

*Get Circular No. 7427*

July 26, 1974

To the Addressee:

Enclosed is a reprint of Regulation Y, as amended effective June 24, 1974, of the Board of Governors of the Federal Reserve System. It replaces your previous printing of the Regulation, as amended effective December 1, 1971, and all subsequent amendments thereto. Interpretations of the Regulation are not included in the reprint and, therefore, should not be discarded.

Circulars Division  
Federal Reserve Bank of New York

**BOARD OF GOVERNORS  
of the  
FEDERAL RESERVE SYSTEM**

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**BANK HOLDING COMPANIES**

**REGULATION Y  
(12 CFR 225)**

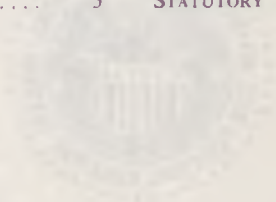
**As amended effective June 24, 1974**



**Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the Federal Reserve district in which the inquiry arises. Forms for the preparation of registration statements, applications, requests, and reports may be obtained from any Federal Reserve Bank.**

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# REGULATION Y

(12 CFR 225)

As amended effective June 24, 1974

## BANK HOLDING COMPANIES\*

### SECTION 225.1—DEFINITIONS

(a) **Terms used in the Act.** As used in this Part, the terms "bank holding company", "company", "bank", "subsidiary", and "Board" have the same meanings as those given such terms in the Act.

(b) **Federal Reserve Bank.** The term "Federal Reserve Bank" as used in this Part with respect to action by, on behalf of, or directed to be taken by a bank holding company or other organization shall mean either the Federal Reserve Bank of the Federal Reserve district in which the operations of the bank holding company or other organization are principally conducted, as measured by total deposits held or controlled by it on the date on which it became, or is to become, a bank holding company, or such Reserve Bank as the Board may designate.

### SECTION 225.2—DETERMINATIONS REGARDING CONTROL

(a) **Conclusive presumptions of control.** Conclusive presumptions that a company controls a bank or other company are established by section

\* This text corresponds to the Code of Federal Regulations, Title 12, Chapter II, Part 225, cited as 12 CFR 225. The "Act" referred to herein is the Bank Holding Company Act of 1956. The words "this Part," as used herein, mean Regulation Y. (Prior to December 1, 1971, this Part was designated as Part 222.)

2(a)(2)(A) and (B) and by section 2(g)(1) and (2) of the Act. In addition, the Board has determined that, whenever the transferability of 25 per cent or more of any class of voting securities of a company is conditioned in any manner, whether pursuant to an agreement, by-law, article of incorporation, or otherwise, upon the transfer of 25 per cent or more of any class of voting securities of another company, the holders of the securities affected by the condition (that is, those who hold both the securities whose transferability is so conditioned and the securities whose transfer can be required to satisfy the condition) constitute, in their capacity as such, a "company" for the purposes of the Act unless one of the issuers of such securities is a subsidiary of the other and is so identified in an order of the Board or in a registration statement or report accepted by the Board under the Act.

(b) **Rebuttable presumptions of control.** A rebuttable presumption that a company controls a bank or other company is established by section 2(g)(3) of the Act. In addition, the Board has established, for use in proceedings instituted in accordance with the procedures of paragraph (c) below, the following rebuttable presumptions:

(1) A company that owns, controls, or has power to vote more than 5 per cent of any class of voting securities of a bank or other company (except where such securities are held in a fiduciary capacity and the company does not have sole discretionary authority to exercise the voting

rights) presumably controls that bank or other company if (i) one or more of the company's directors, trustees, or partners, or officers or employees with policymaking functions serves in any of these capacities with the bank or other company, and (ii) no other person owns, controls, or has power to vote as much as 5 per cent of any class of voting securities of that bank or other company.

(2) A company that owns, controls, or has power to vote more than 5 per cent of any class of voting securities of a bank or other company (except where such securities are held in a fiduciary capacity and the company does not have sole discretionary authority to exercise the voting rights) presumably controls that bank or other company if additional voting securities are owned, controlled, or held with power to vote by individuals (or members of their immediate families as defined in § 206.2(k) of this chapter (Regulation F)) who are directors, officers, trustees, or partners of the company (or own, directly or indirectly, 25 per cent or more of any class of voting securities of the company) and, together with the company's securities, aggregate 25 per cent or more of any class of voting securities of that bank or other company.

(3) A company that enters into any agreement or understanding with a bank or other company (other than an investment advisory agreement), such as a management contract, pursuant to which the company or any of its subsidiaries exercises significant influence with respect to the general management or overall operations of the bank or other company presumably controls such bank or other company.

(4) A company that enters into any agreement or understanding under which the rights of a holder of voting securities of a bank or other company are restricted in any manner presumably controls the shares involved, unless the agreement or understanding (i) is a mutual agreement among shareholders granting to each other a right of first refusal with respect to their shares, or (ii) is incident to a *bona fide* loan transaction, or (iii) relates to restrictions on transferability and continues only for such time as may reasonably be necessary to obtain approval from a Federal bank supervisory authority with respect to acquisition by the company of such securities.

(5) A company that owns directly or indirectly securities that are immediately convertible at the option of the holder or owner thereof into voting

securities presumably owns or controls the voting securities.

(c) **Procedures for determining control.** (1) In any case in which a presumption established by paragraph (b) of this section applies, or in any other case where it appears to the Board that a company exercises a controlling influence over the management or policies of a bank or other company, and the company has not complied with the provisions of the Act, the Board may inform the company that a preliminary determination of control has been made on the basis of the facts summarized in the communication. Such company shall within 30 days (or such longer period of time as may be permitted by the Board (i) indicate to the Board its willingness to terminate the control relationship and to furnish promptly its specific plan to do so; or (ii) state that it will promptly seek Board approval to retain the control relationship, or, if the control relationship has existed continuously since prior to December 31, 1970 (in a manner not covered by section 2(a)(2)(A) or (B)), that it will register as a bank holding company or, if already a holding company report the bank or other company as a subsidiary, or otherwise comply with the applicable provisions of the Act; or (iii) set forth such facts and circumstances as may support its contention that there is not a control relationship.

(2) A company may request a hearing to contest the Board's preliminary determination of control. In the event a hearing is held, any applicable presumptions established by paragraph (b) of this section shall be considered in the usual manner in accordance with the rules of evidence, and the Board will by order, on the basis of the record of the hearing, decide the issues involved and direct such action as may be necessary or appropriate in the circumstances. In the event no hearing is held, but the preliminary determination of control is contested, the Board will decide the matter on the basis of the evidence available to it, relying on the presumptions established in paragraph (b) of this section, and will by order direct such action as may be necessary or appropriate in the circumstances.

#### SECTION 225.3—ACQUISITION OF BANK SHARES OR ASSETS

(a) **Submission of applications.** An application for approval by the Board of any transaction requiring approval under section 3(a) of the Act shall be filed with the Federal Reserve Bank. A



separate application shall be filed with respect to each bank the voting shares or assets of which are sought to be acquired by an existing bank holding company or nonbanking subsidiary thereof.

(b) **Action on applications.** Applications under this section are processed in accordance with the procedures specified in the Act and in § 262.3 of the Board's Rules of Procedure (Part 262 of this chapter). Any application for the Board's approval of the formation of a company that controls only one bank shall be deemed to be approved 45 days after the company has been informed by its Reserve Bank that said application has been accepted, unless the company is notified to the contrary within that time or is granted approval at an earlier date.

(c) **Application to retain shares acquired in a fiduciary capacity.** Applications under this subsection are processed on the basis of a letter of notification without compliance with section 262.3(h) of the Board's Rules of Procedure. Any application for the Board's approval to retain shares of bank stock acquired in a fiduciary capacity (with sole voting rights), which is accompanied by an unconditional undertaking by the Applicant to dispose of such shares or its sole discretionary voting rights with respect to such shares within two years from the date of such acquisition, shall be deemed to be approved 45 days after the Applicant has been informed by the Reserve Bank that said application has been accepted, unless the Applicant is notified to the contrary within that time or is granted approval at an earlier date.

#### SECTION 225.4—NONBANKING ACTIVITIES

(a) **Activities closely related to banking or managing or controlling banks.** In accordance with the procedures set forth in paragraphs (b) and (c) of this section, any bank holding company may engage, or retain or acquire an interest in a company that engages, solely in one or more of the activities specified below, including such incidental activities as are necessary to carry on the activities so specified. Any bank holding company that is of the opinion that other activities in the circumstances surrounding a particular case are closely related to banking or managing or controlling banks may file an application in accordance with the procedures set forth in paragraph (b)(2) of

this section. As to such an application, the Board will publish in the Federal Register a notice of opportunity for hearing only if it believes that there is a reasonable basis for the holding company's opinion. The following activities have been determined by the Board to be so closely related to banking or managing or controlling banks as to be a proper incident thereto:

(1) making or acquiring, for its own account or for the account of others, loans and other extensions of credit (including issuing letters of credit and accepting drafts), such as would be made, for example, by a mortgage, finance, credit card, or factoring company;<sup>1</sup>

(2) operating as an industrial bank, Morris Plan bank, or industrial loan company, in the manner authorized by State law so long as the institution does not both accept demand deposits and make commercial loans;

(3) servicing loans and other extensions of credit for any person;

(4) performing or carrying on any one or more of the functions or activities that may be performed or carried on by a trust company (including activities of a fiduciary, agency, or custodian nature), in the manner authorized by Federal or State law, so long as the institution does not make loans or investments or accept deposits other than (i) deposits that are generated from trust funds not currently invested and are properly secured to the extent required by law, or (ii) deposits representing funds received for a special use in the capacity of managing agent or custodian for an owner of, or investor in, real property, securities, or other personal property, or for such owner or investor as agent or custodian of funds held for investment or escrow agent, or for an issuer of, or broker or dealer in securities, in a capacity such as paying agent, dividend disbursing agent, or securities clearing agent, and not employed by or for the account of the customer in the manner of a general purpose checking account or bearing interest, or (iii) making of call loans to securities dealers or purchase of money market instruments such as certificates of deposit, commercial paper, government or municipal securities, and bankers acceptances (such authorized loans and investments, however, may not be used

<sup>1</sup> Operating a savings and loan association is not regarded by the Board as within the description of this activity. Whether to propose expanding activity (2) to include operating that type of financial institution is under consideration by the Board.

as a method of channeling funds to nonbanking affiliates of the trust company). . . .

(5) acting as investment or financial adviser to the extent of (i) serving as the advisory company for a mortgage or a real estate investment trust; (ii) serving as investment adviser, as defined in section 2(a)(20) of the Investment Company Act of 1940, to an investment company registered under that Act; (iii) providing portfolio investment advice<sup>2</sup> to any other person; (iv) furnishing general economic information and advice, general economic statistical forecasting services and industry studies;<sup>3</sup> and (v) providing financial advice to State and local governments, such as with respect to the issuance of their securities;

(6)(a) Leasing personal property or acting as agent, broker or adviser in leasing such property provided:

(i) the lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;

(ii) the property to be leased is acquired spe-

<sup>2</sup> The term "portfolio investment" as used herein is intended to refer generally to the investment of funds in a "security" as defined in section 2(1) of the Securities Act of 1933 (15 U.S.C. § 77a) or in real property interests, except where the real property is to be used in the trade or business of the person being advised. In furnishing portfolio investment advice, bank holding companies and their subsidiaries shall observe the standards of care and conduct applicable to fiduciaries.

<sup>3</sup> This is to be contrasted with "management consulting" which the Board views as including, but not limited to, the provision of analysis or advice as to a firm's (i) purchasing operations, such as inventory control, sources of supply, and cost minimization subject to constraints; (ii) production operations, such as quality control, work measurement, product methods, scheduling shifts, time and motion studies, and safety standards; (iii) marketing operations, such as market testing, advertising programs, market development, packaging, and brand development; (iv) planning operations, such as demand and cost projections, plant location, program planning, corporate acquisitions and mergers and determination of long-term and short-term goals; (v) personnel operations, such as recruitment, training, incentive programs, employee compensation, and management-personnel relations; (vi) internal operations, such as taxes, corporate organization, budgeting systems, budget control, data processing systems evaluation, and efficiency evaluation; or (vii) research operations, such as product development, basic research, and product design and innovation. The Board has determined that "management consulting" is not an activity that is so closely related to banking or managing or controlling banks as to the proper incident thereto.

cifically for the leasing transaction under consideration or was acquired specifically for an earlier leasing transaction;

(iii) the lease is on a nonoperating basis;

(iv) at the inception of the initial lease the effect of the transaction (and, with respect to governmental entities only, reasonably anticipated future transactions<sup>4</sup>) will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease,<sup>5</sup> from: (1) rentals; (2) estimated tax benefits (investment tax credit, net economic gain from tax deferral from accelerated depreciation, and other tax benefits with a substantially similar effect); (3) the estimated residual value of the property at the expiration of the initial term of the lease, which in no case shall exceed 20 per cent of the acquisition cost of the property to the lessor; and (4) in the case of a lease of not more than 7 years in duration, such additional amount, which shall not exceed 60 per cent of the acquisition cost of the property, as may be provided by an unconditional guarantee by a lessee, independent third party or manufacturer, which has been determined by the lessor to have the financial resources to meet such obligation, that will assure the lessor of recovery of its investment and cost of financing;

(v) the maximum lease term during which the lessor must recover the lessor's full investment in the property plus the estimated total cost of financing the property shall be 40 years; and

(vi) at the expiration of the lease (including any renewals or extensions with the same lessee),

<sup>4</sup> The Board understands that some Federal, State and local governmental entities may not enter into a lease for a period in excess of one year. Such an impediment does not prohibit a company authorized under § 225.4(a) from entering into a lease with such governmental entities if the company reasonably anticipates that such governmental entities will renew the lease annually until such time as the company is fully compensated for its investment in the leased property plus its costs of financing the property. Further, a company authorized under § 225.4(a)(6) may also engage in so-called "bridge" lease financing of personal property, but not real property, where the lease is short term pending completion of long term financing, by the same or another lender.

<sup>5</sup> The estimate by the lessor of the total cost of financing the property over the term of the lease should reflect among other factors, the term of the lease, the modes of financing available to the lessor, the credit rating of the lessor and/or the lessee, if a factor in the financing, and prevailing rates in the money and capital markets.



all interest in the property shall be either liquidated or released on a nonoperating basis as soon as practicable but in no event later than two years from the expiration of the lease,<sup>6</sup> however, in no case shall the lessor retain any interest in the property beyond 50 years after its acquisition of the property.

(6)(b) Leasing real property or acting as agent, broker or adviser in leasing such property provided:

(i) the lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;

(ii) the property to be leased is acquired specifically for the leasing transaction under consideration or was acquired specifically for an earlier leasing transaction;

(iii) the lease is on a nonoperating basis;

(iv) at the inception of the initial lease the effect of the transaction (and, with respect to governmental entities only, reasonably anticipated future transactions<sup>4</sup>) will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease,<sup>5</sup> from: (1) rentals; (2) estimated tax benefits (investment tax credit, net economic gain from tax deferral from accelerated depreciation, and other tax benefits with a substantially similar effect); and (3) the estimated residual value of the property at the expiration of the initial term of the lease, which in no case shall exceed 20 per cent of the acquisition cost of the property to the lessor.

(v) the maximum lease term during which the lessor must recover the lessor's full investment in the property plus the estimated total cost of financing the property shall be 40 years; and

(vi) at the expiration of the lease (including any renewals or extensions with the same lessee), all interest in the property shall be either liquidated or released on a nonoperating basis as soon as practicable but in no event later than two years from the expiration of the lease,<sup>6</sup> however,

in no case shall the lessor retain any interest in the property beyond 50 years after its acquisition of the property.

(7) making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas;

(8)(i) providing bookkeeping or data processing services for the internal operations of the holding company and its subsidiaries and (ii) storing and processing other banking, financial, or related economic data, such as performing payroll, accounts receivable or payable, or billing services, and

(9) acting as insurance agent or broker in offices at which the holding company or its subsidiaries are otherwise engaged in business (or in an office adjacent thereto) with respect to the following types of insurance:

(i) Any insurance for the holding company and its subsidiaries;

(ii) Any insurance that (a) is directly related to an extension of credit by a bank or a bank-related firm of the kind described in this regulation, or (b) is directly related to the provision of other financial services by a bank or such a bank-related firm or (c) is otherwise sold as a matter of convenience to the purchaser, so long as the premium income from sales within this subdivision (ii)(c) does not constitute a significant portion of the aggregate insurance premium income of the holding company from insurance sold pursuant to this subdivision (ii);

(iii) Any insurance sold in a community that (a) has a population not exceeding 5,000, or (b) the holding company demonstrates has inadequate insurance agency facilities.

(10) acting as underwriter for credit life insurance and credit accident and health insurance which is directly related to extensions of credit by the bank holding company system.<sup>7</sup>

<sup>4</sup> See page six for footnotes 4 and 5.

<sup>5</sup> In the event of a default on a lease agreement prior to the expiration of the lease term, the lessor shall either release such property, subject to all the conditions of this subsection 6(b), or liquidate such property as soon as practicable but in no event later than two years from the date of default on a lease agreement.

<sup>7</sup> To assure that engaging in the underwriting of credit life and credit accident and health insurance can reasonably be expected to be in the public interest, the Board will only approve applications in which an applicant demonstrates that approval will benefit the consumer or result in other public benefits. Normally such a showing would be made by a projected reduction in rates or increase in policy benefits to bank holding company performance of this service.



(11) providing courier service (i) for the internal operations of the holding company and its subsidiaries; (ii) for checks, commercial papers, documents, and written instruments (excluding currency or bearer-type negotiable instruments) as are exchanged among banks and banking institutions; (iii) for audit and accounting media of a banking or financial nature and other business records and documents used in processing such media.<sup>8</sup>

(12) providing management consulting advice<sup>9</sup> to nonaffiliated banks *Provided that*, (i) neither the bank holding company nor any of its subsidiaries own or control, directly or indirectly, any equity securities in the client bank; (ii) no officer, director, or employee of the bank holding company or any of its subsidiaries serves as an officer, director or employee of the client bank except where such interlocking relationships are or would be permitted by section 212.3(g) of Regulation L; (iii) the advice is rendered on an explicit fee basis without regard to correspondent balances maintained by the client bank at any subsidiary bank of the bank holding company; and (iv) disclosure is made to each potential client bank of (a) the names of all banks which are affiliates of the consulting company, and (b) the names of all existing client banks located in the same market area(s) as the client bank.<sup>10</sup>

(b)(1) **De novo entry.** A bank holding company may engage *de novo* (or continue to engage in an activity earlier commenced *de novo*) directly or indirectly, solely in activities described in paragraph (a) of this section, 45 days after the company has furnished its Reserve Bank with a copy of a notice of the proposal (in substan-

<sup>8</sup> Applications to engage *de novo* in providing courier services should be filed in accordance with the procedures of § 225.4(b)(2) rather than § 225.4(b)(1). See also the Board's interpretation on courier activities (12 CFR 225.129), which sets forth conditions for holding company entry pursuant to § 4(c)(8).

<sup>9</sup> In performing this activity bank holding companies are not authorized to perform tasks or operations or provide services to client banks either on a daily or continuing basis, except as shall be necessary to instruct the client bank on how to perform such services for itself. See also the Board's interpretation of bank management consulting advice (12 CFR 225.130).

<sup>10</sup> Applicants to engage *de novo* in providing management consulting advice to nonaffiliated banks should be filed in accordance with the procedures of § 225.4(b)(2) rather than § 225.4(b)(1) of Regulation Y.

tially the same form as F.R. Y-4A) published within the preceding 30 days in a newspaper of general circulation in the communities to be served, unless the company is notified to the contrary within that time or unless it is permitted to consummate the transaction at an earlier date on the basis of exigent circumstances of a particular case. If adverse comments of a substantive nature are received by the Reserve Bank within 30 days after the company has so published its proposal,<sup>11</sup> or if it otherwise appears appropriate in a particular case, the Reserve Bank may inform the company that (i) the proposal shall not be consummated until specifically authorized by the Reserve Bank or by the Board or (ii) the proposal should be processed in accordance with the procedures of subparagraph (2) of this paragraph.

(2) **Acquisition of going concern.** A bank holding company may apply to the Board to acquire or retain the assets of or shares in a company engaged solely in activities described in paragraph (a) of this section by filing an application with its Reserve Bank (Form F.R. Y-4). Every such application shall be accompanied by a copy of a notice of the proposal (in substantially the same form as F.R. Y-4B) published within the preceding 30 days in a newspaper of general circulation in the communities to be served. The Board will publish in the Federal Register notice of any such application and will give interested persons an opportunity to express their views (including, where appropriate, by means of a hearing) on the question whether performance of the activity proposed by the holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(3) **Simplified procedures.\*** (i) The procedures of subparagraphs (1) and (2) of this para-

<sup>11</sup> If a Reserve Bank decides that adverse comments are not of a substantive nature, the person submitting the comments may request review by the Board of that decision in accordance with the provisions of § 265.3 of the Board's Rules Regarding Delegation of Authority (12 CFR 265.3) by filing a petition for review with the Secretary of the Board.

\* By order dated December 21, 1971, the Board suspended the operation of § 225.4(b)(3) of Regulation Y until further notice (36 Federal Register 25048, December 28, 1971).

graph shall not apply with respect to a holding company or a subsidiary thereof engaging in the following:

(a) making, acquiring, or servicing loans or other extensions of credit for personal, family, or household purposes if the commencement or expansion of such activity does not involve an acquisition of assets of \$10 million or more (or the acquisition of shares of a company having such assets) except that (1) no holding company may acquire more than \$50 million in assets in any calendar year under the provisions of this clause, (2) within 30 days after consummation of such an acquisition, the holding company informs its Reserve Bank of the acquisition (in substantially the same form as F.R. Y-4B), and (3) whenever necessary to effectuate the purposes of the Act, the Board may require suspension or discontinuation of any action taken, or divestiture of any acquisition made, on authority of this provision and may withdraw such authority with respect to any particular holding company;

(b) engaging in activities described in § 225.4(a) that are shifted from a bank in the holding company system and were engaged in by the bank either *de novo* or as a result of a merger transaction described in and approved by a Federal supervisory agency pursuant to section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), 45 days after the holding company has informed its Reserve Bank of its proposal to shift such activity (in substantially the same form as F.R. Y-4B), unless the company is notified to the contrary within that time or is permitted to consummate the transaction at an earlier date.

(ii) The procedures of subparagraph (1) of this paragraph shall not apply with respect to a holding company or a subsidiary thereof engaging *de novo* as insurance agent or broker with respect to the types of insurance agent or broker with respect to the types of insurance listed in subdivisions (i), (ii), and (iii)(a) of paragraph (a)(9) of this section, 45 days after the holding company has informed its Reserve Bank of its proposal to engage in such activity (in substantially the same form as F.R. Y-4B), unless the company is notified to the contrary within that time or is permitted to consummate the transaction at an earlier date.

(c) **Tie-ins, alterations, relocations, consolidations.** Except as otherwise provided in an order in a particular case, the following conditions shall

apply with respect to every acquisition consummated or activity engaged in on the authority of section 4(c)(8) of the Act: (1) the provision of any credit, property or services involved shall not be subject to any condition which, if imposed by a bank, would constitute an unlawful tie-in arrangement under section 106 of the Bank Holding Company Act Amendments of 1970; (2) the activities involved shall not be altered in any significant respect from those considered by the Board in making the determination, nor provided at any location other than those described in the notice published with respect to such determination, except upon compliance with the procedures of paragraph (b)(1) of this section; and (3) no merger, or acquisition of assets other than in the ordinary course of business, to which the acquired company is a party shall be consummated without prior Board approval, if thereafter the bank holding company will continue to own, directly or indirectly, more than five per cent of the voting shares of such company or its successor.

(d) **Certain acquisitions by companies that became bank holding companies on December 31, 1970, as a result of the 1970 amendments.** Except as provided in this paragraph, no bank holding company may acquire, directly or indirectly, any shares or commence to engage in any activities on the basis of section 4(c)(12) of the Act. A company may file with the Board an irrevocable declaration, in the form approved by the Board,<sup>12</sup> that it will cease to be a bank holding company by January 1, 1981, unless it is granted an exemption under section 4(d) of the Act. A company that has filed such a declaration may (1) commence new activities *de novo*, either directly or through a subsidiary, without further action under this paragraph, until such time as the Board notifies the company to the contrary, and (2) make an acquisition of a going concern 45 days after the company has informed its Reserve Bank of the proposed acquisition, unless the company is notified to the contrary within that time or unless it is permitted to make the acquisi-

<sup>12</sup> Although the form of declaration is in terms of a company divesting itself of whatever interest it has in the bank, a company is regarded by the Board as complying with this condition if it furnishes the Board with convincing evidence that it does not exercise a controlling influence over the management or policies of the bank despite retention of some interest in the bank.



tion at an earlier date, based on exigent circumstances of a particular case. If the company has not filed such a declaration, no acquisition may be made, or activity commenced, on the basis of section 4(c)(12) except with prior approval of the Board. Normally only requests with respect to acquisitions or expansion of activities that the company demonstrates to the satisfaction of the Board are necessary to enable it more efficiently to market its assets subject to divestiture will be approved. This paragraph does not apply to acquisitions made pursuant to a binding commitment entered into before March 23, 1971.

(e) **Activities of companies in which national banks may invest.** No bank holding company or subsidiary thereof that is not a bank or subsidiary of a bank may, after June 30, 1971, acquire shares on the basis of section 4(c)(5) of the Act unless such shares are of the kinds and amounts explicitly eligible by Federal statute for investment by a national bank. A national bank or a subsidiary thereof may acquire or retain shares on the basis of section 4(c)(5) in accordance with the rules and regulations of the Comptroller of the Currency. So far as Federal law is concerned, a State-chartered bank or a subsidiary thereof may (1) acquire or retain shares on the basis of section 4(c)(5) if such shares are of the kinds and amounts explicitly eligible by Federal statute for investment by a national bank and (2) acquire or retain all (but, except for directors' qualifying shares, not less than all) of the shares of a company that engages solely in activities in which the parent bank may engage, at locations at which the bank may engage in the activity, and subject to the same limitations as if the bank were engaging in the activity directly.

(f) **Foreign activities of domestic holding companies.** (1) Any bank holding company may, with the consent of the Board, own or control voting shares of any company in which a company organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611-631) may invest other than a company that accepts deposits or similar credit balances in the United States.

(2) The procedures governing the Board's consent shall be the same as those set forth in § 211.8 of this chapter (Regulation K). In addition, the Board grants its general consent for any bank holding company to acquire from any of its subsidiaries any shares the subsidiary holds with the consent of the Board pursuant to Parts 211 or 213 of this chapter (Regulations K and M).

The Board may at any time, upon notice, suspend the general consent procedures with respect to any bank holding company or with respect to the acquisition of shares of companies engaged in particular kinds of activities.

(3) It shall be a condition to the Board's specific consent to the continued holding of voting shares of any subsidiary of a bank holding company which are acquired or held on the basis of an exemption under section 4(c)(13) of the Act that the subsidiary may take the following actions only with prior Board approval: (a) establish branch offices or agencies in the United States or to engage in receiving deposits in any foreign country (other than a foreign country in which it already has such an activity with the Board's approval) or (b) issue in the United States any debentures, bonds, promissory notes, or similar obligations, other than instruments or obligations due within one year.

(4) A bank holding company shall inform the Board, through its Federal Reserve Bank within 30 days after the close of each semiannual period, of all shares acquired or disposed of during that period that are or were held under the authority of this paragraph. With respect to any acquisition, such information shall (unless previously furnished) include brief descriptions of the business of the companies whose shares were acquired.

(g) **Foreign bank holding companies.** (1) As used in this paragraph: (i) "revenues" means gross income and "consolidated" means consolidated in accordance with generally accepted accounting principles in the United States consistently applied; (ii) "foreign country" means any foreign nation or colony, dependency, or possession thereof; and (iii) "foreign bank holding company" means a bank holding company, organized under the laws of a foreign country, more than half of whose consolidated assets are located, or consolidated revenues derived, outside the United States.

(2) A foreign bank holding company may:

(i) engage in direct activities of any kind outside the United States;

(ii) engage in direct activities in the United States that are incidental to its activities outside the United States;

(iii) own or control voting shares of any company that is not engaged, directly or indirectly, in any activities in the United States except as shall

be incidental to the international or foreign business of such company;

(iv) with the consent of the Board, own or control voting shares of any company principally engaged in the United States in financing or facilitating transactions in international or foreign commerce;

(v) own or control voting shares of any company, organized under the laws of a foreign country, that is engaged, directly or indirectly, in any activities in the United States if (a) such company is not a subsidiary of such bank holding company, (b) more than half of such company's consolidated assets and revenues are located and derived outside the United States, and (c) such company does not engage, directly or indirectly, in the business of underwriting, selling, or distributing securities in the United States; and

(vi) own or control voting shares of any company in a fiduciary capacity under circumstances which would entitle such shareholding to an exemption under section 4(c)(4) of the Act if the shares were held or acquired by the bank.

Nothing in this subparagraph shall authorize a foreign bank holding company to own or control more than 5 per cent of any class of voting shares of any other bank holding company or company accepting deposits or similar credit balances in the United States, except in a fiduciary capacity or with prior approval of the Board.

(3) A foreign bank holding company that is of the opinion that other activities or investments may, in particular circumstances, meet the conditions for an exemption under section 4(c)(9) of the Act may apply to the Board for such a determination by submitting to the Reserve Bank of the district in which its banking operations in the United States are principally conducted a letter setting forth the basis for that opinion.

(4) A foreign bank holding company shall inform the Board, through such Reserve Bank within 30 days after the close of each quarter, of all shares of companies engaged, directly or indirectly, in activities in the United States that were acquired during such quarter under the authority of this paragraph. Such information shall (unless previously furnished) include a brief description of the nature and scope of each such company's business in the United States. Information required need be given only insofar as it is known or reasonably available to a foreign bank holding company, if any required information is unknown and not reasonably available to the bank holding

company, either because the obtaining thereof would involve unreasonable effort or expense or because it rests peculiarly within the knowledge of a company that is not controlled by the bank holding company, the information need not be provided, but the bank holding company shall (i) give such information on the subject as it possesses or can acquire without unreasonable effort or expense together with the sources thereof, and (ii) include a statement either showing that unreasonable effort or expense would be involved or indicating that the company whose shares were acquired is not controlled by the bank holding company and stating the result of a request made to such company for information. No such request need be made, however, to any foreign government, or an agency or instrumentality thereof, if, in the opinion of the bank holding company, such request would be harmful to existing relationships.

(5) If, in the Board's judgment, a company is a substantial competitor in any line of commerce in the United States, an exemption under this paragraph with respect to ownership or control of such company's voting shares may not be predicated on the unavailability of information to establish whether or not such company's activities in the United States are consistent with such an exemption. In the absence of available information, it will be presumed that such a company's activities do not justify an exemption under this paragraph for the holding of its shares by a foreign bank holding company. A company will be deemed to be a substantial competitor in any line of commerce in the United States if its products or services are nationally advertised or distributed in this country or if they are widely advertised or distributed in a regional market in which a banking subsidiary, branch or agency of the foreign bank holding company is located. If unable to obtain sufficient information to establish whether or not an exemption is available, a foreign bank holding company should seek prior approval of the Board before investing in any company that might be a substantial competitor in any line of commerce in the United States.

#### SECTION 225.5—ADMINISTRATION

(a) **Effective date of registration.** The date of registration of a bank holding company shall be the date on which its registration statement is filed with the Federal Reserve Bank.



(b) **Reports and examinations.** Each bank holding company shall furnish to the Board in a form prescribed by the Board a report of the company's operations for the fiscal year in which it becomes a bank holding company, and for each fiscal year thereafter until it ceases to be a bank holding company. Each such annual report shall be filed with the Federal Reserve Bank. Each bank holding company shall furnish to the Board additional information at such times as the

Board may require. The Board may examine any bank holding company or any of its subsidiaries and the cost of any such examination shall be assessed against and paid by such bank holding company. As far as possible the Board will use reports of examinations made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority.

## STATUTORY APPENDIX

**BANK HOLDING COMPANY ACT OF 1956**

Act of May 9, 1956 (70 Stat. 133)

To define bank holding companies, control their future expansion, and require divestment of their nonbanking interests.

*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 1956".*

## DEFINITIONS

**Bank holding company**

SEC. 2. (a)(1) Except as provided in paragraph (5) of this subsection, "bank holding company" means any company which has control over any bank or over any company that is or becomes a bank holding company by virtue of this Act.

(2) Any company has control over a bank or over any company if—

(A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company;

(B) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or

(C) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

(3) For the purposes of any proceeding under paragraph (2)(C) of this subsection, there is a presumption that any company which directly or indirectly owns, controls, or has power to vote less than 5 per centum of any class of voting securities of a given bank or company does not have control over that bank or company.

(4) In any administrative or judicial proceeding under this Act, other than a proceeding under paragraph (2)(C) of this subsection,

a company may not be held to have had control over any given bank or company at any given time unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 per centum or more of any class of voting securities of the bank or company, or had already been found to have control in a proceeding under paragraph (2)(C).

(5) Notwithstanding any other provision of this subsection.

(A) No bank and no company owning or controlling voting shares of a bank is a bank holding company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraphs (2) and (3) of subsection (g) of this section. For the purpose of the preceding sentence, bank shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto; except that this limitation is applicable in the case of a bank or company acquiring such shares prior to the date of enactment of the Bank Holding Company Act Amendments of 1970 only if the bank or company has the right consistent with its obligations under the instrument, agreement, or other arrangement establishing the fiduciary relationship to divest itself of such voting rights and fails to exercise that right to divest within a reasonable period not to exceed one year after the date of enactment of the Bank Holding Company Act Amendments of 1970.

(B) No company is a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis.

(C) No company formed for the sole purpose of participating in a proxy solicitation is a bank holding company by virtue of its control of voting rights of shares acquired in the course of such solicitation.

(D) No company is a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition.



(E) No company is a bank holding company by virtue of its ownership or control of any State chartered bank or trust company which is wholly owned by thrift institutions and which restricts itself to the acceptance of deposits from thrift institutions, deposits arising out of the corporate business of its owners, and deposits of public moneys.

(F) No trust company or mutual savings bank which is an insured bank under the Federal Deposit Insurance Act is a bank holding company by virtue of its direct or indirect ownership or control of one bank located in the same State, if (i) such ownership or control existed on the date of enactment of the Bank Holding Company Act Amendments of 1970 and is specifically authorized by applicable State law, and (ii) the trust company or mutual savings bank does not after that date acquire an interest in any company that, together with any other interest it holds in that company, will exceed 5 per centum of any class of the voting shares of that company, except that this limitation shall not be applicable to investments of the trust company or mutual savings bank, direct and indirect, which are otherwise in accordance with the limitations applicable to national banks under section 5136 of the Revised Statutes (12 U.S.C. 24).

(6) For the purposes of this Act, any successor to a bank holding company shall be deemed to be a bank holding company from the date on which the predecessor company became a bank holding company.

#### **Company**

(b) "Company" means any corporation, partnership, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by any State. "Company covered in 1970" means a company which becomes a bank holding company as a result of the enactment of the Bank Holding Company Act Amendments of 1970 and which would have been a bank holding company on June 30, 1968, if those amendments had been enacted on that date.

#### **Bank**

(c) "Bank" means any institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands which (1) accepts deposits that the depositor has a legal right to withdraw on demand, and (2) engages in the business of making commercial loans. Such term does not include any organization operating under section 25 or section 25(a) of the Federal Reserve Act, or any organization which does not do business within the United States except as an incident to its activities outside the United States. "District bank" means any bank organized or operating under the Code of Law for the District of Columbia.

#### **Subsidiary**

(d) "Subsidiary", with respect to a specified bank holding company, means (1) any company 25 per centum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such bank holding company, or is held by it with power to vote; (2) any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or (3) any company with respect to the management or policies of which such bank holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the Board, after notice and opportunity for hearing.

#### **Successor**

(e) The term "successor" shall include any company which acquires directly or indirectly from a bank holding company shares of any bank, when and if the relationship between such company and the bank holding company is such that the transaction effects no substantial change in the control of the bank or beneficial ownership of such shares of such bank. The Board may, by regulation, further define the term "successor" to the extent necessary to prevent evasion of the purposes of this Act.

#### **Board**

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

**Indirect ownership and control**

(g) For the purposes of this Act—

(1) shares owned or controlled by any subsidiary of a bank holding company shall be deemed to be indirectly owned or controlled by such bank holding company;

(2) shares held or controlled directly or indirectly by trustees for the benefit of (A) a company, (B) the shareholders or members of a company, or (C) the employees (whether exclusively or not) of a company, shall be deemed to be controlled by such company; and

(3) shares transferred after January 1, 1966, by any bank holding company (or by any company which, but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the Board, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee.

**Extraterritorial application**

(h) The application of this Act and of section 23A of the Federal Reserve Act (12 U.S.C. 371), as amended, shall not be affected by the fact that a transaction takes place wholly or partly outside the United States or that a company is organized or operates outside the United States: *Provided, however,* That the prohibitions of section 4 of this Act shall not apply to shares of any company organized under the laws of a foreign country that does not do any business within the United States, if such shares are held or acquired by a bank holding company that is principally engaged in the banking business outside the United States.

**Thrift institution**

(i) The term "thrift institution" means (1) a domestic building and loan or savings and loan association, (2) a cooperative bank without capital stock organized and operated for mutual purposes and without profit, or (3) a mutual savings bank not having capital stock represented by shares.

[U. S. C., title 12, sec. 1841. As amended by Acts of July 1, 1966 (80 Stat. 236) and Dec. 31, 1970 (84 Stat. 1760). The date of enactment of the Bank Holding Company Act Amendments of 1970 referred to in this section is Dec. 31, 1970.]

**ACQUISITION OF BANK SHARES OR ASSETS****Transactions requiring approval; exceptions**

SEC. 3. (a) It shall be unlawful, except with the prior approval of the Board, (1) for any action to be taken that causes any company to become a bank holding company; (2) for any action to be taken that causes a bank to become a subsidiary of a bank holding company; (3) for any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank; (4) for any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or (5) for any bank holding company to merge or consolidate with any other bank holding company. Notwithstanding the foregoing this prohibition shall not apply to (A) shares acquired by a bank, (i) in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 2(b) and except as provided in paragraphs (2) and (3) of section 2(g), or (ii) in the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after the date of enactment of this Act in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired; or (B) additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition. For the purpose of the preceding sentence, bank shares acquired after the date of enactment of the Bank Holding Company Act Amendments of 1970 shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, but in such instances acquisitions may be made without prior approval of the Board if the Board, upon application filed within ninety days after the shares are acquired, approves retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within two years after issuance of the order of disapproval.



**Hearings on applications**

(b) Upon receiving from a company any application for approval under this section, the Board shall give notice to the Comptroller of the Currency, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a national banking association or a District bank, or to the appropriate supervisory authority of the interested State, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a State bank, and shall allow thirty days within which the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be, may be submitted. If the Comptroller of the Currency or the State supervisory authority so notified by the Board disapproves the application in writing within said thirty days, the Board shall forthwith give written notice of that fact to the applicant. Within three days after giving such notice to the applicant, the Board shall notify in writing the applicant and the disapproving authority of the date for commencement of a hearing by it on such application. Any such hearing shall be commenced not less than ten nor more than thirty days after the Board has given written notice to the applicant of the action of the disapproving authority. The length of any such hearing shall be determined by the Board, but it shall afford all interested parties a reasonable opportunity to testify at such hearing. At the conclusion thereof, the Board shall by order grant or deny the application on the basis of the record made at such hearing. In the event of the failure of the Board to act on any application for approval under this section within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted.

**Factors to be considered**

(c) The Board shall not approve—

- (1) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or
- (2) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be sub-

stantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

**Acquisitions in other states**

(d) Notwithstanding any other provision of this section, no application shall be approved under this section which will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside of the State in which the operations of such bank holding company's banking subsidiaries were principally conducted on the effective date of this amendment or the date on which such company became a bank holding company, whichever is later, unless the acquisition of such shares or assets of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located, by language to that effect and not merely by implication. For the purposes of this section, the State in which the operations of a bank holding company's subsidiaries are principally conducted is that State in which total deposits of all such banking subsidiaries are largest.

**Deposit insurance**

(e) Every bank that is a holding company and every bank that is a subsidiary of such a company shall become and remain an insured bank as such term is defined in section 3(h) of the Federal Deposit Insurance Act.

[U. S. C., title 12, sec. 1842. As amended by Acts of July 1, 1966 (80 Stat. 237); and Dec. 31, 1970 (84 Stat. 1763). The date of enactment of the Bank Holding Company Act Amendments of 1970 referred to in this section is Dec. 31, 1970; the date of the amendment referred to in paragraph (d) is July 1, 1966.]

## INTERESTS IN NONBANKING ORGANIZATIONS

**Prohibitions**

SEC. 4. (a) Except as otherwise provided in this Act, no bank holding company shall—

(1) after the date of enactment of this Act acquire direct or indirect ownership or control of any voting shares of any company which is not a bank, or

(2) after two years from the date as of which it becomes a bank holding company, or in the case of a company which has been continuously affiliated since May 15, 1955, with a company which was registered under the Investment Company Act of 1940, prior to May 15, 1955, in such a manner as to constitute an affiliated company within the meaning of that Act, after December 31, 1978, or in the case of any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, after December 31, 1980, retain direct or indirect ownership or control of any voting shares of any company which is not a bank or bank holding company or engage in any activities other than (A) those of banking or of managing or controlling banks and other subsidiaries authorized under this Act or of furnishing services to or performing services for its subsidiaries, and (B) those permitted under paragraph (8) of subsection (c) of this section subject to all the conditions specified in such paragraph or in any order or regulation issued by the Board under such paragraph: *Provided*, That a company covered in 1970 may also engage in those activities in which directly or through a subsidiary (i) it was lawfully engaged on June 30, 1968 (or on a date subsequent to June 30, 1968 in the case of activities carried on as the result of the acquisition by such company or subsidiary, pursuant to a binding written contract entered into on or before June 30, 1968, of another company engaged in such activities at the time of the acquisition), and (ii) it has been continuously engaged since June 30, 1968 (or such subsequent date). The Board by order, after opportunity for hearing, may terminate the authority conferred by the preceding proviso on any company to engage directly or through a subsidiary in any activity otherwise permitted by that proviso if it determines, having due regard

to the purposes of this Act, that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices; and in the case of any such company controlling a bank having bank assets in excess of \$60,000,000 on or after the date of enactment of the Bank Holding Company Act Amendments of 1970 the Board shall determine, within two years after such date (or, if later, within two years after the date on which the bank assets first exceed \$60,000,000), whether the authority conferred by the preceding proviso with respect to such company should be terminated as provided in this sentence. Nothing in this paragraph shall be construed to authorize any bank holding company referred to in the preceding proviso, or any subsidiary thereof, to engage in activities authorized by that proviso through the acquisition, pursuant to a contract entered into after June 30, 1968, of any interest in or the assets of a going concern engaged in such activities. Any company which is authorized to engage in any activity pursuant to the preceding proviso or subsection (d) of this section but, as a result of action of the Board, is required to terminate such activity may (notwithstanding any otherwise applicable time limit prescribed in this paragraph) retain the ownership or control of shares in any company carrying on such activity for a period of ten years from the date on which its authority was so terminated by the Board.

The Board is authorized, upon application by a bank holding company, to extend the two-year period referred to in paragraph (2) above from time to time as to such bank holding 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, but no such extensions shall in the aggregate exceed three years.

**Divorcement of shares**

(b) After two years from the date of enactment of this Act, no certificate evidencing shares of any bank holding company shall bear any statement purporting to represent shares of any other company except a bank or a bank holding company, nor shall the ownership, sale, or transfer of shares of any bank holding company be conditioned in any manner whatsoever upon the ownership, sale, or transfer of shares of any other company except a bank or a bank holding company.



**Exemptions**

(c) The prohibitions in this section shall not apply to any bank holding company which is (i) a labor, agricultural, or horticultural organization and which is exempt from taxation under section 501 of the Internal Revenue Code of 1954, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors; and such prohibitions shall not, with respect to any other bank holding company, apply to—

(1) shares of any company engaged or to be engaged solely in one or more of the following activities: (A) holding or operating properties used wholly or substantially by any banking subsidiary of such bank holding company in the operations of such banking subsidiary or acquired for such future use; or (B) conducting a safe deposit business; or (C) furnishing services to or performing services for such bank holding company or its banking subsidiaries; or (D) liquidating assets acquired from such bank holding company or its banking subsidiaries or acquired from any other source prior to May 9, 1956, or the date on which such company became a bank holding company, whichever is later;

(2) shares acquired by a bank in satisfaction of a debt previously contracted in good faith, but such bank shall dispose of such shares within a period of two years from the date on which they were acquired, except that the Board is authorized upon application by such bank holding company to extend such period of two years from time to time as to such holding 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, but no such extensions shall extend beyond a date five years after the date on which such shares were acquired;

(3) shares acquired by such bank holding company from any of its subsidiaries which subsidiary has been requested to dispose of such shares by any Federal or State authority having statutory power to examine such subsidiary, but such bank holding company shall dispose of such shares within a period of two years from the date on which they were acquired;

(4) shares held or acquired by a bank in

good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 2(b) and except as provided in paragraphs (2) and (3) of section 2(g);

(5) shares which are of the kinds and amounts eligible for investment by national banking associations under the provisions of section 5136 of the Revised Statutes;

(6) shares of any company which do not include more than 5 per centum of the outstanding voting shares of such company;

(7) shares of an investment company which is not a bank holding company and which is not engaged in any business other than investing in securities, which securities do not include more than 5 per centum of the outstanding voting shares of any company;

(8) shares of any company the activities of which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. In determining whether a particular activity is a proper incident to banking or managing or controlling banks the Board shall consider whether its performance by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. In orders and regulations under this subsection, the Board may differentiate between activities commenced *de novo* and activities commenced by the acquisition, in whole or in part, of a going concern;

(9) shares held or activities conducted by any company organized under the laws of a foreign country the greater part of whose business is conducted outside the United States, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act and would be in the public interest;

(10) shares lawfully acquired and owned prior to May 9, 1956, by a bank which is a bank holding company, or by any of its wholly owned subsidiaries;

(11) shares owned directly or indirectly by a company covered in 1970 in a company which does not engage in any activities other than those in which the bank holding company, or its subsidiaries, may engage by virtue of this section, but nothing in this paragraph authorizes any bank holding company, or subsidiary thereof, to acquire any interest in or the assets of any going concern (except pursuant to a binding written contract entered into before June 30, 1968, or pursuant to another provision of this Act) other than one which was a subsidiary on June 30, 1968;

(12) shares retained or acquired, or activities engaged in, by any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, or by any subsidiary thereof, if such company—

(A) within the applicable time limits prescribed in subsection (a)(2) of this section (i) ceases to be a bank holding company, or (ii) ceases to retain direct or indirect ownership or control of those shares and to engage in those activities not authorized under this section; and

(B) complies with such other conditions as the Board may by regulation or order prescribe; or

(13) shares of, or activities conducted by, any company which does no business in the United States except as an incident to its international or foreign business, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act and would be in the public interest.

In the event of the failure of the Board to act on any application for an order under paragraph (8) of this subsection within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. The Board shall include in its annual report to the Congress a description and a statement of the reasons for approval of each activity approved by it by order or regulation under such paragraph during the period covered by the report.

#### Hardship exemption

(d) To the extent that such action would not be substantially at variance with the purposes of this Act and subject to such conditions as it considers necessary to protect the public interest, the Board by order, after opportunity for hearing, may grant exemptions from the provisions of this section to any bank holding company which controlled one bank prior to July 1, 1968, and has not thereafter acquired the control of any other bank in order (1) to avoid disrupting business relationships that have existed over a long period of years without adversely affecting the banks or communities involved, or (2) to avoid forced sales of small locally owned banks to purchasers not similarly representative of community interests, or (3) to allow retention of banks that are so small in relation to the holding company's total interests and so small in relation to the banking market to be served as to minimize the likelihood that the bank's powers to grant or deny credit may be influenced by a desire to further the holding company's other interests.

#### Retention of shares after repeal of exemption

(e) With respect to shares which were not subject to the prohibitions of this section as originally enacted by reason of any exemption with respect thereto but which were made subject to such prohibitions by the subsequent repeal of such exemption, no bank holding company shall retain direct or indirect ownership or control of such shares after five years from the date of the repeal of such exemption, except as provided in paragraph (2) of subsection (a). Any bank holding company subject to such five-year limitation on the retention of nonbanking assets shall endeavor to divest itself of such shares promptly and such bank holding company shall report its progress in such divestiture to the Board two years after repeal of the exemption applicable to it and annually thereafter.

[U. S. C., title 12, sec. 1843. As amended by Acts of July 1, 1966 (80 Stat. 238) and Dec. 31, 1970 (84 Stat. 1763).]

#### ADMINISTRATION

##### Registration statements

SEC. 5. (a) Within one hundred and eighty days after the date of enactment of this Act, or within one hundred and eighty days after becoming a bank holding company, whichever is later,



each bank holding company shall register with the Board on forms prescribed by the Board, which shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry out the purposes of this Act. The Board may, in its discretion, extend the time within which a bank holding company shall register and file the requisite information.

#### Regulations

(b) The Board is authorized to issue such regulations and orders as may be necessary to enable it to administer and carry out the purposes of this Act and prevent evasions thereof.

#### Reports and examinations

(c) The Board from time to time may require reports under oath to keep it informed as to whether the provisions of this Act and such regulations and orders issued thereunder have been complied with; and the Board may make examinations of each bank holding company and each subsidiary thereof, the cost of which shall be assessed against, and paid by, such holding company. The Board shall, as far as possible, use the reports of examinations made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this section.

#### Annual Reports of Board

(d) Before the expiration of two years following the date of enactment of this Act, and each year thereafter in the Board's annual report to the Congress, the Board shall report to the Congress the results of the administration of this Act, stating what, if any, substantial difficulties have been encountered in carrying out the purposes of this Act, and any recommendations as to changes in the law which in the opinion of the Board would be desirable.

[U. S. C., title 12, sec. 1844.]

[Section 6 was repealed by section 9 of the Act of July 1, 1966 (80 Stat. 240).]

### RESERVATION OF RIGHTS TO STATES

#### States' rights

SEC. 7. The enactment by the Congress of the Bank Holding Company Act of 1956 shall not be

construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof.

[U. S. C., title 12, sec. 1846.]

### PENALTIES

#### Criminal penalties

SEC. 8. Any company which willfully violates any provision of this Act, or any regulation or order issued by the Board pursuant thereto, shall upon conviction be fined not more than \$1,000 for each day during which the violation continues. Any individual who willfully participates in a violation of any provision of this Act shall upon conviction be fined not more than \$10,000 or imprisoned not more than one year, 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.

[U. S. C., title 12, sec. 1847.]

### JUDICIAL REVIEW

#### Judicial review

SEC. 9. Any party aggrieved by an order of the Board under this Act may obtain a review of such order in the United States Court of Appeals within any circuit wherein such party has its principal place of business, or in the Court of Appeals in the District of Columbia, by filing in the court, within thirty days after the entry of the Board's order, a petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper. The findings of the Board as to the facts, if supported by substantial evidence, shall be conclusive.

[U. S. C., title 12, sec. 1848. As amended by Acts of Aug. 28, 1958 (72 Stat. 951) and July 1, 1966 (80 Stat. 240).]

AMENDMENTS TO  
INTERNAL REVENUE CODE OF 1954

**Tax provisions**

SEC. 10. (a) Subchapter O of chapter 1 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new part:

**"PART VIII—DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT OF 1956**

"Sec. 1101. Distributions pursuant to Bank Holding Company Act of 1956.

"Sec. 1102. Special rules.

"Sec. 1103. Definitions.

**"SEC. 1101. DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT OF 1956.**

**"(a) DISTRIBUTIONS OF CERTAIN NON-BANKING PROPERTY.—**

**"(1) DISTRIBUTIONS OF PROHIBITED PROPERTY.—If—**

**"(A) a qualified bank holding corporation distributes prohibited property (other than stock received in an exchange to which subsection (c) (2) applies)—**

**"(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or**

**"(ii) to a shareholder, in exchange for its preferred stock; or**

**"(iii) to a security holder, in exchange for its securities; and**

**"(B) the Board has, before the distribution, certified that the distribution of such prohibited property is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956,**

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

**"(2) DISTRIBUTIONS OF STOCK AND SECURITIES RECEIVED IN AN EXCHANGE TO WHICH SUBSECTION (c) (2) APPLIES.—If—**

**"(A) a qualified bank holding corporation distributes—**

**"(i) common stock received in an exchange to which subsection (c) (2) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or**

**"(ii) common stock received in an exchange to which subsection (c) (2) applies to a shareholder, in exchange for its common stock; or**

**"(iii) preferred stock or common stock received in an exchange to which subsection (c) (2) applies to a shareholder, in exchange for its preferred stock; or**

**"(iv) securities or preferred or common stock received in an exchange to which subsection (c) (2) applies to a security holder, in exchange for its securities; and**

**"(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,**

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

**"(3) NON PRO RATA DISTRIBUTION.—**Paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.

**"(4) EXCEPTION.—**This subsection shall not apply to any distribution by a corporation which has made any distribution pursuant to subsection (b).

**"(5) DISTRIBUTIONS INVOLVING GIFT OR COMPENSATION.—**

**"In the case of a distribution to which paragraph (1) or (2) applies, but which—**

**"(A) results in a gift, see section 2501, and following, or**

**"(B) has the effect of the payment of compensation, see section 61 (a) (1).**

**"(b) CORPORATION CEASING TO BE A BANK HOLDING COMPANY.—**

**"(1) DISTRIBUTIONS OF PROPERTY WHICH CAUSE A CORPORATION TO BE A BANK HOLDING COMPANY.—If—**

**"(A) a qualified bank holding corporation distributes property (other than stock received in an exchange to which subsection (c) (3) applies)—**

**"(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or**



“(ii) to a shareholder, in exchange for its preferred stock; or

“(iii) to a security holder, in exchange for its securities; and

“(B) the Board has, before the distribution, certified that—

“(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2 (a) of the Bank Holding Company Act of 1956) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under this subsection or exchanged under subsection (c) (3); and

“(ii) the distribution is necessary or appropriate to effectuate the policies of such Act,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

“(2) DISTRIBUTIONS OF STOCK AND SECURITIES RECEIVED IN AN EXCHANGE TO WHICH SUBSECTION (c) (3) APPLIES.—If—

“(A) a qualified bank holding corporation distributes—

“(i) common stock received in an exchange to which subsection (c) (3) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

“(ii) common stock received in an exchange to which subsection (c) (3) applies to a shareholder, in exchange for its common stock; or

“(iii) preferred stock or common stock received in an exchange to which subsection (c) (3) applies to a shareholder, in exchange for its preferred stock; or

“(iv) securities or preferred or common stock received in an exchange to which subsection (c) (3) applies to a security holder, in exchange for its securities; and

“(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from

the receipt of such stock or such securities or such stock and securities shall be recognized.

“(3) NON PRO RATA DISTRIBUTIONS.—Paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.

“(4) EXCEPTION.—This subsection shall not apply to any distribution by a corporation which has made any distribution pursuant to subsection (a).

“(5) DISTRIBUTIONS INVOLVING GIFT OR COMPENSATION.—

“In the case of a distribution to which paragraph (1) or (2) applies, but which—

“(A) results in a gift, see section 2501, and following, or

“(B) has the effect of the payment of compensation, see section 61(a) (1).

“(c) PROPERTY ACQUIRED AFTER MAY 15, 1955.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), subsection (a) or (b) shall not apply to—

“(A) any property acquired by the distributing corporation after May 15, 1955, unless (i) gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b), or (ii) such property was received by it in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) such property was acquired by the distributing corporation in a transaction in which gain was not recognized under section 305 (a) or section 332, or under section 354 with respect to a reorganization described in section 368 (a) (1) (E) or (F), or

“(B) any property which was acquired by the distributing corporation in a distribution with respect to stock acquired by such corporation after May 15, 1955, unless such stock was acquired by such corporation (i) in a distribution (with respect to stock held by it on May 15, 1955, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b), or (ii) in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) in a transaction in which gain was not

recognized under section 305 (a) or section 332, or under section 354 with respect to a reorganization described in section 368 (a) (1) (E) or (F), or

“(C) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 332, unless such property was acquired from a corporation which, if it had been a qualified bank holding corporation, could have distributed such property under subsection (a) (1) or (b) (1).

“(2) EXCHANGES INVOLVING PROHIBITED PROPERTY.—If—

“(A) Any qualified bank holding corporation exchanges (i) property, which, under subsection (a) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except property described in subsection (b) (1) (B) (i)), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property;

“(B) immediately after the exchange, the qualified bank holding corporation distributes all such stock in a manner prescribed in subsection (a) (2) (A); and

“(C) before such exchange, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (a) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that the exchange and distribution are necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956.

then paragraph (1) shall not apply with respect to such distribution.

“(3) EXCHANGES INVOLVING INTERESTS IN BANKS.—If—

“(A) any qualified bank holding corporation exchanges (i) property which, under subsection (b) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except prohibited property), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property;

“(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (b) (2) (A); and

“(C) before such exchange, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (b) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that—

“(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2 (a) of the Bank Holding Company Act of 1956) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under subsection (b) (1) or exchanged under this paragraph; and

“(ii) the exchange and distribution are necessary or appropriate to effectuate the policies of such Act,

then paragraph (1) shall not apply with respect to such distribution.

“(d) DISTRIBUTIONS TO AVOID FEDERAL INCOME TAX.—

“(1) PROHIBITED PROPERTY.—Subsection (a) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after May 15, 1955, to any corporation, property (other than prohibited property) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

“(2) BANKING PROPERTY.—Subsection (b) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after May 15, 1955, to any corporation, property (other than property described in subsection (b) (1) (B) (i)) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

“(3) CERTAIN CONTRIBUTIONS TO CAPITAL.—In the case of a distribution a portion of which is attributable to a transfer which is a contribution to the capital of a corporation, made after May 15, 1955, and prior to the date of the enactment of this part, if subsection (a)



or (b) would apply to such distribution but for the fact that, under paragraph (1) or (2) (as the case may be) of this subsection, such contribution to capital is part of a plan one of the principal purposes of which is to distribute the earnings and profits of any corporation, then, notwithstanding paragraph (1) or (2), subsection (a) or (b) (as the case may be) shall apply to that portion of such distribution not attributable to such contribution to capital, and shall not apply to that portion of such distribution attributable to such contribution to capital.

“(e) FINAL CERTIFICATION.—

“(1) FOR SUBSECTION (a).—Subsection (a) shall not apply with respect to any distribution by a corporation unless the Board certifies that, before the expiration of the period permitted under section 4 (a) of the Bank Holding Company Act of 1956 (including any extensions thereof granted to such corporation under such section 4 (a)), the corporation has disposed of all the property the disposition of which is necessary or appropriate to effectuate section 4 of such Act (or would have been so necessary or appropriate if the corporation had continued to be a bank holding company).

“(2) FOR SUBSECTION (b).—

“(A) Subsection (b) shall not apply with respect to any distribution by any corporation unless the Board certifies that, before the expiration of the period specified in subparagraph (B), the corporation has ceased to be a bank holding company.

“(B) The period referred to in subparagraph (A) is the period which expires 2 years after the date of the enactment of this part or 2 years after the date on which the corporation becomes a bank holding company, whichever date is later. The Board is authorized, on application by any corporation, to extend such period from time to time with respect to such corporation for not more than one year at a time if, in its judgment, such an extension would not be detrimental to the public interest; except that such period may not in any case be extended beyond the date 5 years after the date of the enactment of this part or 5 years after the date on which the corporation becomes a bank holding company, whichever date is later.

“(f) CERTAIN EXCHANGES OF SECURITIES.—In the case of an exchange described in subsection (a) (2) (A) (iv) or subsection (b) (2) (A)

(iv), subsection (a) or subsection (b) (as the case may be) shall apply only to the extent that the principal amount of the securities received does not exceed the principal amount of the securities exchanged.

“SEC. 1102. SPECIAL RULES.

“(a) BASIS OF PROPERTY ACQUIRED IN DISTRIBUTIONS.—If, by reason of section 1101, gain is not recognized with respect to the receipt of any property, then, under regulations prescribed by the Secretary or his delegate—

“(1) if the property is received by a shareholder with respect to stock, without the surrender by such shareholder of stock, the basis of the property received and of the stock with respect to which it is distributed shall, in the distributee's hands, be determined by allocating between such property and such stock the adjusted basis of such stock; or

“(2) if the property is received by a shareholder in exchange for stock or by a security holder in exchange for securities, the basis of the property received shall, in the distributee's hands, be the same as the adjusted basis of the stock or securities exchanged, increased by—

“(A) the amount of the property received which was treated as a dividend, and

“(B) the amount of gain to the taxpayer recognized on the property received (not including any portion of such gain which was treated as a dividend).

“(b) PERIODS OF LIMITATION.—The periods of limitation provided in section 6501 (relating to limitations on assessment and collection) shall not expire, with respect to any deficiency (including interest and additions to the tax) resulting solely from the receipt of property by shareholders in a distribution which is certified by the Board under subsection (a), (b), or (c) of section 1101, until five years after the distributing corporation notifies the Secretary or his delegate (in such manner and with such accompanying information as the Secretary or his delegate may by regulations prescribe) that the period (including extensions thereof) prescribed in section 4 (a) of the Bank Holding Company Act of 1956, or section 1101 (e) (2) (B), whichever is applicable, has expired; and such assessment may be made notwithstanding any provision of law or rule of law which would otherwise prevent such assessment.

“(c) ALLOCATION OF EARNINGS AND PROFITS.—

“(1) DISTRIBUTION OF STOCK IN A CONTROLLED CORPORATION.—In the case of a dis-

tribution by a qualified bank holding corporation under section 1101 (a) (1) or (b) (1) of stock in a controlled corporation, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation shall be made under regulations prescribed by the Secretary or his delegate.

“(2) EXCHANGES DESCRIBED IN SECTION 1101

(c) (2) OR (3).—In the case of any exchange described in section 1101 (c) (2) or (3), proper allocation with respect to the earnings and profits of the corporation transferring the property and the corporation receiving such property shall be made under regulations prescribed by the Secretary or his delegate.

“(3) DEFINITION OF CONTROLLED CORPORATION.—For purposes of paragraph (1), the term ‘controlled corporation’ means a corporation with respect to which at least 80 per cent of the total combined voting power of all classes of stock entitled to vote and at least 80 per cent of the total number of shares of all other classes of stock is owned by the distributing qualified bank holding corporation.

“(d) ITEMIZATION OF PROPERTY.—In any certification under this part, the Board shall make such specification and itemization of property as may be necessary to carry out the provisions of this part.

“(e) CERTAIN BANK HOLDING COMPANIES.—This part shall apply in respect of any company which becomes a bank holding company as a result of the enactment of the Act entitled ‘An Act to amend the Bank Holding Company Act of 1956’, approved July 1, 1966 (Public Law 89-485), with the following modifications:

“(1) Subsections (a) (3) and (b) (3) of section 1101 shall not apply.

“(2) Subsections (a) (1) and (2) and (b) (1) and (2) of section 1101 shall apply in respect of distributions to shareholders of the distributing bank holding corporation only if all distributions to each class of shareholders which are made—

“(A) after April 12, 1965, and

“(B) on or before the date on which the Board of Governors of the Federal Reserve System makes its final certification under section 1101 (e),  
are pro rata. For purposes of the preceding sentence, any redemption of stock made in whole or in part with property other than money shall be treated as a distribution.

“(3) In applying subsections (c) and (d) of section 1101 and subsection (b) of section 1103, the date ‘April 12, 1965’ shall be substituted for the date ‘May 15, 1955’.

“(4) In applying subsection (d) (3) of section 1101, the date of the enactment of this subsection shall be treated as being the date of the enactment of this part.

“(5) In applying subsection (b) (2) (A) of section 1103, the reference to the Bank Holding Company Act of 1956 shall be treated as referring to such Act as amended by Public Law 89-485.

#### “SEC. 1103. DEFINITIONS.

“(a) BANK HOLDING COMPANY.—For purposes of this part, the term ‘bank holding company’ has the meaning assigned to such term by section 2 of the Bank Holding Company Act of 1956.

“(b) QUALIFIED BANK HOLDING CORPORATION.—

“(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of this part the term ‘qualified bank holding corporation’ means any corporation (as defined in section 7701 (a) (3)) which is a bank holding company and which holds prohibited property acquired by it—

“(A) on or before May 15, 1955.

“(B) in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, or

“(C) in exchange for all of its stock in an exchange described in section 1101 (c) (2) or (c) (3).

“(2) LIMITATIONS.—

“(A) A bank holding company shall not be a qualified bank holding corporation, unless it would have been a bank holding company on May 15, 1955, if the Bank Holding Company Act of 1956 had been in effect on such date, or unless it is a bank holding company determined solely by reference to—

“(i) property acquired by it on or before May 15, 1955,

“(ii) property acquired by it in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, and



“(iii) property acquired by it in exchange for all of its stock in an exchange described in section 1101 (c) (2) or (3).

“(B) A bank holding company shall not be a qualified bank holding corporation by reason of property described in subparagraph (B) of paragraph (1) or clause (ii) of subparagraph (A) of this paragraph, unless such property was acquired in a distribution with respect to stock, which stock was acquired by such bank holding company—

“(i) on or before May 15, 1955,

“(ii) in a distribution (with respect to stock held by it on May 15, 1955, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b) of section 1101, or

“(iii) in exchange for all of its stock in an exchange described in section 1101 (c) (2) or (3).

“(C) A corporation shall be treated as a qualified bank holding corporation only if the Board certifies that it satisfies the foregoing requirements of this subsection.

“(c) **PROHIBITED PROPERTY.**—For purposes of this part, the term ‘prohibited property’ means, in the case of any bank holding company, property (other than nonexempt property) the disposition of which would be necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956 if such company continued to be a bank holding company beyond the period (including any extensions thereof) specified in subsection (a) of such section or in section 1101 (e) (2) (B) of this part, as the case may be. The term ‘prohibited property’ does not include shares of any company held by a bank holding company to the extent that the prohibitions of section 4 of the Bank Holding Company Act of 1956 do not apply to the ownership by such bank holding company of such property by reason of subsection (c) (5) of such section.

“(d) **NONEXEMPT PROPERTY.**—For purposes of this part, the term ‘nonexempt property’ means—

“(1) obligations (including notes, drafts, bills of exchange, and bankers’ acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace;

“(2) securities issued by or guaranteed as to principal or interest by a government or sub-

division thereof or by any instrumentality of a government or subdivision; or

“(3) money, and the right to receive money not evidenced by a security or obligation (other than a security or obligation described in paragraph (1) or (2)).

“(e) **BOARD.**—For purposes of this part, the term ‘Board’ means the Board of Governors of the Federal Reserve System.”

(b) The table of parts for subchapter O of chapter 1 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following:

“Part VIII. Distributions pursuant to Bank Holding Company Act of 1956.”

(c) The amendments made by this section shall apply with respect to taxable years ending after the date of the enactment of this Act.

#### SAVING PROVISION

##### Saving clause

SEC. 11. (a) Nothing herein contained shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding pending or hereafter instituted on account of any prohibited antitrust or monopolistic act, action, or conduct, except as specifically provided in this section.

##### Applicability of and procedure with respect to anti-trust laws

(b) The Board shall immediately notify the Attorney General of any approval by it pursuant to section 3 of a proposed acquisition, merger, or consolidation transaction, and such transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 3 shall be commenced within such thirty-day period. The commencement of such an action shall stay the effectiveness of the Board’s approval unless the court shall otherwise specifically order. In any such action, the court shall review *de novo* the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction approved pursuant to section 3 on the ground that such transaction alone and of itself constituted a

violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the Board is directed to apply under section 3 of this Act. Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 3 in compliance with this Act and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this Act shall exempt any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

**Judicial rights of Board and State bank supervisors**

(c) In any action brought under the antitrust laws arising out of any acquisition, merger, or consolidation transaction approved by the Board under section 3 of this Act, the Board and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel.

**Litigation not initiated before July 1, 1966**

(d) Any acquisition, merger, or consolidation of the kind described in section 3(a) of this Act which was consummated at any time prior or subsequent to May 9, 1956, and as to which no litigation was initiated by the Attorney General prior to the date of enactment of this amendment, shall be conclusively presumed not to have been in violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

**Litigation pending on or after July 1, 1966**

(e) Any court having pending before it on or after the date of enactment of this amendment any litigation initiated under the antitrust laws by the Attorney General with respect to any acquisition, merger, or consolidation of the kind described in section 3(a) of this Act shall apply the substantive rule of law set forth in section 3 of this Act.

**Meaning of "antitrust laws"**

(f) For the purposes of this section, the term "antitrust laws" means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1-7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12-27), and any other Acts in pari materia.

[U. S. C., title 12, sec. 1849. As amended by Acts of July 1, 1966 (80 Stat. 240) and Dec. 31, 1970 (84 Stat. 1766). The date of the amendment referred to in paragraphs (d) and (e) is July 1, 1966.]

**SEPARABILITY OF PROVISIONS**

**Separability clause**

SEC. 12. 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.

**BANK HOLDING COMPANY ACT  
AMENDMENTS OF 1970**

**Act of December 31, 1970 (84 Stat. 1766)**

**PARTY IN INTEREST**

SEC. 105. With respect to any proceeding before the Federal Reserve Board wherein an applicant seeks authority to acquire a subsidiary which is a bank under section 3 of the Bank Holding Company Act of 1956, to engage directly or indirectly in a nonbanking activity pursuant to section 4 of such Act, or to engage in an activity otherwise prohibited under section 106 of this Act, a party who would become a competitor of the applicant or subsidiary thereof by virtue of the applicant's or its subsidiary's acquisition, entry into the business involved, or activity, shall have the right to be a party in interest in the proceeding and, in the event of an adverse order of the Board, shall have the right as an aggrieved party to obtain judicial review thereof as provided in section 9 of such Act of 1956 or as otherwise provided by law.

[U. S. C., title 12, sec.1850.]



## CONDITIONAL TRANSACTIONS

**Definitions**

SEC. 106. (a) As used in this section, the terms "bank", "bank holding company", "subsidiary", and "Board" have the meaning ascribed to such terms in section 2 of the Bank Holding Company Act of 1956. For purposes of this section only, the term "company", as used in section 2 of the Bank Holding Company Act of 1956, means any person, estate, trust, partnership, corporation, association, or similar organization, but does not include any corporation the majority of the shares of which are owned by the United States or by any State. The term "trust service" means any service customarily performed by a bank trust department.

[U. S. C., title 12, sec. 1971.]

**Tie-in arrangements**

(b) A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

(1) that the customer shall obtain some additional credit property, or service from such bank other than a loan, discount, deposit, or trust service;

(2) that the customer shall obtain some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;

(3) that the customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

(4) that the customer provide some additional credit, property, or service to a bank holding company of such bank, or to any other subsidiary of such bank holding company; or

(5) that the customer shall not obtain some other credit, property, or service from a competitor of such bank, a bank holding company of such bank, or any subsidiary of such bank holding company, other than a condition or requirement that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit.

The Board may by regulation or order permit such exceptions to the foregoing prohibition as it con-

siders will not be contrary to the purposes of this section.

[U. S. C., title 12, sec. 1972.]

**Judicial proceedings**

(c) The district courts of the United States have jurisdiction to prevent and restrain violations of subsection (b) of this section and it is the duty of the United States attorneys, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. The proceedings may be by way of a petition setting forth the case and praying that the violation be enjoined or otherwise prohibited. When the parties complained of have been duly notified of the petition, the court shall proceed, as soon as possible, to the hearing and determination of the case. While the petition is pending, and before final decree, the court may at any time make such temporary restraining order or prohibition as it deems just. Whenever it appears to the court that the ends of justice require that other parties be brought before it, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and subpoenas to that end may be served in any district by the marshal thereof.

[U. S. C., title 12, sec. 1973.]

**Subpenas in actions by United States**

(d) In any action brought by or on behalf of the United States under subsection (b), subpoenas for witnesses may run into any district, but no writ of subpoena may issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the prior permission of the trial court upon proper application and cause shown.

[U. S. C., title 12, sec. 1974.]

**Civil actions**

(e) Any person who is injured in his business or property by reason of anything forbidden in subsection (b) may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without regard to the amount in controversy, and shall be entitled to recover three times the amount of the damages sustained by him, and the cost of suit, including a reasonable attorney's fee.

[U. S. C., title 12, sec. 1975.]

**Injunctions**

(f) Any person may sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by reason of a violation of subsection (b), under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity and under the rules governing such proceedings. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue.

[U. S. C., title 12, sec. 1976.]

**Limitation of actions**

(g)(1) Subject to paragraph (2), any action to enforce any cause of action under this section shall be forever barred unless commenced within four years after the cause of action accrued.

(2) Whenever any enforcement action is instituted by or on behalf of the United States with respect to any matter which is or could be the subject of a private right of action under this section, the running of the statute of limitations in respect of every private right of action arising

under this section and based in whole or in part on such matter shall be suspended during the pendency of the enforcement action so instituted and for one year thereafter: *Provided*, That whenever the running of the statute of limitations in respect of a cause of action arising under this section is suspended under this paragraph, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within the four-year period referred to in paragraph (1).

[U. S. C., title 12, sec. 1977.]

**Actions under other Federal or State laws**

(h) Nothing contained in this section shall be construed as affecting in any manner the right of the United States or any other party to bring an action under any other law of the United States or of any State, including any right which may exist in addition to specific statutory authority, challenging the legality of any act or practice which may be proscribed by this section. No regulation or order issued by the Board under this section shall in any manner constitute a defense to such action.

[U. S. C., title 12, sec. 1978.]