or to claim for its views any superiority over those of any other agency, group, or individual. Our desire is only to give you the benefit of our views after a rather intensive study of the matter, leaving to your Committee and to Congress, of course, the decision as to the most appropriate course of action.

Last year, when consideration was being given to bank holding company legislation, the Board of Governors made a careful re-examination of the whole subject in an effort to determine the basic nature of the problems existing in this field and the extent to which new legislation is needed to meet these problems. The conclusions unanimously reached by the Board at that time were set forth in a letter addressed

to the Chairman of the House Banking and Currency Committee on April 11, 1952, and were further elaborated in a statement made by Governor Robertson before that Committee in June 1952.

In the light of the presently pending bills, the Board has again reviewed the matter. One member of the Board, Governor Evans, while favoring bank holding company legislation, dissents from the views of the majority with respect to two points for reasons set forth in an attached memorandum. The other members of the Board, however, continue to hold the same views as those expressed by the Board in 1952.

In order to conserve the Committee's time and avoid technicalities as much as possible, I should like to outline the general substance of the Board's position. I am submitting for the record a memorandum which will explain in more detail the reasons for our views and their application to the pending bills.

The fundamental concept with which we start is that Federal regulatory legislation in this field should deal only with those problems which cannot adequately be dealt with by the States and then only to the extent necessary to meet the actual needs of the specific situations which give rise to these problems. Our approach, therefore, is one of minimum control rather than an approach designed to meet all conceivable situations that could arise in the future.

With this fundamental concept in mind, we have made a careful study of the existing factual situation regarding bank holding company groups; and, along with the memorandum explaining our views, I am also

submitting a table showing figures on the 34 groups of banks in the United States which are generally regarded as bank holding company groups.

On the basis of this study, we believe that there are two major problems in the bank holding company field which are not met by existing provisions of law. One is the unrestricted ability of a bank holding company to expand its banking operations through the acquisition of additional banking offices, thus making it possible for the commerical banking resources in a particular geographical area to be concentrated under the control of a single corporation. The other major problem is that which arises from the fact that a bank holding company may control not only banks but also various other types of enterprises wholly unrelated to the business of banking.

These two problems could be met by relatively simple legislation containing only a few essential features.

In the first place, minimum legislation would need to cover only those holding company groups which give rise to the problems in this field. For this purpose, it would be sufficient to define the term "bank holding company" in language modeled after the definition of "holding company affiliate" contained in present law. Such a definition, based primarily on the test of majority ownership, would be in general harmony with the definition which has been in the law for nearly 20 years. In a few respects, however, the definition should be expanded.

It should cover companies which control any banks and not be confined only to companies controlling member banks. It should be phrased so that any company which falls within the definition on a specified date prior to enactment of the new law will continue to be a bank holding company as long as it continues to own any stock of any bank. Finally, it should cover any successor organization in order to preclude the possibility that a bank holding company might escape regulation simply by transferring bank stocks to some other organization which would not itself technically fall within the definition.

We believe that such a definition of "bank holding company" would be adequate to cover all present holding companies which would need to be restricted in order to accomplish the main objectives of the legislation. The mere possibility that in the future some arrangements might be devised to evade the law does not in our opinion warrant the vesting of unlimited authority in the administrative agency to bring within the coverage of the legislation companies which would not meet the percentage requirements of the definition. On the other hand, it would be desirable for the administering agency to have authority to exempt from the definition, after consideration of certain factors to be stated in the law itself, any company which may be determined not to be engaged in the business of holding bank stocks or in managing or controlling banks to such an extent as to require its regulation in order to carry out the purposes of the law.

As an essential feature of minimum legislation, a bank holding company should be prohibited from acquiring bank stocks or merging with any other bank holding company except with the prior approval of the administering agency. In determining whether to give such approval, the administering agency should be guided by definite standards prescribed in the law. For reasons stated in the accompanying memorandum, we do not believe that the legislation should attempt to cover acquisitions of bank assets as distinguished from bank stocks.

In limiting the expansion of bank holding companies, the rights of the States should be preserved. The administering agency should be required to consult the appropriate State authority where a State bank is involved. And, as an even more effective guarantee of States' rights, it should be clearly provided that no acquisition of the stock of any bank in any State could be approved by the administering agency if the transaction would be prohibited by the statutes of that State. This would mean that each State would have complete freedom to deal as it wishes with the matter of bank holding company expansion within its borders. It would apply to bank holding companies the same principle which is now applied under Federal law to the establishment of branches by national banks.

We feel that the Federal Government should not in any way attempt to encroach upon the right of the States to determine their

own policies as to holding companies and branch banking. This could easily happen, however, if, as provided by some of the recent proposals, a bank holding company were prohibited from acquiring bank stocks or bank assets across State lines or in any State which prohibits branch banking. Any provision of this kind would, in fact, compel a State to apply to bank holding companies rules at least as restrictive as those which it may have seen fit to apply to branch banking and thus deprive the State of its freedom to express its own policy as to the operation of out-of-State holding companies within its borders.

Turning to the second major problem, that resulting from the nonbanking interests of bank holding companies, we believe that minimum legislation should require all such companies, with reasonable exceptions and with appropriate tax relief, to divest themselves of ownership of shares of stock and similar equity interests in nonbanking enterprises. Exceptions should be kept to a minimum; but the administering agency might be given a limited authority to exempt enterprises whose activities are so closely related to the business of banking as to be a proper incident thereto.

No further provisions for the supervision of bank holding companies would be necessary, except that the administering agency should be authorized to obtain such information as might be necessary to enable it to pass judgment on proposed acquisitions of bank stocks, determine

compliance with the law, and keep Congress informed. Such information could be obtained through reports or, if necessary, through examinations. This information would enable the administering agency to inform Congress as to the success with which the legislation is meeting its objectives. As a matter of fact, we believe that the administering agency should be required to advise Congress regularly as to the manner in which the law is being administered and the provisions of the law, if any, which may need to be expanded or altered.

Bearing in mind the limited scope of the proposed legislation we feel that the only essential measure of enforcement would be a provision for criminal penalties. This would place complete responsibility for enforcement in that agency of the Government which presumably is best equipped to perform the job - the Department of Justice.

Finally, we feel strongly that administration of any such legislation should be vested in a single Government agency. We would like to emphasize, as we did in 1952, that the Board makes no recommendation as to the agency which should be selected for this purpose. It feels, however, that it would be a serious mistake to distribute authority and responsibility among several agencies of the Federal Government or, as provided by one bill, among not only the Federal agencies but also the State bank supervisory agencies. Any possible reasons for such a distribution of authority would be far outweighed by the uniformity of policies and procedures and the economy and efficiency which would result from administration by a single agency. Moreover, it should be borne in

mind that under the simplified approach suggested by the Board the restrictive actions of the administering agency would be limited solely to passing upon applications for acquisitions of bank stocks by bank holding companies. There would be no conflict or interference with powers now vested in the three bank supervisory agencies of the Government.

Legislation of the kind here suggested would not necessitate any immediate revision of the provisions of present law relating to affiliates and holding company affiliates. These provisions are aimed primarily at maintaining the soundness of member banks in holding company groups, and for this purpose there is no reason why they should not be continued. They do not, however, deal effectively with the problems created by the present ability of bank holding companies to expand without restriction and to combine banking and nonbanking interests under single control. It is those two problems which need to be met directly by legislation. We believe that supplemental companion legislation of the kind which we have outlined would adequately meet that need.

Attachment

June 8, 1953

MEMORANDUM OF THE VIEWS OF THE BOARD OF GOVERNORS OF THE

FEDERAL RESERVE SYSTEM REGARDING BANK HOLDING COMPANY LEGISLATION

Two bills relating to bank holding companies are now pending before the Senate Banking and Currency Committee. In general and without reference to details, these bills may be summarized as follows:

S. 1118, introduced by Senator Capehart, would define a "bank holding company" as any company which owns 25 per cent or more of the shares of two or more banks or which is determined by the Board of Governors to exercise a controlling influence over two or more banks. A bank holding company could not acquire any bank shares without the Board's consent and also the consent of either or both the Comptroller of the Currency and the appropriate State supervisory authority. Bank assets could not be acquired without the consent of the Board, the Comptroller, or the appropriate State authority, and in some instances the consent of two or all three of these agencies. No holding company could acquire bank shares or assets in any State in which it does not now have its head office or the office of any subsidiary or in States prohibiting branch banking. Holding companies would be required to divest themselves of nonbanking interests with certain exceptions. Additional provisions relate to registration, reports and examinations of bank holding companies, borrowings by holding companies from their subsidiary banks, judicial review, criminal penalties and amendments to existing law.

S. 76, introduced by Senator Robertson, would define a "bank holding company" as any company which, after April 15, 1953, owns 50 per cent or more of the shares of an insured bank. A bank holding company owning more than 5 per cent of the shares of any insured bank, would be prohibited from acquiring bank shares except with the approval of the Board, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation. Bank holding companies would be required to divest themselves of their interests in nonbanking organizations. Criminal penalties would be provided for violations of the Act.

When bills on this subject were pending in the Spring of 1952, the Board of Governors made a careful re-examination of the whole subject in order to determine the basic nature of the actual or potential problems relating to bank holding companies which are not met by present law. In the light of the bills now pending before the Senate Banking and Currency Committee, the Board has again reviewed this matter.

The views of the Board as the result of its current review of the subject are set forth in this memorandum.

The fundamental concept which forms the basis of the Board's position is that regulatory legislation affecting bank holding companies should attempt to meet only those problems which cannot adequately be dealt with by the various States and then only to the extent necessary to meet the actual needs of the specific situations giving rise to these problems. The Board's approach, therefore, is one of minimum control rather than one designed to meet all conceivable situations that could possibly arise in the future. With this in mind, we begin by asking three basic questions:

First, what is the bank holding company problem as revealed by existing facts?

Secondly, what are the particular aspects of the problem which are not adequately met by existing provisions of law?

And thirdly, what are the general principles which should be applied in drafting legislation to meet these specific problems?

Types of multiple-office banking

In seeking to determine the nature of the bank holding company problem, it should be recognized that there are three distinct types of multiple-office banking. The most familiar type is branch banking which prevails, with varying degrees of limitation, throughout most of the country, though there are some States in which it is absolutely prohibited. Wherever it exists, however, branch banking is already subject to a reasonable measure of control. Under Federal and State laws, banks may establish branches only with the approval of the appropriate bank supervisory authorities.

A second form of multiple-office banking is chain banking, under which a number of independently incorporated banks are controlled by the same individual or individuals. Through this means it is possible for several banks to be brought together under single control and management much the same as in the case of holding company banking. However, we do not suggest at this time any Federal legislation to regulate chain banking. The reason lies in the fact that chain banking carries its own inherent limitations. Expansion is limited by the personal financial means of a single individual or a relatively small group of individuals. Moreover, control ceases upon the death of these individuals or else it is ultimately diffused among their heirs.

The third type of multiple-office banking is of course that with which we are here concerned - group banking or holding company banking. The reason for our concern lies in the fact that this type is neither subject to inherent limitations like chain banking nor adequately restricted by existing law like branch banking. Inherent

limitations are lacking because, through the corporate device, a holding company may acquire control of banks either with funds derived from sale of capital to the public or by an exchange of the company's stock for the stock of individual banks. Furthermore, the corporate device makes it possible for this control to be perpetuated indefinitely. In order to determine the extent to which this type of banking is not effectively restricted by present law, we must consider first the existing factual situation as to bank holding company groups.

Factual situation

In the United States there are 34 groups of banks which are generally regarded as bank holding company groups. These 34 groups include 396 banks located in 31 States and the District of Columbia with 1,076 branches, a total of 1,472 offices. A table showing figures on these holding company groups is attached hereto.

The aggregate deposits of the banks in these 34 groups amount to about $20.8 billion. This represents 12 per cent of the deposits of all the commercial banks in the United States, and 15 per cent of the deposits of all commercial banks in the 31 States and the District of Columbia in which the banks are located. The banking offices included in these groups represent 7.6 per cent of the total number of banking offices of all commercial banks in the United States and 10 per cent of the number of banking offices of all commercial banks in 31 States and the District of Columbia.

It should be made clear that these figures include not only banks controlled by the holding companies, but also some relatively large banks which dominate certain of the groups or are closely associated with them. Included among these banks for the purpose of these figures is Bank of America N. T. & S. A., even though none of its stock is presently owned by Transamerica Corporation. As the Committee knows, the relation between that Bank and Transamerica Corporation is a matter which is now pending before the Federal courts. If Bank of America were not included in the figures stated, the aggregate deposits of the banks in the 34 groups would amount to approximately $13.6 billion, which is 7.9 per cent of the deposits of all commercial banks in the United States and 9.8 per cent of the deposits of all commercial banks in the 31 States and the District of Columbia; and the number of banking offices in these groups would be 934, which is about 4.8 per cent of the number of banking offices of all commercial banks in the United States and 6.4 per cent of the banking offices of all commercial banks in the 31 States and the District of Columbia in which these groups operate.

In addition to the 34 groups covered, there are a number of cases in which banks are controlled by other banks and some cases in which one or more banks are controlled by nonbanking organizations.

However, these cases are not generally regarded as involving holding company banking of a type which requires regulation, because they are not engaged as a business in managing or controlling banks.

For reasons to be explained later, only 20 of the 34 holding company groups are subject to any degree of regulation under the provisions of existing Federal law; and, consequently, we have certain statistical information regarding these groups which we do not have as to those groups which are not subject to regulation.

For example, we know that some of the 20 groups have expanded. During the period from 1934 to 1952, inclusive, the net increase in the number of banking offices operated by the banks in the 20 groups was 341. If Bank of America N. T. & S. A. were excluded from these figures the net increase during this period would be 218.

We also know that in the 20 holding company groups which are now subject to regulation there were 96 nonbanking organizations at the end of 1952 with aggregate resources of about $600 million. Among these nonbanking enterprises were companies engaged in varied types of business, such as home financing, automobile and installment financing, life, fire, auto, and marine insurance, real estate, manufacturing, fish catching and processing, investment, safe deposit, ownership of bank premises, and liquidation of assets. Some of these enterprises, it will be noted, are engaged in activities not wholly unrelated to the banking business. Others, however, are organizations engaged in types of business in which banks normally cannot themselves engage directly.

Problems presented

From our study of these facts, we believe that they indicate the existence of two major problems in the bank holding company field which are not met by existing provisions of law.

One of these is the unrestricted ability of a bank holding company to expand its banking operations by acquiring additional banking offices. As a result, situations can arise under which a large part of the commercial banking facilities in a particular geographical area covering perhaps several States may be concentrated under the management and control of a single corporation.

The other problem arises from the fact that a bank holding company may control not only banks but also various other types of enterprises wholly unrelated to the business of banking or may itself engage in nonbanking business. Our banking laws have long recognized the desirability of prohibiting banks from engaging in extraneous

businesses. The ordinary nonbanking enterprise requires a managerial attitude and involves business risks of a kind entirely different from those involved in the banking business. To a great extent, of course, banks operate with their depositors' funds. These funds should be used by banks to finance business enterprises within the limitations and restrictions of the banking laws and in accordance with sound banking practices. They should not be used directly or indirectly for the purpose of engaging in other businesses which are not subject to these restrictions and safeguards. Obviously, if banks and nonbanking enterprises are controlled by the same corporation, there is always a danger that the credit facilities of the banks in the group may be improperly used for the benefit of the nonbanking enterprises in the group.

Inadequacy of present law

These two problems - unlimited ability to expand and combination of banks and nonbanking enterprises under single control - are not dealt with by existing provisions of law regarding bank holding companies.

The Banking Act of 1933 contained, along with other provisions designed to strengthen the banking system, certain provisions relating to affiliates and holding company affiliates of member banks. Affiliates of member banks were made subject to requirements as to reports and examinations. Limitations were placed upon the amount which might be loaned by a member bank to its affiliates, including holding company affiliates, and certain requirements were prescribed as to the security for such loans. Finally, it was provided that if any holding company affiliate should wish to vote stock owned by it in any member bank, it must first apply to the Board of Governors for a voting permit and, in doing so, agree to submit itself and its controlled banks to examination, to establish certain reserve funds, to dispose of all interests in securities companies, and to declare dividends only out of actual net earnings.

Essentially, these are all of the provisions of existing law on this subject. They serve to regulate the activities of a bank holding company only if it controls a member bank of the Federal Reserve System and only if it desires to vote the stock of that bank, so that in effect regulation is largely voluntary on the part of the holding company. Even if it applies for a voting permit, the regulation to which it becomes subject is mostly supervisory in nature. While such regulation under existing holding company law is aimed at protecting the soundness of the member banks in the group, it does not prevent bank holding companies from adding to the number of banks controlled by them or preclude them from having extensive interests in enterprises not related to the banking business.

GUIDING PRINCIPLES

In the light of the factual situation, the Board believes that the soundest approach to this matter lies in simple, direct legislation which would be aimed solely at meeting the two serious problems which now exist in this field and that this can be done through the application of six guiding principles. These principles relate to (1) coverage, (2) limitation on expansion, (3) divestment of nonbanking interests, (4) supervision, (5) enforcement and (6) the administering agency.

(1) Coverage

First, the term "bank holding company" should be defined in language broad enough to cover all companies normally regarded as bank holding companies, including those which control nonmember as well as member banks.

Under present law, a company is a "holding company affiliate" (1) if it owns or controls, directly or indirectly, a majority of the shares of stock of a member bank, (2) if it owns or controls more than 50 per cent of the number of shares voted in the last election of directors, (3) if it controls in any manner the election of a majority of the directors of the member bank, or (4) if all or substantially all of the member bank's stock is held by trustees for the benefit of the shareholders of the company. We believe that a definition of "bank holding company" in substantially the same language, but with certain changes, would adequately cover all companies which give rise to the problems in this field.

In the first place, the definition should cover companies which control any banks, whether members of the Federal Reserve System or not, since the need for restricting expansion by bank holding companies exists whether or not the banks controlled by them are member or nonmember banks. Secondly, in order to prevent evasions through reduction of stock ownership to less than a majority, the definition should be so phrased as to continue to cover any company which fell within the definition as of a specified date prior to enactment of the new law, as long as such company continues to own any stock of any bank. In the third place, the definition should cover any successor organization, in order to preclude the possibility that a bank holding company might escape regulation merely by transferring the bank stocks owned by it to some other organization which would not itself technically fall within the definition.

It is the Board's considered conclusion that, with the changes suggested, a definition of "bank holding company" similar to the definition in present law would be entirely adequate. After applying such a definition to the facts of each known case, we believe that it would cover

all holding companies which need to be restricted in order to carry out the purposes of the law. If it should later develop that some companies not covered by the definition ought to be subject to the restrictions of the law, it would, of course be possible for Congress further to amend the law. However, the mere possibility that one may devise some means of which we are not now aware in order to evade the law does not warrant the vesting of unlimited authority in an administrative agency to subject such companies and possibly numerous others to its control. In other words, we think it would be unnecessary and inadvisable to give the administering agency discretionary authority to bring additional companies under coverage of the definition.

On the other hand, the Board feels that it would be desirable for the administering agency to have some authority to exempt from the definition any company which is determined not to be engaged as a business in holding bank stocks, or in managing or controlling banks, to such an extent as to require regulation of the company in order to carry out the purposes of the legislation. No such exemptions should be made, however, except after consideration of certain factors to be stated in the law, such as the nature of the company's business, the number of banks controlled by it, and the area of its operations. Also, any such exemption should be subject to revocation at any time.

(2) Limitation on expansion

A bank holding company should be prohibited from acquiring additional bank stocks or merging with another bank holding company, except with the consent of the administering agency.

It is proposed that, in determining whether to give its consent to any proposed acquisition of bank stocks or to any merger of bank holding companies, the administering agency should be required to take into consideration certain standards which would be stated in the law. These standards would be: (1) The financial history and condition of the applying bank holding company and of the banks controlled by it; (2) the prospects of the holding company and its controlled banks; (3) the character of the management of the holding company and of its controlled banks; (4) the convenience and needs of the communities concerned; and, finally, (5) whether or not the proposed transaction would have the effect of expanding the bank holding company system beyond limits consistent with sound banking and the public interest and the preservation of competition in the field of banking.

It is also proposed that, in granting its consent, the administering agency should have authority to prescribe such conditions as it might deem necessary in order to assure the maintenance of the relative financial status and character of management of the bank holding company

and of its controlled banks. Such conditions might, for example, cover such matters as the maintenance of adequate capital and reserve funds by the holding company.

Acquisition of bank assets

We do not think it necessary for holding company legislation to require the prior consent of the administering agency for acquisition of bank assets, as distinguished from bank stocks.

Ordinarily, a holding company acquires stocks of banks rather than assets of banks; and where one of its controlled banks acquires the assets of another bank, the result is usually the conversion of that other bank into a branch of the acquiring bank. In such cases it would be necessary under existing law that the consent of one of the bank supervisory agencies be obtained before the branch could be established.

In those relatively few cases in which the acquisition of bank assets would have the effect of eliminating the bank whose assets are taken over, the matter is one which falls within the field of bank supervision rather than that relating to bank holding companies. We believe it should be covered, not by bank holding company legislation, but by other provisions of Federal law which relate specifically to this matter. Such provisions are now contained in section 18(c) of the Federal Deposit Insurance Act which requires the prior approval of the appropriate Federal bank supervisory agency before any bank may acquire the assets of another bank if the capital and surplus of the resulting bank will be less than the capital and surplus, respectively, of the banks involved.

If any further restrictions on the acquisition of bank assets are necessary, we believe they should be provided by direct amendments to section 18(c) of the Federal Deposit Insurance Act. The provisions of that section could be given broader scope by making them applicable to all mergers and consolidations of banks and acquisitions of bank assets, irrespective of the capital structure of the resulting bank; and standards could be prescribed in the law which would require the supervisory authorities to consider, not only the capital condition of the banks involved, but also the effect of proposed mergers and consolidations upon competition in the field of banking.

States' rights

Provisions of the legislation designed to regulate the expansion of bank holding companies should be coupled with provisions which will effectively preserve the rights of the States in this field.

For this purpose, we propose that the administering agency be required to obtain the views of the appropriate State authority before passing on any application for the acquisition of the stock of a State bank by a bank holding company. As an even more effective means of guaranteeing States' rights, there should be a provision to the effect that the administering agency could not approve any acquisition by a holding company of the stock of any bank in any State in which such acquisition of stock would be expressly prohibited by the statutes of such State. Such a provision would apply to holding companies the same principle now applied to branches by the Federal banking laws which prohibit a national bank from establishing a branch unless the laws of the particular State expressly authorize the establishment of branches by State banks. A provision of this kind would adequately and effectively guarantee to each State freedom to deal as it pleases with bank holding company expansion within its borders.

At a later point, it will be explained why we feel that provisions prohibiting acquisitions of bank stocks across State lines or in nonbranch States would not in fact protect the rights of the States in this field but on the contrary would interfere with those rights.

(3) Divestment of nonbanking interests

Our third principle is that all bank holding companies should be required, after a reasonable period of time and with appropriate exceptions, to divest themselves of ownership of shares of stock and similar equity interests in nonbanking enterprises.

We doubt that it would be necessary to require bank holding companies to dispose of debt obligations of nonbanking enterprises, as distinguished from stocks and other equity interests, since it is not ownership of obligations but ownership of stock which enables bank holding companies now to combine control of banks with control of nonbanking businesses.

As far as exceptions are concerned, we believe that they should be kept to a minimum. It would seem reasonable, however, to permit bank holding companies to hold stocks of safe deposit companies and companies engaged solely in a fiduciary business; and consideration might be given to the inclusion of a limited authority in the administering agency to exempt ownership of shares of any company whose activities are so closely related to the business of banking as to be a proper incident thereto, as for example, a company engaged in owning the bank's premises.

It would be desirable to provide bank holding companies with appropriate tax relief in connection with divestment of their nonbanking

interests as required by the new law. The drafting of such provisions, however, would be of primary concern to the Treasury Department and we make no specific recommendations.

(4) Supervision

Provision should be made for the registration of all bank holding companies; and the administering agency should be authorized to obtain such information regarding bank holding companies and their subsidiaries as may be necessary to enable it to pass judgment on proposed acquisitions of bank stocks, to determine compliance with the law, and to keep Congress informed. This information could be obtained through reports, or, if necessary, by examinations. We believe that no additional provisions for the supervision of bank holding companies would be necessary in order to accomplish the basic objectives of the legislation.

(5) Enforcement

Having in mind the desirability of keeping the legislation to a minimum, we feel that the only essential measure of enforcement, and the most effective one, would be provision for criminal penalties for violations of the law and of such conditions as may be imposed by the administering agency in granting its consent to acquisitions of bank stocks by bank holding companies. This would place complete responsibility for enforcement of the law in the law enforcement branch of the Government, the Department of Justice.

(6) Administering agency

Finally, administration of the legislation should be vested in a single agency of the Federal Government to be determined by Congress. It should be emphasized again in this connection that the Board is not seeking additional authority for itself in this field and makes no recommendation as to what agency should be selected to administer the legislation. The Board feels strongly, however, that it would be a mistake to distribute authority and responsibility with respect to bank holding companies among several agencies of the Federal Government or, as provided by one of the pending bills, among not only the Federal agencies but also the 48 State bank supervisory agencies.

It should be borne in mind that under the simplified approach suggested by the Board, the authority of the administering agency to take restrictive actions would be limited solely to passing upon acquisitions of bank stocks by bank holding companies. It would not conflict or interfere with any powers now vested in the three bank supervisory agencies of the Federal Government. Since all national banks and most State banks are normally prohibited by existing laws from acquiring bank

stocks, the administering agency's authority would ordinarily be exercised only in those cases in which the bank holding company is not itself a bank.

Distribution of responsibility among several agencies would inevitably result in duplication of effort and possibly in conflicts in policies and procedures. The several agencies involved might be obtaining substantially the same information from some bank holding companies. At the same time, no one of the agencies would be likely to have sufficient information to give it the total or over-all picture with respect to all bank holding companies. Any reasons of which we can think for distributing authority among the various supervisory agencies would be far outweighed by the advantages of uniformity of policies and procedures and by the economy and efficiency which would result from administration by a single agency of the Government.

THE PENDING BILLS

Having outlined the general principles which we believe should form the basis for minimum legislation on this subject, it is now appropriate to apply these principles to the two bills pending before this Committee - S. 1118 and S. 76. With this in mind, our comments will be directed only to the principal features of the bills. There are, however, a number of technical or minor respects in which the Board might wish to suggest changes in the bills and, if the Committee wishes, it will be glad to furnish a supplemental memorandum of such technical suggestions.

S. 1118

The bill S. 1118 is in many respects more restrictive than any bill on this subject which has been considered in recent years. We believe that it would go far beyond the necessities of the situation and would present serious administrative problems.

Under this bill, the term "bank holding company" would be defined as any company which owns or controls 25 per cent or more of the stock of two or more banks or of another bank holding company, or any company which might be determined by the Board of Governors to exercise a controlling influence over two or more banks. Because of its low percentage test, such a definition would probably cover a number of existing companies which would not need to be covered in order to carry out the basic objectives of the legislation; and it would be difficult to say how many companies might unnecessarily be covered by the definition in the future. For reasons previously indicated, we feel that it is unnecessary and undesirable to vest the administering agency with a broad discretion to bring companies under coverage of the bill even though they do not meet the percentage requirements of the definition.

The administrative problems presented by the excessive coverage of the definition would be accentuated by the fact that, while certain charitable and similar organizations would be exempted, the bill contains no authority in the administering agency, such as we have suggested, to exempt companies which accidentally or technically might fall within the definition but which are not actually engaged as a business in managing or controlling banks to such an extent as to require their regulation in order to accomplish the purposes of the law.

Under the definition contained in this bill, a company would not be a bank holding company unless it controlled at least two banks. However, the potential abuses resulting from the nonbanking interests of bank holding companies exist even where the holding company controls only one bank. For example, if a company controlled only one bank, but a very large bank, and the company also controlled nonbanking businesses, it would not be affected by the requirements of this bill although such a situation might be more objectionable than a situation in which a company owns 25 per cent of the stock of each of two or more smaller banks along with nonbanking interests.

S. 1118 would require prior administrative consent for acquisitions of bank stocks or bank assets. For reasons previously stated, we feel that this legislation is not the proper place for limitations with respect to acquisitions of bank assets. On the other hand, the bill would not prevent the merger or consolidation of two or more bank holding companies.

The bill would make it impossible for a bank holding company to acquire the stock or assets of any additional bank without the consent, not only of the Federal agencies involved, but also of the appropriate State authorities, if any bank which would be "affected" by the transaction is a State bank. Such a situation might result in the conversion of State banks to national banks, or vice versa, depending upon which supervisory agency seemed to be more liberal in its approach. In addition, the bill would prohibit any bank holding company or any of its subsidiaries from acquiring bank shares or assets across State lines or in any State in which such acquisition would not be in conformity with the State's branch banking laws.

We believe that the Federal Government should not attempt to encroach upon the right of the States to determine their own policies as to branch banking and bank holding companies. However, this would inevitably be the effect of the provisions of S. 1118, even though

they were apparently designed to protect the rights of the States. Actually, they would compel a State to apply to bank holding companies rules at least as restrictive as those which it may have seen fit to apply to branch banking. Obviously, this would be neither logical nor desirable, since a State's policy as to branch banking may very well not coincide with its policy as to bank holding companies. It is well known that in some States in which branch banking is prohibited, bank holding companies have operated for many years.

There may be times, as in the past, when a State might be glad to have a bank holding company come to the assistance of one of its banks and thereby maintain banking facilities in the particular community. However, this assistance would not be possible under S. 1118 unless that State happened to be one which authorizes branch banking and, even in that event, unless a bank holding company or its subsidiary already carries on its principal operations within the State. Occasions requiring such assistance occur suddenly and it would not always be easy in such cases to obtain emergency legislation.

In the Board's opinion, each State should be left entirely free to deal with bank holding companies, if it so desires, on a basis different from that applied by it to branch banking and to express freely its policy as to the operation of out-of-State holding companies within its borders. We suggest again that the rights of the States in this field could better be preserved and protected by provisions such as those which we have recommended requiring consultation with the State authorities and prohibiting acquisitions of bank stocks in any State in which such acquisition of stock would be expressly forbidden by State law.

With respect to the provisions of the bill regarding nonbanking interests, we question the necessity of requiring bank holding companies to divest themselves of their ownership of obligations of nonbanking organizations and we doubt the desirability of the many exceptions to the requirement for divestment contained in the bill. For example, the bill would authorize bank holding companies to own, without any limit, shares or obligations of investment companies. Since investment companies would normally have interests in various kinds of business organizations, this broad exemption would seem to be inconsistent with the basic purposes of the bill.

Section 9 of the bill would authorize any shareholder, bank, company, or individual who is "directly interested" in any proposed transaction requiring approval under the Act to apply for such approval by the appropriate administering agency. The section would also authorize any person directly affected by any determination of the administering agency to bring proceedings for judicial review and even a trial of the facts de novo by the reviewing court. These provisions

would, in the Board's opinion, seriously hamper the administration of the law and, by their vagueness, provide a field day for lawyers. They would be at variance with the spirit and intent of the Administrative Procedure Act which exempts from judicial review action committed to agency discretion. Arbitrary, capricious, or unlawful action on the part of the administering agency should be, and is, subject to review by the courts; but, in the absence of action of this kind, it is difficult to see why the judgment of a court should be substituted for the discretion committed by Congress to an agency which presumably has expert knowledge in the field.

S. 1118 would distribute authority and responsibility for its administration. While ostensibly only the consent of the Board of Governors would be required for acquisitions of bank stocks, actually the consent of the Comptroller or the State authority would also be necessary. If any bank "affected" by the proposed transaction is a national bank, the Board could not give its approval unless the Comptroller of the Currency should also consent. Consequently, the Comptroller would be required to make much the same investigation as the Board, with resulting duplication of effort. Similarly, if any bank affected were a State bank, the appropriate State supervisory authority would be given a veto power. In the case of acquisitions of bank assets by banks, authority would be distributed among the Comptroller of the Currency, the appropriate State supervisory authority, and the Board of Governors, depending upon the nature of the acquiring bank; but here again no approval could be given if any national bank or State bank were "affected" by the transaction and if the Comptroller or the State authorities should object, so that in many cases the consent of two agencies would be necessary and in some instances the consent of all three might be required.

For the reasons previously stated, the Board believes that such a diffusion of responsibility for the administration of the law would be a serious mistake.

Two other provisions of S. 1118 should be mentioned.

The bill begins with a declaration of policy which states that a bank holding company and its subsidiary banks shall constitute a branch banking system when in fact it does not. The purpose of this provision is not entirely clear. If the provision should be interpreted as a substantive requirement that the administering agencies apply to bank holding company all provisions of Federal law which are applicable to establishment of branches, the provision would obviously create serious problems of interpretation and administration.

Finally, the Board feels that the provisions of section 7 of the bill which would completely prohibit loans by a subsidiary bank to

its bank holding company are unnecessarily restrictive. If provisions on this subject are considered necessary, it would seem sufficient to include provisions similar to those now contained in section 23A of the Federal Reserve Act which place certain limitations as to amount and collateral on the loans which may be made by member banks to their holding company affiliates or other affiliates. We feel, however, that no provisions with respect to this matter are necessary to accomplish the main objectives of this legislation. To the extent that it is desirable to restrict loans by member banks to their holding company affiliates, the matter is already covered by the Federal Reserve Act. As to nonmember banks, the States should be left free to determine the means for protecting such banks from the possible hazards resulting from loans to their affiliated organizations.

S. 76

The bill S. 76 conforms in general to the basic approach recommended by the Board and to the general principles heretofore outlined. In only two respects does it seem to depart from these principles. First, it would distribute authority among the three Federal bank supervisory agencies. Our reasons for opposing such a distribution of responsibility have been fully stated. In the second place, though perhaps of less importance, the bill does not contain any provision for the obtaining of necessary information through reports and examinations. These provisions, we believe, would be desirable, particularly if the administration of the law were vested, as we recommend, in a single agency of the Government.

In certain respects, we would wish to suggest changes in S. 76. For example, we believe that the definition of the term "bank holding company" should cover companies which control any bank instead of only insured banks; and we see no reason why mutual savings banks should be exempted from the definition as the bill would provide. We think that the bill should cover mergers or consolidations of two or more holding companies. We question the necessity of circumscribing the kind and quality of investment securities in which funds of a holding company can be invested. And we feel that the provision of the bill regarding the rights of the States would be strengthened by the addition of a provision prohibiting the acquisition of any bank stocks in any State if, in the same circumstances, the acquisition of such stocks would be prohibited by the statutes of that State.

We would prefer to see such matters covered by S. 76. However, this bill, except for its distribution of authority, follows generally the basic principles of the Board's approach to this problem.

Conclusion

In concluding, it should be emphasized again that the Board does not consider bank holding companies as undesirable per se. It recognizes that in many instances they have performed valuable services. The fact remains, however, that the very nature of the holding company mechanism makes possible certain abuses which should be considered and dealt with by Congress. Our over-all objective throughout our study of this matter has been to determine what new legislation is necessary, not as a maximum, but as a very minimum, in order to prevent these possible abuses and adequately protect the public interest.

BANKING OFFICES AND DEPOSITS
OF 34 HOLDING COMPANY GROUPS 1/

December 31, 1952

Name and location of holding company State	No. of Banking Offices Banks	 Branches	 Total	Deposits (in thousands of dollars)	% of offices of group banks to offices of all commercial banks in same State (%)	% of deposits of group banks to deposits of all commercial banks in same State (%)
*Atlantic Trust Company, Jacksonville, Florida (Includes Atlantic National Bank of Jacksonville, with deposits of $148,648,000, because the stock of the company is trusteed for the shareholders of the bank.)						
Florida	7		7	233,067	3.27	9.43
*BancOhio Corporation, Columbus, Ohio						
Ohio	20	14	34	483,953	3.70	5.49
*Bank Shares Incorporated, Minneapolis Minnesota						
Minnesota	3		3	67,463	.44	2.09
Bankers Discount Corporation, Dallas, Texas (Holding company status originated in fore-part of 1953.)						
Illinois	2	-	2	37,720	.22	.26
Indiana	1	-	1	11,742	.17	.32
Total - Two States	3	-	3	49,462	.20	.27

Name and location of holding company State	No. of Banking Offices Banks	 Branches	 Total	Deposits (in thousands of dollars)	% of offices of group banks to offices of all commercial banks in same State (%)	% of deposits of group banks to deposits of all commercial banks in same State (%)
*Barnett National Securities Corporation, Jacksonville, Florida (Includes Barnett National Bank of Jacksonville, with deposits of $101,836,000, because the shareholders of the bank and the corporation are the same.)						
Florida	5		5	131,067	2.34	5.30
*Baystate Corporation, Boston, Massachusetts						
Massachusetts	8	60	68	394,240	17.94	8.56
Otto Bremer Company, St. Paul, Minnesota						
Minnesota	12	-	12	47,316	1.75	1.47
North Dakota	6	4	10	24,899	5.71	4.07
Total - Two States	18	4	22	72,215	2.56	1.88
Brenton Companies, Inc., Des Moines, Iowa						
Iowa	5	1	6	8,497	.72	.34

Name and location of holding company State	No. of Banking Offices Banks	 Branches	 Total	Deposits (in thousands of dollars)	% of offices of group banks to offices of all commercial banks in same State (%)	% of deposits of group banks to deposits of all commercial banks in same State (%)
Citizens Fidelity Bank & Trust Company, Louisville, Kentucky (Includes Citizens Fidelity Bank & Trust Co., Louisville, with 3 branches and deposits of $225,986,000, because it owns the majority of the outstanding stock of the subsidiary banks.)						
Kentucky	3	3	6	232,351	1.39	12.50
Citizens & Southern Holding Company, Savannah, Georgia (Includes Citizens & Southern National Bank, Savannah, with 10 branches and deposits of $366,169,000, because the stock of the company is trusteed for the shareholders of the bank.)						
Georgia	9	12	21	426,398	4.69	20.51
Equitable Company of Texas, Dallas, Texas (Includes Mercantile National Bank at Dallas, with deposits of $262,242,000, because the stock of the company is trusteed for the shareholders of the bank.)						
Texas	3		3	274,144	.33	3.20

Name and location of holding company State	No. of Banking Offices Banks	 Branches	 Total	Deposits (in thousnads of dollars)	% of offices of group banks to offices of all commercial banks in same State (%)	% of deposits of group banks to deposits of all commercial banks in same State (%)
Equity Corporation, New York, New York						
Morris Plan Corporation of America, New York, New York						
(Equity Corporation controls Morris Plan Corporation of America.)						
District of Columbia	1	1	2	58,466	3.23	4.60
Georgia	1	2	3	18,728	.67	.90
Illinois	3	-	3	78,561	.34	.54
Massachusetts	1	-	1	4,376	.26	.09
New York	5	15	20	107,345	1.38	.31
Ohio	1	6	7	40.256	.76	.46
Tennessee	1	2	3	13,985	.74	.61
Virginia	1	10	11	89,417	2.58	3.77
Total - Seven States and D. C.	14	36	50	411,134	1.00	.58
Family Finance Corporation, Wilmington, Delaware						
Massachusetts	2	1	3	2,045	.79	.04
Michigan	1	5	6	6,591	.84	.10
Total - Two States	3	6	9	8,636	.83	.08

Name and location of holding company State	No. of Banking Offices Banks	 Branches	 Total	Deposits (in thousands of dollars)	% of offices of group banks to offices of all commercial banks in same State (%)	% of deposits of group banks to deposits of all commercial banks in same State (%)
*First Bank Stock Corporation, Minneapolis, Minnesota						
Minnesota	43	3	46	967,807	6.72	30.02
Montana	12	-	12	204,715	11.01	31.31
North Dakota	13	-	13	85,629	7.43	13.98
South Dakota	7	3	10	48,483	4.52	8.76
Total - Four States	75	6	81	1,306,634	6.81	25.90
*First National Securities Company in Dallas, Dallas, Texas (Includes First National Bank in Dallas, with deposits of $526,100,000, because the stock of the company is trusteed for the shareholders of the bank.)						
Texas	3		3	552,979	.33	6.45
*First Security Corporation, Ogden, Utah						
Idaho	1	25	26	156,652	25.74	30.51
Utah	1	16	17	167,492	20.24	24.07
Wyoming	1	-	1	3,494	1.92	1.11
Total - Three States	3	41	44	327,638	18.57	21.51

Name and location of holding company State	No. of Banking Offices Banks	 Branches	 Total	Deposits (in thousands of dollars)	% of offices of group banks to offices of all commercial banks in same State (%)	% of deposits of group banks to deposits of all commercial banks in same State (%)
Fort Worth National Company, Fort Worth, Texas (Includes Fort Worth National Bank, with deposits of $238,863,000, because the stock of the company is trusteed for the shareholders of the bank.)						
Texas	3		3	260,163	.33	3.03
General Contract Corporation, St. Louis, Missouri						
Illinois	1	-	1	18,488	.11	.13
Missouri	4	-	4	159,987	.67	3.17
Tennessee	1	-	1	14,097	.25	.61
Total - Three States	6	-	6	192,572	.32	.88
Goppert Insurance Agency and Investment Co., Kansas City, Missouri						
Kansas	3	-	3	2,116	.49	.11
Missouri	2	-	2	5,043	.33	.10
Total - Two States	5	-	5	7,159	.41	.10

Name and location of holding company State	No. of Banking Offices Banks	 Branches	 Total	Deposits (in thousands of dollars)	% of offices of group banks to offices of all commercial banks in same State (%)	% of deposits of group banks to deposits of all commercial banks in same State (%)
Hamilton National Associates, Inc., Chattanooga, Tennessee (Includes Hamilton National Bank of Chattanooga, with 6 branches and deposits of $138,782,000, because it appears to be the principal bank in the group and the company owns 24% of its stock.)						
Georgia	1	-	1	5,398	.22	.26
Tennessee	9	6	15	184,382	3.72	8.02
Total - Two States	10	6	16	189,780	1.88	4.33
Keystone Corporation, Kansas City, Missouri (Includes Commerce Trust Company, Kansas City, with deposits of $463,416,000, because a majority of the capital stock of the corporation and the trust company is held by the same shareholders.)						
Missouri	4		4	497,317	.67	9.87
*Marine Bancorporation, Seattle, Washington						
Washington	2	38	40	411,883	14.60	18.75

Name and location of holding company State	No. of Banking Offices Banks	 Branches	 Total	Deposits (in thousands of dollars)	% of offices of group banks to offices of all commercial banks in same State (%)	% of deposits of group banks to deposits of all commercial banks in same State (%)
*Marine Midland Corporation, Jersey City, New Jersey						
New York	14	102	116	1,470,480	7.98	4.18
Mid-Continent Bankshares, Inc., Tulsa, Oklahoma						
Oklahoma	2	-	2	20,958	.52	1.05
Texas	2	-	2	9,503	.22	.11
Total - Two States	4	-	4	30,461	.31	.29
*New Hampshire Bankshares, Inc., Nashua, New Hampshire						
New Hampshire	5		5	30,426	6.49	9.98
*Northwest Bancorporation, Minneapolis, Minnesota						
Iowa	4	-	4	163,577	.48	6.57
Minnesota	40	3	43	844,551	6.28	26.19
Montana	7	-	7	82,579	6.42	12.63
Nebraska	5	-	5	127,364	1.19	8.35
North Dakota	9	-	9	89,257	5.14	14.57
South Dakota	4	19	23	134,379	10.41	24.28
Wisconsin	1	-	1	23,260	.14	.67
Total - Seven States	70	22	92	1,464,967	2.93	11.68

Name and location of holding company State	No. of Banking Offices Banks	 Branches	 Total	Deposits (in thousands of dollars)	% of offices of group banks to offices of all commercial banks in same State (%)	% of deposits of group banks to deposits of all commercial banks in same State (%)
*Old National Corporation, Spokane, Washington						
Washington	2	18	20	147,955	7.30	6.73
*Republic National Company, Dallas, Texas (Includes Republic National Bank of Dallas, with deposits of $514,285,000, because the stock of the company is trusteed for the shareholders of the bank.)						
Texas	8		8	634,956	.87	7.40
*Shawmut Association, Boston, Massachusetts (Includes National Shawmut Bank of Boston, with 28 branches and deposits of $432,368,000, because all trustees of the association are directors or officers of the bank; the bank shares in the income of the association; and the Executive Committee of the bank has the right to approve the appointment of the trustees of the association.)						
Massachusetts	13	34	47	531,542	12.40	11.53

Name and location of holding company State	No. of Banking Offices Banks	 Branches	 Total	Deposits (in thousands of dollars)	% of offices of group banks to offices of all commercial banks in same State (%)	% of deposits of group banks to deposits of all commercial banks in same State (%)
*Transamerica Corporation, San Francisco, California (Includes Bank of America, N.T.&S.A., San Francisco, California, with 537 branches and deposits of $7,219,823,000. None of the bank's stock is now owned by Transamerica or its subsidiaries, but the relationship between Bank of America N.T.&S.A. and Transamerica Corporation is now pending before the Federal courts.)						
Arizona	1	14	15	128,598	18.29	21.02
California	27	555	582	7,586,301	48.50	46.26
Nevada	3	15	18	174,812	64.29	77.78
Oregon	16	50	66	729,961	36.87	45.40
Washington	1	11	12	118,380	4.38	5.39
Total - Five States	48	645	693	8,738,052	39.31	41.53
*Trust Company of Georgia Associates, Atlanta, Georgia (Includes Trust Company of Georgia, Atlanta, with 1 branch and deposits of $164,949,000, because all of the stock of the Associates is owned by the trust company.)						
Georgia	6	3	9	267,638	2.01	12.87

Name and location of holding company State	No. of Banking Offices Banks	 Branches	 Total	Deposits (in thousands of dollars)	% of offices of group banks to offices of all commercial banks in same State (%)	% of deposits of group banks to deposits of all commercial banks in same State (%)
*Trustees, First National Bank of Louisville, Louisville, Kentucky *First Kentucky Company, Louisville, Kentucky (The Trustees own the stock of First Kentucky Company, which is a holding company affiliate of one of the member banks in this group.) Kentucky	4	10	14	169,831	3.24	9.14
*Union Bond & Mortgage Company, Port Angeles, Washington Washington	4	1	5	19,032	1.82	.87
*Wisconsin Bankshares Corporation Milwaukee, Wisconsin Wisconsin	6	14	20	776,057	2.84	22.28
Total - 34 Groups	396	1,076	1,472	20,820,149		
All commercial banks in above 31 States and District of Columbia	10,751	3,925	14,676	138,706,445		
Per cent of total of banks in 34 groups to all commercial banks in same States					10.03	15.01
All commercial banks in the United States	14,046	5,274	19,320	172,930,961		
Per cent of total of banks in 34 groups to all commercial banks in the United States					7.62	12.04

1/ These data include not only banks controlled by holding companies, but also banks which dominate certain of the respective groups or are closely associated with them. Some of the latter banks are comparatively large institutions.

First National Bank of Boston and Old Colony Trust Company, Boston, with 25 branches and deposits of $1,293,790,000 formerly included with the Baystate Corporation group, are not included in these data, because it does not appear that the relations currently existing between those banks and Baystate Corporation and its controlled banks are such as to warrant their inclusion in the group. If First National Bank of Boston and Old Colony Trust Company were added to the above groups, the totals would be as follows: banks, 398; branches, 1,101; banking offices, 1,499; and deposits, $22,113,939,000. The percentage ratios of the offices and deposits in the 34 groups to all commercial banks in the same States and in the United States would be increased from 10.03, 15.01, 7.62, and 12.04 to 10.21, 15.94, 7.76, and 12.79, respectively.

Although no stock of Bank of America NT&SA is now owned by Transamerica Corporation or its subsidiaries, Bank of America NT&SA is included with the Transamerica Corporation group. The relationship between the bank and Transamerica is now pending before the Federal courts. If Bank of America NT&SA were excluded from the totals of the 34 groups, the totals would be as follows: banks, 395; branches, 539; banking offices, 934; and deposits, $13,600,326,000. The percentage ratios of the offices and deposits in the 34 groups to all commercial banks in the same States and in the United States would be decreased from 10.03, 15.01, 7.62, and 12.04 to 6.36, 9.81, 4.83, and 7.86, respectively.

* The holding companies in these groups are subject to the limited regulation provided by existing law.

Statement by Governor R. M. Evans of the Board of Governors
of the Federal Reserve System regarding
Bank Holding Company Legislation

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.