

EMERGENCY ACQUISITION OF BANKS OR BANK HOLDING COMPANIES

HEARINGS BEFORE THE SUBCOMMITTEE ON FINANCIAL INSTITUTIONS OF THE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS UNITED STATES SENATE NINETY-FOURTH CONGRESS

FIRST SESSION

ON

S. 890

TO AMEND THE BANK HOLDING COMPANY ACT OF 1956, AS AMENDED, TO PROVIDE SPECIAL PROCEDURES FOR THE ACQUISITION OF FAILING BANKS OR BANK HOLDING COMPANIES AND FOR THE ACQUISITION OF BANKS OR BANK HOLDING COMPANIES IN EMERGENCIES AND TO PROVIDE FOR THE ACQUISITION BY BANK HOLDING COMPANIES OF BANKS OUTSIDE THEIR STATE OF PRINCIPAL BANKING OPERATIONS IN EMERGENCY SITUATIONS AND SITUATIONS INVOLVING A FAILING BANK OR BANK HOLDING COMPANY

JULY 22 AND 28, 1975

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Committee on Banking, Housing and Urban Affairs



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(II)

CONTENTS

	Page
S. 890.....	25
Report of the Comptroller of the Currency.....	32

LIST OF WITNESSES

Robert C. Holland, Member, Board of Governors, Federal Reserve System.....	2
Frank Wille, Chairman, Federal Deposit Insurance Corporation.....	35
Joe Sims, Acting Deputy Assistant Attorney General, Antitrust Division, Department of Justice.....	85
Ralph A. Beeton, president-elect, Association of Registered Bank Holding Companies.....	98

ADDITIONAL STATEMENTS AND DATA

Reprint of address by Frank Wille, Chairman, Federal Deposit Insurance Corporation, before the 74th Annual Convention of the Conference of State Bank Supervisors.....	44
Letters to Senator McIntyre from:	
Gerald M. Lowrie, executive director, government relations, American Bankers Association.....	110
Lawrence E. Kreider, executive vice president-economist, Conference of State Bank Supervisors.....	112
Kenneth J. Benda, president, Independent Bankers Association of America.....	116

(III)

EMERGENCY ACQUISITION OF BANKS OR BANK HOLDING COMPANIES

TUESDAY, JULY 22, 1975

U.S. Senate,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS,
Washington, D.C.

The subcommittee met at 10 a.m. in room 1202, Dirksen Senate Office Building, Senator Thomas J. McIntyre, (chairman) presiding. Present: Senators Proxmire and McIntyre.

Senator McINTYRE. The subcommittee will come to order.

This morning the subcommittee will take up S. 890, a bill, and I quote:

To provide special procedures for the acquisition of failing banks or bank holding companies and for the acquisition of banks or bank holding companies in emergencies and to provide for the acquisition by bank holding companies of banks outside their state of principal banking operations in emergency situations and situations involving a failing bank or bank holding company.

This bill was introduced on February 28 of this year by myself and Senator Proxmire at the request of the Federal Reserve Board.

The bill calls for two changes in present law. First, it would speed up the process by which the Federal Reserve may approve an acquisition by a bank holding company when the bank or bank holding company to be acquired is in severe financial difficulty. This provision has already been extended to banks making a similar acquisition under the Bank Merger Act.

Secondly, the bill would amend the Bank Holding Company Act to permit bank holding companies to go across State lines to effectuate such acquisitions whenever the Board finds that there is either an "emergency requiring expeditious action" or "probable failures."

The failure, or near failure, of several large banks in the past few years has prompted a reconsideration of the adequacy of the tools available to both the Fed and the FDIC to deal effectively and expeditiously in such situations.

Notwithstanding the issue of adequacy of emergency provisions already contained in present law, it should be noted that, perhaps, the most significant factor pertaining to recent bank failures has been the maintenance of public confidence in the strength of our banking system as a whole, despite the well-publicized deterioration of a few poorly or fraudulently run institutions.

As we consider this emergency bank holding company legislation, therefore, let us not overplay the word "emergency," for the present system does work.

At this time, I am pleased to welcome as our first witnesses, Governor Robert Holland of the Federal Reserve Board and Chairman Frank Wille of the Federal Deposit Insurance Corporation. Both the Comptroller of the Currency and the Conference of State Bank Supervisors are submitting written statements for the record.

Gentlemen, if you would, please summarize your testimony with the understanding that your written statements will be incorporated into the record in their entirety. This will permit us to use our time to best advantage for questions and answers.

Governor Holland, will you proceed, sir?

STATEMENT OF ROBERT C. HOLLAND, MEMBER, BOARD OF GOVERNORS, FEDERAL RESERVE SYSTEM

MR. HOLLAND. Thank you, Mr. Chairman. I would like to say that the Board appreciates very much the scheduling of this hearing. We know that Members of the Senate have a very heavy schedule, and we appreciate your working on this bill.

We believe we are bringing to you not a trivial or simply a technical proposal, but something that has the potential—if financial lightning should strike in the form of a big bank failure—of preventing a lot of heartache for a lot of people.

The financial experiences of the last couple of years have raised significant issues with respect to the regulation and supervision of the Nation's banking institutions.

One very important area to which we at the Federal Reserve are giving increased attention is the development of more expeditious methods of dealing with problem banks.

The Federal Reserve System is strengthening its program covering banks under its jurisdiction to place increased emphasis on the identification, surveillance, and timely resolution of current and potential problem bank cases. This action has had first priority among our broad sweep of studies addressing key problem areas in banking supervision and regulation. It is humanly impossible—and even undesirable—for supervisors to prevent all bank problems; but it is practical to aspire, as we do, to recognizing problems early and moving promptly to try to remedy them.

But we still have to face the fact that there is a gap in the range of feasible remedial measures we could use if our preventive measures should somehow not succeed in forestalling a bank failure. In that eventuality, the best solution of the problem in most cases is for the troubled bank to be taken over by another bank.

Bank mergers, where permitted by State branching laws, can sometimes serve this purpose effectively. The alternative of bank holding company acquisition of a failing bank, however, even where permitted by State laws, is substantially inhibited by two Federal statutory constraints. One enforces certain time delays in the approval and consummation of all bank holding company acquisitions. The second effectively prevents any holding company acquisition of banks across State lines.

In our view, either or both of those limitations can interfere with actions needed to protect the public interest in some cases, and this concern is behind our recommendation of these changes in the law.

The first recommendation essentially involves procedural amendments to the Bank Holding Company Act designed to permit the immediate or expeditious consummation of a transaction under the Bank Holding Company Act in certain problem bank and bank holding company situations. These amendments are intended to parallel the already existing provisions provided in the Bank Merger Act, and those procedures have worked well for a decade. The details of this recommendation are explained in my written statement. I believe that the proposed changes are not controversial. I know of no opposition to them.

In the interest of time, let me jump over to page 8 in my statement and underline the policy emphasis that leads us to make this recommendation. We see the need for this amendment because of existing statutory limitations.

The existing statutory delay provisions in the Bank Holding Company Act have effectively eliminated bank holding companies from bidding in emergency situations, since usually a bank in severe financial difficulty may not be able to survive the statutory 30-day delay before consummation is permitted. These provisions have thus unnecessarily limited the number of potential acquirers of a problem bank, and that elimination of potential acquirers can increase the anticompetitive risks in such acquisitions by limiting the pool of potential acquirers to banks already in direct competition with the problem bank.

For example, in the case of Franklin National Bank, the delay provisions effectively limited potential acquirers to other banks located in New York City.

The holding company can be a procompetitive form of bank expansion, and the acquisition of a failing bank by a bank holding company should not be effectively foreclosed in infrequent problem bank situations, because of delay requirements not similarly imposed in bank mergers. Waiver of the usual delay provisions undoubtedly would be warranted in only a small number of cases, and in those cases the waiver should produce net public benefits.

The other and more serious and more sensitive constraint on bank holding company acquisitions is geographical in nature. As you know, under the Bank Holding Act, the Board may not approve any further acquisition of a bank by a bank holding company across State lines.

This provision was made part of the original Bank Holding Company Act of 1956 in order to halt the further expansion of several large multi-State bank holding companies then in existence. It was based in large part on Congress concern that, unless this trend were halted, widespread and frequent acquisitions by major bank holding companies could eventually lead to an undue concentration of banking resources in the United States.

The Board is of the opinion that the present law could, in the case of a large problem bank or a problem bank holding company controlling a large bank, operate in contravention of both the national and local interest.

When one stops to think of the practicability of the American banking structure, one realizes that the limitation of takeover buying to in-State bidders can, in the case of a large problem bank, severely limit the number of potential acquirers and can result in an increased

concentration of banking resources within a State. That is contrary to the intent of the Congress in passing the Bank Holding Company Act.

In most of our States, the number of locally owned banks big enough and strong enough to absorb a large problem bank are very few.

When adverse news triggers enough outflows of funds to significantly weaken a big bank, it may become necessary in the public interest to fold it into a larger and stronger institution. As you know, this occurred in New York and California, but in those States big in-State banks were available to acquire the problem banks involved. Had institutions of the size of Franklin National or U.S. National failed in many other States, however, no banks in those States would have been large enough to acquire them. In such circumstances, the need to be able to arrange acquisitions across State boundaries would become very real.

The Board, therefore, recommends several amendments to the Bank Holding Company Act designed to permit out-of-State acquisitions in certain emergency and failing bank situations involving a large bank or bank holding company controlling a large bank.

We propose to limit those acquisitions to a bank having assets in excess of \$500 million or a bank holding company controlling a bank having assets in excess of \$500 million. We pick that figure for three basic reasons:

First, failure of such an institution, we believe, could have damaging effects in both the international and national markets, and on the national economy and the regional economy in which the failing bank is located.

Second, we believe there may be, few, if any, prospective acquirers of such an institution within any State.

And, third, the most likely, in-State acquirers may well be institutions of comparable or greater size, which might often pose problems under the antitrust laws, and threaten an increased concentration of banking resources within the State.

We chose \$500 million as a cutoff figure, because it would cover major money center banks and regional banks, and yet it would not be so extensive an exception as to create potential loopholes in the multi-State prohibitions of the Bank Holding Company Act.

Also, we believe that in cases involving smaller problem banks, local acquisitions, where appropriate, can more readily be arranged by the FDIC and by State authorities than can transfers of the liabilities and assets of large institutions. Under the bill as proposed, the Board could use this authority to approve a multi-State acquisition only when it finds, in weighing the statutory competitive and other factors, that the public interest would best be served if the bank or banks involved were acquired by an out-of-State bank holding company.

We anticipate that this authority would rarely be used and only in cases presenting very special circumstances, such as those involving Franklin National Bank.

In our view, these relatively rare situations should not and would not contravene the central purpose of the multi-State prohibition of the Bank Holding Company Act, which was directed at preventing large concentrations of financial resources through frequent multi-State acquisitions of banking institutions.

The Board is sensitive to the fact that the prohibition on multi-State branching was designed to prevent the evolution of a few large banking institutions. While there would be only a very limited number of instances in which we would even consider making exceptions to section 3(d), we could conceive that you might want to narrow the amending language even more than was originally suggested. That is, a strict limit could be placed on the number of acquisitions any single holding company would be allowed to make under such an exception. This limit should be more than one, in order not to encourage potential bidders to wait until an ideal acquisition opportunity was presented, but it could well be less than five, in order to forestall excessive expansions of financial power.

In our view, this kind of limit would serve to preclude any possibility of undue concentration of economic resources being created through exceptions to section 3(d).

Let me sum up what I am saying here in as plain terms as I know how. We hope a big bank will never get in serious trouble again, but we don't think it is right to assume that will be so.

Good contingency planning calls for being ready to deal with that kind of circumstance. Under present law, if a big bank here or there gets in very serious trouble, there really are only three alternatives facing the regulators:

We can fix it, if we're able. Otherwise, we nail the bank's doors shut, figuratively speaking, and pay off deposits of \$40,000 or less; or third, we sell it to a very big nearby competitor.

We think neither of those second or third alternatives is advantageous to the public interest, and that is why we favor passing this bill—to provide a proper competitive option, when no other good choice exists. We believe that is in the interest of the public as a whole.

Thank you, Mr. Chairman.

Senator McINTYRE. Thank you, Governor.

[Complete statement of Governor Holland, a copy of the bill being considered, and a report from the Comptroller of the Currency follow:]

Statement by

Robert C. Holland

Member, Board of Governors of the Federal Reserve System

I am pleased to appear before this Subcommittee, on behalf of the Board of Governors of the Federal Reserve System, to discuss the Board's reasons for recommending the enactment of legislation embodied in S. 890.

The financial experiences of the last two years have raised many significant issues with regard to the regulation and supervision of the nation's banking institutions.

One very important area that we at the Federal Reserve are giving increased attention is the development of more expeditious means of dealing with problem banks. The Federal Reserve System is strengthening its program covering banks under its jurisdiction to place increased emphasis on the identification, surveillance and timely resolution of current and potential problem bank cases. This action has had first priority among our broad sweep of studies addressing key problem areas in banking supervision

and regulation. It is humanly impossible -- and even undesirable -- for supervisors to prevent all bank problems; but it is practical to aspire, as we do, to recognizing problems early and moving promptly to try to remedy them.

There remains, however, a gap in the range of feasible remedial actions that could be undertaken if preventive measures should somehow not succeed in forestalling a bank failure. In that eventuality, the best solution of the problem in most cases is for the troubled bank to be taken over by another bank. Bank mergers, where permitted by State branching laws, can sometimes serve this purpose effectively. The alternative of bank holding company acquisition of a failing bank, however, even where permitted by State laws, is substantially inhibited by two Federal statutory constraints. One enforces certain time delays in the approval and consummation of all bank holding company acquisitions. The second effectively prevents any holding company acquisition of banks across State lines.

In our view, either or both of those limitations can interfere with actions needed to protect the public interest in some cases. Accordingly, the Board has placed two separate statutory recommendations before the Congress, both of which are now embodied in S. 890.

The first recommendation essentially involves procedural amendments to the Bank Holding Company Act designed to permit the immediate or expeditious consummation of a transaction under the Bank Holding Company Act in certain problem bank and bank holding company situations. The amendments are intended to parallel existing provisions in the Bank Merger Act. The second recommendation would amend the Bank Holding Company Act to grant the Board authority to approve an acquisition of a bank across State lines by a bank holding company when the Board determines that a large bank or bank holding company controlling a large bank is in severe financial difficulty, and the public interest would best be served if the bank involved was acquired by

an out-of-State holding company. I will discuss each of these recommendations in turn, referring to the current law, the main reason therefor, the key arguments for changing the law at this time, and the Board's reasons for recommending the specific amendments proposed in S. 890.

Certain time schedules for the provision of notice and hearing ^{1/} were enacted as part of the original Bank Holding Company Act of 1956, as a compromise between giving bank chartering authorities an absolute right to deny a holding company application

^{1/} Under existing law, the Board, before approving an application for the acquisition of voting shares or assets of a bank under section 3 of the Bank Holding Company Act, must: (1) give notice to the Comptroller of the Currency if the applicant or bank involved is a national or district bank or to the appropriate State supervisory authority if the applicant or bank involved is a State bank; (2) 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; and (3) if the supervisory authority so notified files a written disapproval of the application within the thirty-day period, the Board must provide a hearing on the application, and base its decision on the record of that hearing.

to acquire a bank and giving such authorities only an informal consulting role vis-a-vis the Board's final decision in the case.

The Board in section 1(1) of S. 890 has recommended, first, that the regular thirty-day notice period be shortened to ten days if the Board advises the supervisory authority that an emergency exists requiring expeditious action. Secondly, section 1(1) as proposed would give the Board the authority to waive notice and hearing requirements entirely if the Board finds that it must act immediately on an application to prevent the probable failure of a bank or bank holding company involved in the proposed transaction. Both of these suggested amendments parallel provisions subsequently enacted in the Bank Merger Act -- provisions which have worked well in the nearly fifty instances in which they have been used over the past ten years.

In the Board's judgment, the present requirement for thirty-day notice to the relevant bank supervisor might work against the public interest in the context of

a problem bank or bank holding company situation where immediate or expeditious action is called for. From a practical standpoint, the primary supervisory authority in such a situation would be actively involved in the process of screening potential acquirers and would also be desirous of having an acquisition quickly consummated. Similarly, the protracted hearing requirements in the case of recommended disapprovals by the supervisory authority are ill-suited to a failing bank or bank holding company situation where the public interest demands that decisions be made quickly on the basis of available evidence.

There is an additional statutory delay to be dealt with. Under existing law, the Board must immediately notify the Attorney General of any approval of a proposed bank acquisition, merger or consolidation transaction under section 3 of the Bank Holding Company Act, and such transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board.

This requirement was added to the Bank Holding Company Act in 1966 in order to conform with the standard consummation procedures being established in the Bank Merger Act. The purpose of the provision was to eliminate conflicts between the Board's decisions under the Bank Holding Company Act and the Attorney General's enforcement of the antitrust laws, which might otherwise require the unwinding of a transaction after that transaction had been approved under the Bank Holding Company Act.

However, the Bank Merger Act provides for an exception to this delay in problem cases, while the Bank Holding Company Act does not. The Board is recommending that, in cases involving problem banks or bank holding companies, the consummation procedures of the Bank Holding Company Act be fully conformed to those in the Bank Merger Act.

Accordingly, it is proposed that, when the Board has advised a supervisory authority of an emergency requiring expeditious action, consummation be permitted five calendar days after the date of

approval. In cases where the Board has found that it must act immediately to prevent the probable failure of a bank or bank holding company, it is recommended that immediate consummation be permitted. In the Board's judgment, there appears to be no public policy reason for not having parallel consummation procedures for bank mergers and bank holding company acquisitions in problem bank situations, since the same reasons exist for not waiting thirty days for the Attorney General's competitive judgment in both cases. As a practical matter, the Federal banking agencies in such situations have regularly followed the practice of informally consulting with the Attorney General in advance in any case large enough to raise substantial competitive questions.

The existing statutory delay provisions in the Bank Holding Company Act have effectively eliminated bank holding companies from bidding in emergency situations, since a bank in severe financial difficulty may not be able to survive the thirty-day consummation delay. These provisions have thus unnecessarily limited the number of potential acquirers of a problem bank.

This can increase the anti-competitive risks in such acquisitions by often limiting the pool of potential acquirers to banks already in direct competition with the problem bank, e.g., in the case of Franklin National Bank, other New York City banks. The holding company can be a pro-competitive form of bank expansion, and its use should not be effectively foreclosed in infrequent problem bank situations because of delay requirements not similarly imposed in bank mergers. Waiver of the usual delay provisions undoubtedly would be warranted in only a small number of cases, and in those cases the waiver should produce net public benefits.

Another -- and more sensitive -- constraint on bank holding company acquisitions is geographical in nature. Under the Bank Holding Company Act, the Board may not approve any further acquisition of a bank by a bank holding company across State lines.^{2/}

^{2/} The precise words of section 3(d) provide that the Board may not approve any application under section 3 of the Bank Holding Company Act: ". . . 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 an additional bank located outside of the State in which the operations of such bank holding company's banking subsidiaries were principally conducted. . . ."

This provision was made part of the original Bank Holding Company Act of 1956 in order to halt the further expansion of several large multi-State bank holding companies then in existence. It was based in large part on Congress' concern that, unless this trend were halted, widespread and frequent acquisitions by major bank holding companies could eventually lead to an undue concentration of banking resources in the United States. In particular, it was thought that, absent this provision, holding companies would be used to avoid the multi-State branching provisions of the McFadden Act, and it thus was also intended to preserve the rights of the States in this area.^{3/}

^{3/} Under the terms of this provision, a bank holding company can only acquire a bank outside of its principal State if the State in which such bank is located takes action to specifically permit such acquisition. If a State took such action, the Board would still have to decide the application under the statutory standards of the Bank Holding Company Act. At the time of this Act's passage in 1956, no State granted such permission. Except for Iowa, which has enacted a law giving a single grandfathered multi-State bank holding company permission to acquire additional banks in that State, and Maine, which recently enacted a law which would allow acquisition of a Maine bank by an out-of-State bank holding company if a Maine bank holding company is given reciprocal rights in that holding company's State, the situation remains essentially unchanged with no other States granting such permission.

The Board is of the opinion that section 3(d) could, in the case of a large problem bank or a problem bank holding company controlling a large bank, operate in contravention of both national and local interests. The limitation to in-State bidders may, in the case of a large problem bank, severely limit the number of potential acquirers and result in an increased concentration of banking resources within a State -- contrary to an intent of Congress in passing the Bank Holding Company Act. In most of our States, the number of locally-owned banks big and strong enough to absorb a large problem bank are very few. The only smaller banks strong enough to undertake such a venture may be those affiliated with powerful commercial or financial interest domiciled either in this country or abroad.

The problem created by the constraints imposed by section 3(d) has been sharpened as banks, particularly large banks, have moved increasingly from asset to liability management. This shift in emphasis has led

many larger institutions to search far afield for money market funds. While this has often been of considerable benefit to the customers and communities they have served -- particularly in those areas where widespread branching is not permitted and local deposit generation is thereby limited -- liability management has increased banks' exposure to the risks created by any substantial net outflow of such nonlocal and often volatile funds.

When adverse news triggers enough outflows of funds to significantly weaken a bank, it may become necessary in the public interest to fold it into a larger and stronger institution. As you know, this occurred in New York and California, where big in-State banks were available to acquire the problem banks involved. Had institutions of the size of Franklin National or U.S. National failed in many other States, however, no banks in those States would have been large enough to acquire them. In such circumstances, the need to be able to arrange acquisitions across State boundaries would become very real.

The Board therefore recommends several amendments to the Bank Holding Company Act designed to permit out-of-State acquisitions in certain emergency and failing bank situations involving a large bank or bank holding company controlling a large bank. Under section 1(3) of S. 890 as proposed, the Board would have the authority to make exceptions to the multi-State prohibitions of section 3(d) whenever the Board finds that an emergency requiring expeditious action exists with respect to a bank or bank holding company, or that it must act immediately in order to prevent the probable failure of a bank or bank holding company. The proposed authority would be limited, however, to cases involving a bank having assets in excess of \$500 million or a bank holding company controlling a bank having assets in excess of \$500 million. There are three basic reasons for limiting this authority to the case of a large bank or bank holding company controlling a large bank: first, the failure of such an institution can have

damaging effects in both national and international markets and on the national economy; secondly, there may be few, if any, prospective acquirers of such an institution within any State; and thirdly, the most likely in-State acquirers are likely to be institutions of comparable or greater size, which might often pose problems under the anti-trust laws and threaten an increased concentration of banking resources within the State.

The Board chose a \$500 million asset cut-off figure because it would cover major money-center and regional banks, whose failure might have an adverse effect on regional, national or even international financial markets, yet would not be so extensive an exception as to create a potentially significant loophole to the multi-State prohibitions of the Act. Also, in cases involving smaller problem banks, local acquisitions where appropriate can be more readily arranged by the FDIC and State authorities than can transfers of the liabilities and assets of large institutions.

The choice of any cut-off figure involves various public policy considerations by the Congress. The Board stands ready to supply the Subcommittee with additional data on this issue if that would be helpful. On the basis of data prepared by the Board's staff, a \$500 million cut-off would cover not only the large money-center and regional banks but also, in most cases, the largest bank in any State.^{4/} From our analysis of cases in which emergency or failing bank procedures have been used under the Bank Merger Act, it appears only three banks acquired under emergency approval procedures have had assets in excess of \$500 million (Security National Bank of Long Island, Franklin National Bank of New York, and United States National Bank of San Diego). Thus, the Board anticipates that this provision would be applicable only in rare cases where there may be significant effects upon the national and international economy.

^{4/} From the Board's figures as of December 31, 1974, this asset cut-off would appear to include some 210 commercial banks across the country, including the largest bank in 39 States and the District of Columbia, and the two largest banks in 35 States and the District of Columbia.

Under section 1(3) of S. 890 the Board could use this authority to approve a multi-State acquisition only when it finds, in weighing the statutory competitive and other factors, that the public interest would best be served if the bank or banks involved were acquired by an out-of-State bank holding company. The Board thus anticipates that this authority would rarely be used and only in cases presenting very special circumstances, such as those involving Franklin National Bank. In our view, these relatively rare situations would not contravene the central purpose of the multi-State prohibition of the Bank Holding Company Act, which was directed at preventing large concentrations of financial resources through frequent multi-State acquisitions of banking institutions.

The Board is sensitive to the fact that the prohibition on multi-State branching was designed to prevent the evolution of a few large banking institutions. While there would be only a very limited number of instances in which the Board would consider

making exceptions to section 3(d), the amending language could be narrowed even more than was originally suggested. A strict limit could be placed on the number of acquisitions any single bank holding company would be allowed to make under such an exception. This limit should be more than one, in order not to encourage potential bidders to wait until an ideal acquisition opportunity was presented, but it could be less than five, in order to forestall excessive expansions of financial power. In our view, this kind of limit would serve to preclude any possibility of undue concentration of economic resources being created through exceptions to section 3(d).^{5/}

^{5/} As a corollary to its recommended amendment of section 3(d), the Board has felt it necessary to also recommend an amendment in section 2 of S. 890 overriding certain provisions of State law in situations involving a problem bank or bank holding company where expeditious or immediate action is required.

Section 7 of the Bank Holding Company Act reserves to the States their rights to exercise such powers and jurisdiction which they now or in the future may have with respect to banks, bank holding companies, and subsidiaries thereof. In problem bank or (continued)

The Board hopes, of course, that no significant bank will so misbehave that it becomes threatened with

5/ (Continued) bank holding company situations, the normal circumstances which may have led a State to enact a statute prohibiting the formation of bank holding companies within its borders or otherwise restricting the entry of out-of-State bank holding companies do not apply and therefore such provisions should not be controlling when the Board has approved such application under the immediate or expeditious action provisions recommended in S. 890. In such cases, the national interest argues that Federal law be supreme. In practical terms, even though a State may favor an acquisition by an out-of-State holding company approved by the Board under its immediate or expeditious action provisions as an alternative to failure, it would probably be impossible either for a State legislature to enact in time any necessary amendments to its laws, or for a State court to interpret the terms of an unclear statute. The delays involved in trying to pursue either of the above courses of action could be crucial. Section 2 of S. 890 would solve these problems by providing that in any case where the Board has approved an application under the immediate or expeditious action provisions of S. 890, the holding company may acquire and operate the bank involved as a subsidiary notwithstanding section 7 or any provision of State law which would otherwise prevent the acquisition or restrict the operations of that holding company.

Section 2, however, leaves intact State restrictions on multi-bank holding companies, so that an out-of-State bank holding company which acquired a bank with the Board's approval under the immediate or expeditious action provisions could not gain a competitive advantage over an in-State holding company by acquiring a second bank under those provisions. The McFadden Act restrictions on multi-State branching would not be affected by section 2 of S. 890 as such restrictions are a matter of Federal law.

failure. It would be imprudent, however, not to be prepared to deal with that eventuality. As a matter of good contingency planning, the Board recommends prompt enactment of S. 890. It will serve the public interest both by facilitating the speedy and efficient resolution of problem bank and bank holding company cases we may encounter and by increasing the likelihood of more competitive acquisitions in such situations.

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94TH CONGRESS
1ST SESSION

S. 890

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28 (legislative day, FEBRUARY 21), 1975

Mr. PROXMIRE (for himself and Mr. MCINTYRE) (by request) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

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

- 1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That section 3 of the Bank Holding Company Act of 1956
 4 (12 U.S.C. 1842) is amended—
 5 (1) by striking out subsection (b) and inserting
 6 in lieu thereof the following:

2

1 “(b) Upon receiving from a company any application
2 for approval under this section, the Board shall give notice
3 to the Comptroller of the Currency, if the applicant company
4 or any bank the voting shares or assets of which are sought
5 to be acquired is a national banking association or a district
6 bank, or to the appropriate supervisory authority of the
7 interested State, if the applicant company or any bank the
8 voting shares or assets of which are sought to be acquired is
9 a State bank, in order to provide for the submission of the
10 views and recommendations of the Comptroller of the Cur-
11 rency or the State supervisory authority, as the case may be.
12 The views and recommendations shall be submitted within
13 thirty calendar days of the date on which notice is given, or
14 within ten calendar days of such date if the Board advises
15 the Comptroller of the Currency or the State supervisory
16 authority that an emergency exists requiring expeditious
17 action. If the Comptroller of the Currency or the State
18 supervisory authority so notified by the Board disapproves
19 the application in writing within this period, the Board shall
20 forthwith give written notice of that fact to the applicant.
21 Within three days after giving such notice to the applicant,
22 the Board shall notify in writing the applicant and the dis-
23 approving authority of the date for commencement of a
24 hearing by it on such application. Any Such hearing
25 shall be commenced not less than ten nor more than

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1 thirty days after the Board has given written notice to the
2 applicant of the action of the disapproving authority. The
3 length of any such hearing shall be determined by the Board,
4 but it shall afford all interested parties a reasonable oppor-
5 tunity to testify at such hearing. At the conclusion thereof,
6 the Board shall by order grant or deny the application on
7 the basis of the record made at such hearing. In the event
8 of the failure of the Board to act on any application for ap-
9 proval under this section within the ninety-one-day period
10 which begins on the date of submission to the Board of the
11 complete record on that application, the application shall be
12 deemed to have been granted. Notwithstanding any other
13 provision of this subsection, if the Board finds that it must
14 act immediately on any application for approval under this
15 section in order to prevent the probable failure of a bank
16 or bank holding company involved in a proposed acquisition,
17 merger, or consolidation transaction, the Board may dis-
18 pense with the notice requirements of this subsection, and
19 if notice is given, the Board may request that the views
20 and recommendations of the Comptroller of the Currency
21 or the State supervisory authority, as the case may be, be
22 submitted immediately in any form or by any means
23 acceptable to the Board, and, notwithstanding the receipt
24 of any such views and recommendations or any recom-
25 mended disapproval by the appropriate authority, the

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1 Board may grant or deny immediately any such applica-
2 tion.”;

3 (2) by striking out “Notwithstanding any other pro-
4 vision of this section,” in subsection (d) and inserting in lieu
5 thereof “Except as provided in subsection (f) of this sec-
6 tion,”; and,

7 (3) by adding at the end thereof the following new
8 subsection:

9 “(f) Notwithstanding any other provision of this sec-
10 tion, the Board may approve any application under this sec-
11 tion which will permit any bank holding company or any
12 subsidiary thereof to acquire, directly or indirectly, any vot-
13 ing shares of, interest in, or all or a substantial part of the
14 assets of any additional bank located outside of the State in
15 which the operations of such bank holding company’s bank-
16 ing subsidiaries are principally conducted, as determined
17 under subsection (d) of this section, if the Board finds that
18 an emergency requiring expeditious action exists with re-
19 spect to a bank having assets in excess of \$500,000,000
20 or a bank holding company controlling a bank having assets
21 in excess of \$500,000,000 or the Board finds that immediate
22 action is necessary to prevent the probable failure of a bank
23 having assets in excess of \$500,000,000 or a bank holding
24 company controlling a bank having assets in excess of \$500,-
25 000,000, and, in weighing the competitive, financial, and

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1 other factors under subsection (c) of this section, the Board
2 finds that the public interest would best be served if the
3 bank or banks involved in such application were acquired
4 by an out-of-State bank holding company.”.

5 SEC. 2. Section 7 of the Bank Holding Company Act
6 of 1956 (12 U.S.C. 1846) is amended by striking out the
7 period at the end thereof and inserting in lieu thereof the
8 following new proviso: “: *Provided, however,* That in any
9 case in which the Board has approved an application under
10 the immediate or expeditious action provisions of section 3
11 of this Act, the holding company involved may acquire and
12 operate the bank involved as a subsidiary notwithstanding
13 the provisions of this section or any provision of State law
14 which would otherwise prevent the acquisition or restrict the
15 operations of said holding company, unless the law involved
16 is one which prohibits multibank holding companies and con-
17 summation of the proposal would result in the applicant
18 having more than one banking subsidiary in that State.”.

19 SEC. 3. Subsection (b) of section 11 of the Bank Hold-
20 ing Company Act of 1956 (12 U.S.C. 1849) is amended
21 to read as follows:

22 “(b) The Board shall immediately notify the Attorney
23 General of any approval by it pursuant to section 3 of a pro-
24 posed acquisition, merger, or consolidation transaction. If
25 the Board has found that it must act immediately in order to

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1 prevent the probable failure of a bank or bank holding com-
2 pany involved in any such transaction, the transaction may
3 be consummated immediately upon approval by the Board.
4 If the Board has advised the Comptroller of the Currency
5 or the State supervisory authority, as the case may be, of the
6 existence of an emergency requiring expeditious action and
7 has required the submission of views and recommendations
8 within ten days, the transaction may not be consummated
9 before the fifth calendar day after the date of approval by
10 the Board. In all other cases, the transaction may not be
11 consummated before the thirtieth calendar day after the date
12 of approval by the Board. Any action brought under the
13 antitrust laws arising out of an acquisition, merger, or con-
14 solidation transaction approved under section 3 shall be com-
15 menced prior to the earliest time under this subsection at
16 which a transaction approved under section 3 might be con-
17 summated. The commencement of such an action shall stay
18 the effectiveness of the Board's approval unless the court
19 shall otherwise specifically order. In any such action, the
20 court shall review de novo the issues presented. In any judi-
21 cial proceeding attacking any acquisition, merger, or con-
22 solidation transaction approved pursuant to section 3 on the
23 ground that such transaction alone and of itself constituted
24 a violation of any antitrust laws other than section 2 of the
25 Act of July 2, 1890 (section 2 of the Sherman Antitrust

1 Act, 15 U.S.C. 2), the standards applied by the court shall
2 be identical with those that the Board is directed to apply
3 under section 3 of this Act. Upon the consummation of an
4 acquisition, merger, or consolidation transaction approved
5 under section 3 in compliance with this Act and after the
6 termination of any antitrust litigation commenced within the
7 period prescribed in this section, or upon the termination of
8 such period if no such litigation is commenced therein, the
9 transaction may not thereafter be attacked in any judicial
10 proceeding on the ground that it alone and of itself con-
11 stituted a violation of any antitrust laws other than section 2
12 of the Act of July 2, 1890 (section 2 of the Sherman Anti-
13 trust Act, 15 U.S.C. 2), but nothing in this Act shall exempt
14 any bank holding company involved in such a transaction
15 from complying with the antitrust laws after the consumma-
16 tion of such transaction.”.

THE ADMINISTRATOR OF NATIONAL BANKS

WASHINGTON, D.C. 20219

July 18, 1975

Dear Mr. Chairman:

We appreciate this opportunity to present the views of the Office of the Comptroller of the Currency to your Committee on S. 890, a bill to provide for the emergency acquisition of banks and bank holding companies.

The bill makes two amendments to the Bank Holding Company Act designed to expedite the purchase by a bank holding company of a bank or other bank holding company facing financial difficulty. The first eliminates the waiting periods in the Act which now permit the banking agencies, the Department of Justice and others to comment on or protest an application. Depending on the severity of the emergency, the Board of Governors would have discretion under the amendment to shorten or eliminate entirely such waiting periods.

This office fully supports and urges the Committee to adopt the foregoing amendment. This change would merely bring the Bank Holding Company Act in line with the emergency provisions already contained in the Bank Merger Act. (See 12 U.S.C. 1828(c)(4) and (6).) The latter provisions have been used by this office in several instances to approve the take-over by national banks of troubled institutions under circumstances where the absence of the emergency provisions would have resulted in the closing and liquidation of the acquired bank.

The second amendment would permit the acquisition of a troubled bank, having assets in excess of \$500 million, by a bank holding company located in another state. Under the present law, a holding company whose principal subsidiary bank is located in one state may not acquire any bank located in another state unless the laws of the latter expressly permit, it and at the present time no states do so. However, under the proposed amendment, the Federal Reserve Board still could not permit the acquisition of a second bank by a one-bank holding company located in the same state as the bank in trouble, if such state prohibits multibank holding companies.

- 2 -

The findings which the Board must make prior to approval of an across-state-line acquisition is either "emergency requiring expeditious action" or "probable failure."

This office fully supports the idea of permitting across-state-line acquisitions in emergency situations. Relaxing state barriers to this extent serves two important purposes. It provides a maximum number of potential bidders, thus assuring the highest possible price for the benefit of shareholders of the troubled bank and the FDIC. Secondly, a wider range of potential bidders permits selection of the least anticompetitive combination. However, this office believes that both of these desirable ends would be furthered by some strengthening amendments as follows:

1. We see no reason why the across-state-line provision should be limited to acquisition by holding companies. In many instances, e.g. multistate SMSAs, a medium-size bank might be a more logical partner for a small troubled bank than a holding company. In these situations, acquisition by an out-of-state bank might be much more feasible. Thus, we recommend that an enabling amendment be made either to the Bank Holding Company Act, in that it deals with emergency and probable failure situations, or to the Bank Merger Act to give banks the same opportunities in this respect as bank holding companies.

2. Second, we see no compelling reason to retain the prohibition against acquisition of troubled banks by local one-bank holding companies in states which do not allow multibank holding companies. This provision creates the anomalous situation of an out-of-state holding company being able to take over a bank where a company inside the state would be forbidden. It is our opinion that, in these problem cases, the banks and regulators should be able to have the choice of banks and bank holding companies close to the troubled bank. In addition, fairness would seem to dictate that there not be discrimination against bank or holding company in the national policy on these types of transactions. Therefore, we recommend that the last qualifying phrase of Section 2 beginning with the word "unless" be removed from the bill.

3. The across-state-line provision limitation to troubled banks with assets of \$500 million or more may need further consideration. The Committee must find the right balance between minimum interference with state prerogatives and maximum utility of the emergency procedure.

- 3 -

4. Lastly, we note that the bill does not require that the State Banking Commissioner or the Comptroller of the Currency certify to the Board of Governors the existence of an emergency in order to invoke its provisions. While it seems unlikely that the Board of Governors would invoke the provisions without such a certification from the chartering supervisor, who would have the most intimate knowledge of the troubled bank's condition, we recommend that this be made explicit in the legislation.

Sincerely,



Robert Bloom
First Deputy Comptroller
for Policy

Honorable Thomas J. McIntyre
Chairman
Subcommittee on Financial Institutions
United States Senate
Washington, D. C. 20510

Senator McINTYRE. Now, Mr. Wille.

**STATEMENT OF FRANK WILLE, CHAIRMAN, FEDERAL DEPOSIT
INSURANCE CORPORATION**

Mr. WILLE. Mr. Chairman, I welcome the opportunity to present to you some views with respect to S. 890 which has been introduced at the request of the Federal Reserve Board.

As to the first part of the bill, I think there is no significant exception to its provisions and we would urge that the committee promptly enact the portion of S. 890 that would waive the 30-day waiting period for the consummation of emergency acquisitions under the Bank Holding Company Act.

We think that this would conform the act to provisions of the Bank Merger Act and that probably the failure to include that kind of a waiver in existing law was an oversight.

The second part of the bill is more controversial, I think, generally, and it is the portion of the bill on which the FDIC has some reservations.

Although this portion of the bill, which would allow interstate acquisitions of troubled banks of \$500 million or more, has been presented primarily in terms of the Franklin National Bank experience last summer, it actually raises some very basic questions about the Nation's banking system and its future.

Some of these issues include, for example, the obvious one, the future of interstate banking and interstate branching; secondly, the impetus that the bill's enactment would give to the concept of 100-percent insurance of all deposits, a concept which the Congress over 40 years has generally rejected in favor of more limited Government insurance; thirdly, the financial and legal capacity of the FDIC to work out the problems of a large bank in distress; fourthly, the role of the Federal Reserve in bank regulation generally and in that sense this portion of the bill presents a part of the agency restructuring issue which is before the Congress in a number of different forms in both Houses; and, fifthly, the bill raises the treatment to be accorded shareholders and debentureholders of a bank in distress.

I discussed each one of these various issues at some length in a speech in Kansas City which is attached to my statement. I am not going to go into it all at this time, but I would be glad to answer any questions you may have about these various issues.

I do want to say that we support the bill proposed by the Federal Reserve in principle with some suggestions for amendment.

Having discussed the various issues, I stated in Kansas City:

The fact remains that defensible solutions become more difficult to hammer out, the larger a bank in distress is.

There are several reasons for this. If a statutory merger or acquisition is contemplated without any form of Federal Reserve or FDIC assistance, the takeover bank must be large enough to absorb the risks of the failing bank and must have, or be able to obtain, sufficient capital to support a sudden expansion of its deposit base.

These risks are likely to include significant oversea exposures, the larger the size of the problem bank and even the Nation's largest banks may be quite unwilling to take on sizeable foreign exchange risks, for example, without Government support.

Even if FDIC financial support or indemnities are provided, the management of the takeover bank will probably also be expected to take over a substantial portion of the assets and branch offices of the failing bank.

Since there are only 107 banks with domestic assets of \$1 billion or more, only 51 with domestic assets of \$2 billion or more and only 27 banks with domestic assets of \$3 billion or more, it is obvious the number of healthy banks capable of even a Government-assisted takeover of a large bank in distress decreases rapidly the larger the failing bank is.

Under existing law, of course, none of these larger banks or their parent holding companies would be eligible to acquire such a problem bank unless they operated in the same State, even assuming the terms of the transaction could be worked out to their satisfaction.

Now, the arithmetic of diminishing numbers on seeking candidates for a deposit takeover was very much at work in the Franklin National Bank case last summer.

Twenty banks and bank holding companies, each of which was believed to have significant financial and managerial resources, were contacted initially to determine the degree of their potential interest.

Antitrust clearances were obtained so that joint ventures might be considered and organized if the smaller banks or bank holding companies among the 20—or not even limited to the 20—felt themselves unable to proceed alone.

Of those contacted, only four became seriously interested and ultimately submitted bids—three of them under an antitrust cloud.

No joint ventures got off the ground, even though we had antitrust clearance to proceed with them.

And we were extremely fortunate, despite these handicaps, that Franklin National Bank was headquartered in New York State because New York State has a relatively large number of potential suitors and has statewide holding companies permitted by State law.

A larger pool of potential suitors would have been very desirable last summer, and the FRB's proposal would certainly make a broader canvass possible.

This is not the same as saying the final result would have been achieved in a shorter span of time. In fact, contacting potential out-of-State suitors as well as in-State suitors, and negotiating with a larger group than we did in an effort to arrive at a uniform bid package, might well have taken longer than the process actually did.

On the other hand, if a significantly larger number of potential suitors had been identified, it might conceivably have been possible to arrange a deposit takeover without any form of Government assistance, or it might have been possible for the FDIC and the Federal Reserve to have dictated the terms of the transaction and still have had one or two banks left that would have taken the terms offered.

In my view, only if one of these two conditions existed would the process of finding a final solution to the Franklin affair have been "shortened considerably" as the FRB claims.

Nonetheless, enlarging the pool of potential suitors regardless of the speed of resolution is likely to improve significantly the prospects of successfully consummating a deposit assumption transaction at

all, and this is the basic reason I support the concept of the FRB proposal.

Reviewing the experience of the last 5 years, however, I would have to inform the Congress that in my judgment FDIC, under existing law, can probably handle successfully and with reasonable dispatch the potential failure of virtually any bank with less than \$2 billion in assets and, depending on the circumstances, banks of even larger size.

If the Congress wishes to narrow the coverage of the FRB bill to the area of clearest need, it can easily do so by raising the asset cutoff proposed by the FRB to at least \$2 billion.

At that figure only 51 banks in 15 of the Nation's most industrialized States would have been potentially subject to acquisition under the bill's provisions as of October 15 last year.

This might be contrasted with the 208 banks in 38 States potentially subject to acquisition under the \$500 million cutoff proposed by the FRB.

Proponents of a lower cutoff than even the \$500 million proposed by the FRB have pointed out that in each of the remaining 12 States the largest commercial bank has less than \$500 million in assets and that such banks at least should also be covered under this proposed change in the law.

I personally tend to disagree with this argument, largely because it ignores two options FDIC has under present law in dealing with any such bank that finds itself in a failing condition—either one of which I am sure the FDIC Board of Directors could and would use in preference to a statutory payoff up to the insurance limit.

The first is direct FDIC financial assistance under appropriate safeguards to insure correction of the bank's problems and ultimate repayment and that is designed to keep the bank operating as an independent institution.

This was the option selected to prevent the failure of the \$1 billion Bank of the Commonwealth in 1972, at that time not even the largest, but the fourth largest bank, in the Detroit metropolitan area.

When that assistance was granted, Michigan law did not permit the expansion of multibank holding companies, and the FDIC Board found the bank's preservation as a significant competitor in a major market to be essential for "adequate banking service in the community."

By analogy, I am confident a similar finding could be made for the largest bank in a State, and possibly its nearest competitors as well, if there appeared to be no feasible possibility of a procompetitive acquisition by either an in-State or an out-of-State organization.

The second option available to the FDIC under such circumstances would be to stimulate the emergency chartering of a new bank with capable management, partially capitalized with an FDIC advance, and to permit that bank to acquire the deposits of the failing bank in exchange for the liquid assets of the problem bank and balancing FDIC cash.

That particular option was one that we used just the other day in the State of Illinois when the State Bank of Clearing, a State member bank of some \$80 million in total resources, failed.

A new bank was chartered and successfully engaged in a purchase and assumption transaction out of a receivership, with the FDIC supplying a capital note to assist the formation of that bank to the extent of \$1,500,000.

The total capital which the organizers of such a new bank would have to supply under these circumstances might approximate only \$5 million or so for each \$100 million in deposits to be assumed.

Now, obviously if it were a \$2 billion bank, that might be something like \$100 million in total capital, of which the FDIC would be prepared to contribute quite a significant portion.

The other items that I raised in that talk in Kansas City lead us to suggest that S. 890 be amended to require in all cases the prior concurrence of the primary supervisor of the bank to be acquired by an out-of-State bank holding company under the bill's provisions. That is, the prior concurrence of the Comptroller of the Currency in the event the bank is a national bank or the prior concurrence of a State supervisor in the event it is a State-chartered bank that has been acquired.

In those cases where FDIC financial assistance or indemnities are contemplated, we also recommend that the bill be amended to require the prior concurrence of the FDIC as well before the Federal Reserve Board acts.

The most difficult problem in this bill, it seems to me, is the dollar cutoff and on that I do not have a Corporation position.

I think that we have different views within our own Board.

However, I would say that the Congress seems to have two directions in which it can move on the \$500 million cutoff proposed by the Federal Reserve.

Obviously it can lower the figure and the basic argument for that is that if you reduce the figure from \$500 million to say zero, you avoid creating a two-tier kind of banking system in which banks over the cutoff tend to be preferred in some way because the public has been led to believe that no matter what happens they will not be allowed to fail.

If you have that connotation given to banks over the cutoff, whether it is \$500 million or \$1 billion or \$100 million, you have in effect assured the people that deal with that bank that 100 percent insurance applies to all the deposits in that particular bank, whereas insurance only up to \$40,000 per depositor (or \$100,000 in the case of a public depositor) applies to other banks.

This would create, I think, a disadvantage for the banks below the cutoff.

It is hard to quantify that, but I believe that it could emphasize the development of a two-tier kind of banking system which would concern all of us on the FDIC Board of Directors and which we would prefer not to see.

However, you can't have this kind of a bill without settling on some kind of cutoff. If you set it at zero, it means that you involve 50 States and every bank in the country in a possible acquisition under emergency circumstances contemplated by the Federal Reserve Board.

If you set the figure at \$100 million, about 800 banks are involved; at \$500 million, as I have said, 208 banks are involved; and at \$2 billion, only 51.

I think it fair to say that Director LeMaistre of the FDIC Board would prefer that there be no dollar cutoffs for the reasons that I have specified.

My suggestion, contained in the Kansas City speech was to raise the figure from \$500 million to \$2 billion, and thereby minimize the two-tier effect.

In my view, modifying the bill's interstate acquisition provisions along these lines would substantially minimize the damage which might otherwise be done to the historical pattern of state primacy in matters of bank structure, it would be consistent with the concept of limited deposit insurance, it would be consistent with the regulatory structure we presently have and I believe fairer to the shareholders and debenture holders of insured banks in distress.

Thank you very much, Mr. Chairman.

[Complete statement of Chairman Wille follows:]

Statement of
Frank Wille, Chairman
Federal Deposit Insurance Corporation

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

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

In order to conform Bank Holding Company Act procedures in emergency situations to those presently applicable under the Bank Merger Act, S. 890 would authorize the Federal Reserve (1) to shorten to 10 days the period for submission of views and recommendations by the primary supervisor of a bank involved in a bank holding company acquisition if the Federal Reserve finds "that an emergency exists requiring expeditious action," or (2) to dispense entirely with notice to the primary supervisor

or to require immediate submission of his views and recommendations and to disregard any adverse recommendations received from the primary supervisor if the Federal Reserve finds "that it must act immediately . . . in order to prevent the probable failure of a bank or bank holding company involved in a proposed acquisition" When the Federal Reserve acts pursuant to the 10-day notice procedure described above, the acquisition can be consummated five days after approval thereof; and when the Federal Reserve grants immediate approval, the acquisition can be consummated immediately, with no delay to afford the Attorney General an opportunity to challenge the acquisition prior to its consummation.

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

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

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

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

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

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

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

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

Attachment



FOR IMMEDIATE RELEASE

PR-30-75 (4-29-75)

THE FEDERAL RESERVE'S PROPOSAL FOR
INTERSTATE ACQUISITION OF LARGE BANKS
IN TROUBLE: BASIC ISSUES IN A SIMPLE BILL

Address of
Frank Wille, Chairman
Federal Deposit Insurance Corporation

Before the
74th Annual Convention
of the
Conference of State Bank Supervisors

Kansas City, Missouri

April 29, 1975

FEDERAL DEPOSIT INSURANCE CORPORATION, 550 Seventeenth St. N. W., Washington, D. C. 20429 • 202-389-4221

Earlier this year, the Federal Reserve Board proposed legislation (S. 890, H. R. 4008) which would permit it to approve the acquisition by an out-of-state bank holding company of all or a substantial portion of the assets of any \$500 million bank located in another State if the Board finds either that "an emergency requiring expeditious action exists" with respect to such a bank or some parent holding company or that "immediate action is necessary to prevent the probable failure" of the bank or its parent and if the Board also finds "the public interest would best be served" by such an out-of-state acquisition. ^{*/}

Although presented to the Congress almost solely in terms of the Franklin National Bank experience last summer, this relatively simple, straightforward bill actually raises some very basic issues about the nation's banking system and its future course. While I favor the bill in principle, and believe that in some instances it could be a useful additional tool in the supervisory workshop for dealing with the problems of a large bank in distress, I will urge the Congress not to enact it without thoroughly considering its impact on these underlying

^{*/} The proposed legislation also authorizes the consummation of certain bank holding company acquisitions in designated emergencies without waiting the presently required 30 days (a delay designed to permit an antitrust attack against the proposed acquisition). In this regard, the bill merely proposes to conform emergency procedures under the Bank Holding Company Act with those presently in force under the Bank Merger Act. This provision is noncontroversial and should be enacted promptly.

- 2 -

issues and its relationship to other proposals for statutory change which will undoubtedly be suggested by the Federal Reserve, the FDIC and the Comptroller as a result of our joint experience over the last few years. If the Congress, after such a review, still wishes to pursue the Board's proposal, I hope it will do so only after adopting a number of amendments, the effect of which would be to limit the Board's open-ended discretion to approve emergency acquisitions of the kind contemplated.

As State Supervisors, you are keenly aware that the bill would allow the Board of Governors to override State law provisions that might expressly prohibit such an acquisition. The other basic issues that I see in the bill are these: (i) the future of interstate banking and interstate branching; (ii) the impetus the bill's enactment would give to the concept of 100 percent insurance for all deposits; (iii) the financial and legal capacity of the FDIC to work out the problems of a large bank in distress; (iv) the role of the Federal Reserve in bank regulation generally; and (v) the treatment to be accorded shareholders and debenture holders of the bank in distress.

The deference to be given State law in a matter of this kind is clearly up to the Congress. Its constitutional power to enact the Federal Reserve's proposal is no longer open to question, so the issue becomes purely one of congressional policy. While Federal preemption of State

law can be well documented in other regulatory fields, the Congress up to this point has taken considerable care to accommodate its enactments bearing on commercial bank structure to explicit restrictions found in State law. No doubt this has been largely due to the existence, side by side, of national and State banks, and the congressional conclusion that a viable system of dual chartering requires basic equality between the two systems in a matter as competitively important as the geographic location of the bank's offices. But the matter is hardly this simple. The competitive environment faced by commercial banks, regardless of charter, is just as influenced -- and some observers would say more so -- by important Federal regulations like Q, by the operating powers, including specifically the branching powers, of federally chartered savings and loan associations and by the activities of other nonbank institutions. Federal S&Ls are not bound, as you know, by any McFadden Act or by any strictures about competitive equality laid down by the Supreme Court. In operational areas, national banks may be restrained by State law in only limited situations while State banks frequently find themselves limited to whichever law or regulation, Federal or State, is the more restrictive. Even in structural matters, national antitrust policy may prevent completion of an acquisition which has already passed muster under State law or State administrative decision. Deference to State law is, therefore, a "sometime" thing in congressional policy, and I doubt

that a philosophic appeal pitched on that basis will prove very persuasive if Congress sees a need to override State law in the emergency situations envisaged by the Federal Reserve.

The FRB's bill does make two concessions to State law. First, it would not permit more than one acquisition in the same State by the same out-of-state holding company if State law prohibits multibank holding companies. Second, it would not permit an emergency acquisition by an in-state holding company if State law prohibited such an acquisition. Both concessions are consistent with the Board's concern for a procompetitive result in each potential use of its new authority, although in some factual situations an acquisition of a large bank in distress by an in-state holding company might be just as procompetitive as its acquisition by an out-of-state holding company. However, given the clear trend toward statewide operation of multibank holding companies -- even in hitherto unit banking States -- the Board's recommendation in this regard is not unreasonable. No doubt local emotions will run high if BankAmerica Corporation or Citicorp acquires a major bank outside California or New York when an in-state holding company in the same State as the bank in distress was ready, willing and able to complete the same acquisition -- but that sort of emotion is not much different than the reaction we all hear when a new bank enters a banking market where existing banks

previously had the competition all to themselves. The examples of that type of entry are so widespread, we can hardly fault the Federal Reserve in making the choice it did in drafting the proposal now before Congress.

I have even less trouble with the interstate banking issue which is so obviously a part of the Federal Reserve's proposal. There is significant interstate banking going on today, even if a bank headquartered in one State cannot establish deposit-receiving branches in another State. A number of major banking corporations have "grandfather" rights in other States under the Federal Bank Holding Company Act. Large banks regardless of their headquarters location already compete for any significant commercial, international, correspondent or corporate trust business throughout the nation. The 1970 amendments to the Bank Holding Company Act, and the Board's decisions under those amendments, have given a strong impetus to the acquisition and development of nonbank subsidiaries operating across State lines, many of them in retail as well as wholesale lending activities. The Comptroller's recent rulings on CBCTs, unless checked by the Congress or the courts, are likely to add significant new pressures in the direction of nationwide, or at least interstate, banking. Full interstate banking will come in time, although many banks and bank customers might prefer not to see that evolution take place.

The Federal Reserve's proposal is a very limited, intermediate step in the direction of full interstate banking, and I doubt that Congress will be impressed by any claim that the enactment of the Fed's bill, only occasionally applicable as it would be, will cause irreparable harm to thousands of smaller, community banks across the land. Congress may be concerned that under the bill the percentage of commercial bank assets already held by the largest banks in the country will increase significantly by acquisition rather than internal growth. The largest bank in the country, however, has less than 4 percent of the total domestic assets of the nation's commercial banking system, and the acquisition of even a \$2 billion bank in trouble would not increase that percentage by more than 0.2 percent. The United States has one of the least concentrated commercial banking systems in the world, and the enactment of the Federal Reserve's proposal is not likely, by itself, to change that situation in any substantial way.

I consider the other four issues I have identified in the FRB's bill as more serious and more troublesome.

The clear thrust of the Federal Reserve's proposal is that if a large bank is in failing condition, under no circumstances should there be an FDIC payout of insured deposits up to the statutory ceiling, now \$40,000 for most depositors. Rather, a takeover by some healthy bank should be arranged, at whatever cost, so as to avoid the damage to publi

confidence in both national and international markets which might follow an FDIC payoff of a large insured bank. In point of fact, every failure or near-failure in FDIC history of a bank with more than \$100 million in assets has been resolved either by means of a deposit assumption transaction or by means of direct financial assistance to keep the bank going, rather than by an FDIC payoff up to the insured amount. Nonetheless, the net effect of the bill's enactment would be to eliminate any uncertainty as to the safety of deposit funds over \$40,000 so long as the bank in which the deposit is made has more than \$500 million in assets.

We at the FDIC have already stated publicly our determination to explore the possibility of arranging a deposit assumption transaction whenever a bank of any size fails, precisely because the net result of such a transaction is to protect all depositors 100 percent, even if their accounts are over the statutory insurance limit. We have pointed out, however, that arranging such a takeover transaction is never automatic. Under present law, the FDIC's discretion in choosing between the several methods available to it when a large bank fails is not unlimited. Furthermore, if the failing bank presents significant risk of financial loss to an acquiring bank, either in earnings performance or capital exposure, a willing purchaser may not be available or the FDIC may conclude that the price such a purchaser is willing to pay for the transaction is totally

- 8 -

inadequate to compensate the FDIC for the numerous guarantees against loss which the takeover bank may require before proceeding. In other words, under present circumstances, neither large depositors nor a bank's management can be fully confident that in the event of trouble all of the bank's deposits will be 100 percent safe or quickly available.

This uncertainty has been a significant discipline on the management policies of most banks, problem or nonproblem, and corporate treasurers and other suppliers of institutional funds are today reinforcing that discipline in the light of our four large bank failures and near-failures in the past four years.^{*/} At least with respect to banks of the asset size described in the bill, the net effect of its enactment might be to remove that discipline and encourage greater risks in asset and liability management than might otherwise be taken. As a bank regulator who is also concerned with the capacity of the nation's deposit insurance reserves to absorb large bank failures, I would regard any such development as both imprudent and shortsighted.

Moreover, eliminating any uncertainty as to the safety of deposits over the insurance ceiling in banks larger than a specified size will tend

^{*/} Bank of the Commonwealth, Detroit, 1972; United States National Bank, San Diego, 1973; Franklin National Bank, New York, 1974; and Security National Bank of Long Island, 1975.

to make banks of lesser size "second-class citizens" among the nation's banks and will tend to reinforce the trend, clearly evident in 1974, toward a "two-tiered" banking system. By that, I mean the preference of corporate and institutional treasurers, after United States National and Franklin National, for the largest money-center banks in New York, Chicago and San Francisco as compared with perfectly sound banks of lesser size and only regional coverage. This preference showed up in 1974 in deposit withdrawals and liquidity strains at a number of regional banks and in the relatively greater asset growth of the largest money-center banks. As a matter of self-defense, banks with total assets near the size break specified in the bill can be expected to argue for an even lower cutoff point, thereby adding to the impetus for 100 percent insurance of all deposits.

Fortunately, in every review of the deposit insurance program to date, Congress has resisted any general movement towards 100 percent insurance for all deposits and has reaffirmed its initial decision in favor of limited coverage. Since the FRB proposal runs counter to this long-standing policy, insofar as \$500 million banks are concerned, I think Congress will be perfectly justified in looking hard at the dollar cutoff suggested and in seeking to limit the coverage of the bill to the smallest number of banks necessary to remedy some demonstrated shortcoming in the present system of resolving the problems of large banks in distress.

What, then, has the experience of the last few years told us about the capacity of the present system in this regard? First, the FDIC with significant Federal Reserve assistance successfully arranged deposit assumption transactions for the nation's two largest bank failures and direct financial assistance to a third large bank to prevent its failure. These three banks ranged in asset size from something over \$1.2 billion in the case of the Bank of the Commonwealth and United States National Bank to \$3.6 billion in the case of Franklin National Bank. Second, the actual transfer of deposits from the failed bank to the assuming bank took place smoothly and efficiently within hours of the closing of both United States National Bank and Franklin National Bank, with no panic at all among the 1,000,000 depositors of the two institutions. Literally hundreds of examiners and other personnel in all three Federal agencies worked cooperatively at the time of closing to make this result possible. Third, it took a significant amount of time in all three cases to work out a satisfactory solution in advance: slightly over three months from FDIC's initial involvement in the case of Franklin National Bank, about seven weeks after FDIC's initial involvement in the case of United States National Bank, and about seven months in the less-pressing case of Bank of the Commonwealth. In the case of the two failures, the time required seems to have varied in direct proportion to the complexity and volume of the problems facing the bank in trouble, the degree of interest shown -- and

the risks faced -- by potential acquiring banks, and the extent and nature of FDIC or Federal Reserve assistance needed to make the transaction feasible from the point of view of potential acquirers. Fourth, the total FDIC outlay in these three cases to date (most of which it expects to recover in time) amounted to about \$510 million, an amount equal to roughly one-sixth of the aggregate deposits in the three banks. Each outlay was funded essentially out of the FDIC's current revenues, now running at about \$1 billion per year, rather than from the principal of the deposit insurance trust fund accumulated since 1933. The size of that trust fund, now \$6.2 billion, as well as the Corporation's statutory right to call on the Treasury for \$3 billion more if this is needed for insurance purposes, is considerable assurance that the FDIC, financially, can handle more frequent and even larger bank failures and near-failures than the three I have mentioned.

These things said, the fact remains that defensible solutions become more difficult to hammer out the larger a bank in distress is. There are several reasons for this. If a statutory merger or acquisition is contemplated, without any form of Federal Reserve or FDIC assistance, the takeover bank must be large enough to absorb the risks of the failing bank and must have, or be able to obtain, sufficient capital to support a sudden expansion of its deposit base. These risks are likely to include significant overseas exposures the larger the size of the problem bank,

and even the nation's largest banks may be quite unwilling to take on sizeable foreign exchange risks, for example, without Government support. Even if FDIC financial support or indemnities are provided, the management of the takeover bank will probably also be expected to take over a substantial portion of the assets and branch offices of the failing bank. Since there are only 107 banks with domestic assets of \$1 billion or more, only 51 with domestic assets of \$2 billion or more and only 27 banks with domestic assets of \$3 billion or more, ^{*/} the number of healthy banks capable of even a Government-assisted takeover of a large bank in distress decreases rapidly the larger the failing bank is. Under existing law, of course, none of these larger banks or their parent holding companies would be eligible to acquire such a problem bank unless they operated in the same State, even assuming the terms of the transaction could be worked out to their satisfaction.

The arithmetic of diminishing numbers in seeking candidates for a deposit takeover was very much at work in the Franklin National Bank case last summer. Twenty banks and bank holding companies, each of which was believed to have significant financial and managerial resources, were contacted initially to determine the degree of their potential interest.

^{*/} As of October 15, 1974.

- 13 -

Antitrust clearances were obtained so that joint ventures might be considered and organized if the smaller banks or bank holding companies among the twenty felt themselves unable to proceed alone. Of those contacted, only four became seriously interested and ultimately submitted bids -- three of them under an antitrust cloud. No joint ventures got off the ground. And we were extremely fortunate, despite these handicaps, that Franklin National Bank was headquartered in New York State where there was a relatively large number of potential suitors, in-state, to be contacted.

A larger pool of potential suitors would have been very desirable last summer, and the FRB's proposal would certainly make a broader canvass possible. This is not the same as saying the final result would have been achieved in a shorter span of time. In fact, contacting potential out-of-state suitors as well as in-state suitors, and negotiating with a larger group than we did in an effort to arrive at a uniform bid package, might well have taken longer than the process actually did. On the other hand, if a significantly larger number of potential suitors had been identified, it might conceivably have been possible to arrange a deposit takeover without any form of Government assistance or it might have been possible for the FDIC and the Federal Reserve to have dictated the terms of the transaction and still have had one or two banks left which were willing to bid. In my view, only if one of these two conditions existed would the

process of finding a final solution to the Franklin affair have been "shortened considerably" as the FRB claims. Nonetheless, enlarging the pool of potential suitors regardless of the speed of resolution, is likely to improve significantly the prospects of successfully consummating a deposit assumption transaction at all, and this is the basic reason I support the concept of the FRB proposal.

Reviewing the experience of the last five years, however, I would have to inform the Congress that in my judgment FDIC, under existing law, can probably handle successfully and with reasonable dispatch the potential failure of virtually any bank with less than \$2 billion in assets and, depending on the circumstances, banks of even larger size. If the Congress wishes to narrow the coverage of the FRB bill to the area of clearest need, it can easily do so by raising the asset cutoff proposed by the FRB to at least \$2 billion. At that figure, only 51 banks in 15 of the nation's most industrialized States^{*/} would have been potentially subject to acquisition under the bill's provisions as of October 15, 1974. This might be contrasted with the 208 banks in 38 States potentially subject to acquisition under the \$500 million cutoff proposed by the FRB.

^{*/} Arizona, California, Georgia, Illinois, Maryland, Massachusetts, Michigan, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, Washington and Wisconsin.

Proponents of a lower cutoff than even the \$500 million proposed by the FRB have pointed out that in each of the remaining 12 States the largest commercial bank has less than \$500 million in assets and that such banks at least should also be covered under this proposed change in the law. I disagree with this argument, largely because it ignores two options FDIC has under present law in dealing with any such bank that finds itself in a failing condition -- either one of which I am sure the FDIC Board of Directors could and would use in preference to a statutory payoff up to the insurance limit. The first is direct FDIC financial assistance, under appropriate safeguards to insure correction of the bank's problems and ultimate repayment, designed to keep the bank operating as an independent institution. This was the option selected to prevent the failure of the \$1 billion Bank of the Commonwealth in 1972, at that time not even the largest, but the fourth largest, bank in the Detroit metropolitan area. When that assistance was granted, Michigan law did not permit the expansion of multibank holding companies, and the FDIC Board found the bank's preservation as a significant competitor in a major market to be essential for "adequate banking service in the community." By analogy, I am confident a similar finding could be made for the largest bank in a State, and possibly its nearest competitors as well, if there appeared to be no feasible possibility of a procompetitive acquisition by either an in-state or an out-of-state organization. The second option available to the FDIC under such

- 16 -

circumstances would be to stimulate the emergency chartering of a new bank with capable management, partially capitalized with an FDIC advance, and to permit that bank to acquire the deposits of the failing bank in exchange for the liquid assets of the problem bank and balancing FDIC cash. The equity capital which the organizers of such a new bank would have to supply under these circumstances might approximate only \$5 million or so for each \$100 million in deposits to be assumed -- a sum readily within the reach of many groups.

The Board's proposal raises in a direct way the agency restructuring issue with which it has been wrestling since last October, including specifically the FRB's own role in bank supervision and its relationship with other bank supervisors. You will have noted the power to approve an interstate acquisition of the type described has been left, in the FRB proposal, solely to the discretion of its Board of Governors under the broadest possible standards. Nothing in the language proposed would require the Board, before acting, to receive a certification from the primary supervisor of the bank in distress covering either the condition of the bank which requires emergency action or the merits of the proposed acquisition when compared to other possible solutions. Even granting that the Board would be likely to consult the Comptroller of the Currency if the bank in distress were a large national bank or the appropriate State Supervisor if a State-chartered bank were involved, nothing in the language

- 17 -

of the bill proposed would require such advice to be heeded. Similarly, even though the proposed acquisition may be contingent on FDIC financial assistance or indemnities, nothing in the bill requires the Board to consult with, or heed the advice of, the FDIC prior to approving the transaction.

The bill ignores the hard questions which may arise if a choice must be made between several eligible out-of-state holding companies all vying for the opportunity of purchasing the bank in distress. By its power to approve, the Board of Governors can undoubtedly predetermine the successful suitor. Will that choice be made, for example, on the basis of which lead bank, in the Board's view, is most adequately capitalized even if that judgment differs from the judgment of the lead bank's primary supervisor? Will that choice possibly depend on which lead bank is most closely adhering to the credit "guidelines" of the moment, laid down by the Board in the exercise of its monetary functions? Will the Board tend to prefer that bank holding company most of whose subsidiary banks are Federal Reserve members rather than the holding company with a greater proportion of nonmembers? How will the Board weigh a choice between two equally procompetitive proposals -- one from an in-state holding company and one from an out-of-state holding company? If the primary supervisor is attempting to work out a solution under the Bank Merger Act, will the Board defer some alternative bank holding

- 18 -

acquisition under the proposed bill, or will it threaten the use of its new power in an effort to speed up action by the primary supervisor? If the problem bank is a large nonmember bank, will the Board prefer the use of its new authority to the extension of a direct or conduit loan from the Federal Reserve discount window?

Questions like these are inherent in any bill which vests virtually unrestrained power in the Board of Governors to determine when, or when not, to use the new authority it has requested. I would suggest that the only way such conflicts can be completely avoided is by requiring the concurrence of the primary supervisor before the Board acts. If FDIC financial assistance or indemnities are an integral part of such an out-of-state acquisition, then the FDIC's concurrence should also be required before the Board acts.

If the Board finds this restraint on its proposed authority to be unpalatable, I will recommend that the Congress defer action on the whole proposal until it reviews the entire structure of bank regulation at the Federal level and has determined whether or not it wishes the Federal Reserve to continue to have responsibilities in matters of bank supervision in addition to its responsibilities in the monetary field. To enact the FRB proposal without amendments before that determination is made would be a clear case of prejudging the underlying issue of regulatory structure or letting it go by default.

- 19 -

The absence of meaningful standards for the exercise of the Board's discretion also raises the question of whether the fairness of the consideration offered to debenture holders and shareholders of the bank to be acquired should play any part in the Board's decision to approve an emergency acquisition by an out-of-state bank holding company. The FDIC, in the exercise of its responsibilities as potential receiver in the case of a bank which is thought likely to fail, has a fiduciary duty to obtain the highest price it possibly can for the going concern value of the problem bank's business. The Corporation has attempted to carry out this duty by seeking to encourage at least two prospective purchasers to bid on a uniform basis for the deposits, assets and offices of the problem bank which are to be transferred. Our experience has been that a negotiated deal with only one institution, or a bidding procedure in which there is known to be only one bidder, almost never produces a fair price for the receivership estate or for the debenture holders and shareholders of the closed bank. Will the Board of Governors, under its proposed bill, be required to follow any similar procedure? Or will it be permitted to consider the speed of resolution more important than the fairness of the consideration offered? Obviously, these two considerations may present an insoluble dilemma in a particular case, but it is no answer to suggest that the consent of the problem bank's debenture holders and shareholders will have to be obtained in any event before the

Board of Governors is called upon to act. This ignores the emergency nature of the proposed acquisition and the fact that the Comptroller of the Currency and many State Supervisors have the authority to waive shareholder or debenture holder approval in appropriate cases.

After considering all of these underlying issues, it will be my recommendation to the Congress that it pass the FRB proposal only after it is amended to increase the asset cutoff from \$500 million to \$2 billion and to require in all cases the prior concurrence of the primary supervisor of the bank to be acquired. In those cases where FDIC financial assistance or indemnities are contemplated, the bill should be amended to require the prior concurrence of the FDIC as well.

In my view, these amendments will substantially minimize the damage which might otherwise be done to the historical pattern of State primacy in matters of bank structure, to the concept of limited deposit insurance, to the regulatory structure we presently have and to the shareholders and debenture holders of the bank in distress. They will, moreover, narrow the coverage of the bill to those situations in which the need for additional regulatory flexibility in the case of large banks in distress has been most clearly demonstrated.

Senator McINTYRE. Governor Holland, would you respond to the suggestion that the cutoff level be raised from 500 million to 2 billion?

Mr. HOLLAND. Well, Mr. Chairman, if we had to choose which way to move that number, we would move it down rather than up.

Senator McINTYRE. Well, that's interesting because I have a letter here from a constituent up in New Hampshire who says, and I quote, "It is important that the asset test be reduced from 500 million, where it presently stands, to no minimum at all or if need be 50 million or 100 million. As you are aware, a 500 million minimum wipes New Hampshire right off the map. If one of the larger banks got in trouble here, it would make sense to have outsiders bidding."

Mr. HOLLAND. I don't want to be part of a proposal that wipes New Hampshire off the map.

Senator McINTYRE. He meant only in a financial way.

Mr. HOLLAND. Our feeling about it is this. The risks one runs in setting the number too high are entirely disproportionate to the benefits one gains. If you set the number too small—smaller than it needs to be—what will happen is that the provision will not be used, because there will continue to be in those cases banks within the State or sources of capital within the State working with the primary supervisor who are able to bolster the bank, sustain the bank, or reinvigorate the bank. The bank will continue on, and this provision will not be used. So that risk, it seems to me, doesn't represent all that much damage. But if you set the number too high, and, as a result, we find that we have an institution in trouble which we can't handle in any other way than by this out-of-State acquisition arrangement, and we don't have this way either, that would turn out to be a real tragedy for the locality. And so if we were going to change the number we would lower it, not raise it.

Senator McINTYRE. Well, Mr. Wille, your testimony seems to indicate that any problem situation with a bank of 2 billion in assets or less is one that you can handle; and I want to ask you, weren't you really lucky in the Franklin National Bank Case?

Mr. WILLE. Well, I want to talk about the historical record here because I think that that is important. Given the emergency basis on which this proposal has been made by the Fed, I don't think that there has been any question of the FDIC's ability to respond quickly. In the case of a bank of the size that your constituent has raised in his letter to you, of \$50 million to \$100 million, we have an accumulated insurance fund of more than \$6.2 billion and we have a call on the Treasury for \$3 billion more. In addition, we are adding to the FDIC insurance fund about \$500 million a year. In resolving the problems of those smaller banks, whether they are below \$100 million or \$500 million or wherever that intermediate figure is, it is not a difficult matter for the FDIC to come up very promptly with the kind of cash needed to balance off a purchase and assumption transaction. We recently had a \$80 million bank in Illinois go down, as you know, the State Bank of Clearing. That was resolved in the space of 24 hours; a new bank was chartered and capitalized, and it took over and assumed the deposit liabilities of that bank the Monday after a Saturday failure. We have other instances of that. We did the same thing in the Northern Ohio Case, a bank of about \$125 million or \$130 million. Recently last year, the American Bank and Trust

of Orangeburg, S.C. was handled in the same way, a bank of about \$150 million in assets. So that I think that with regard to these banks—and certainly any others that are below the cutoff suggested by the Fed—there is no difficulty insofar as FDIC's coming up quickly with the necessary cash and capitalization which may be needed to continue banking services in a given community. That is true under existing law. Moreover, with respect to those large banks in States such as New Hampshire that don't have a bank of \$500 million as their largest bank, and there are some 12 States in which this is the case, I have stated that if the largest bank in a State or even its nearest competitors are in difficulty, I have no doubt that the FDIC would attempt to work out a solution such as the one we worked out at the Bank of the Commonwealth in Detroit 4 years ago. The Bank of the Commonwealth was a billion dollar bank.

Michigan had a holding company moratorium at that time. The options available to us by way of acquisition were accordingly limited to the city of Detroit, and we came to the conclusion that it would be anticompetitive and not in the public interest to permit the Bank of the Commonwealth to be merged into one of the larger Detroit banks. We came to the conclusion by way of that analysis that the Bank of the Commonwealth was competitively essential for adequate banking service in the Detroit community and we supplied financial assistance directly to the Bank of the Commonwealth to keep it going, the amount of which was \$35.5 million. So the effect of our action was to keep and preserve a billion dollar institution with only \$35.5 million and that rescue effort has been successful.

If we look at the record, therefore, the question, it seems to me, if you are considering the emergency nature of this proposal and possible contingencies in the future, is to what extent the FDIC has been inhibited in its solution of a failing bank situation. As my statement indicates, I would be the first to say that as a bank problem becomes larger the problem of resolution becomes more severe because the possible partners for a successful takeover are fewer in numbers. The Fed's proposal would help in those limited situations.

The Franklin National Bank was actually a \$4 billion bank, at least when we started down the road to such a solution. By the time it failed it had deposits of only \$1.5 billion more or less, a Federal Reserve loan of \$1.7 billion and total assets of around \$3.6 billion. That kind of a bank does present problems. There are no two ways about it. You need a very large bank to manage such a takeover. It would have been helpful if we had been able to include some of the largest banks in California or Chicago or Texas in our potential list of the suitors that we tried to get interested in the Franklin situation.

Conceivably one of them might have been willing to merge or acquire the Franklin Bank under the Bank Holding Company Act without FDIC guarantees or financial assistance by way of a capital note. I have my doubts about that, but I think at least it would have been more likely than under the present law we have, where we had to look to the organizations in New York or who were capable of establishing a bank in New York.

That limited us primarily to the larger banking organizations in New York, of which there were some upstate holding companies as well as downstate banks included in our list of 20. It also meant

that we had to look at the foreign-owned banks that were subsidiaries of major European banks, and we actually inquired as to Canadian-owned subsidiaries and Japanese-owned subsidiaries as well.

But I would not be hesitant at all to say that a \$4 billion bank clearly did present some problems to us. We had problems to a degree in the United States National Bank in San Diego, but I think partly, even though that bank was considerably smaller, the problems that we had were those of newness rather than of complexity or of international ramifications, which were so much more apparent in the Franklin situation.

My judgment, coming at this from the point of view of the historical experience of the FDIC, is that in cases where the assets of the bank are below \$2 billion we are likely to be able to handle that with considerable expedition and dispatch, particularly in light of the experience we have gained both in the United States National and Franklin. That's a judgment question. I don't say that my judgment necessarily is the only one. I think that what your constituent is talking about is his fear of the two-tier effect, which is precisely the thing that troubles me about the whole proposal, if you have a dollar cutoff in it.

The trouble Director LeMaistre, and I am sure many others are concerned about, is the apparent favored status that banks over the cutoff would have in the event there's trouble, and there is no real way of getting around that unless you set the figure at zero.

So that in a sense your constituent is correct. But if you set the cutoff at zero, what you have got is the potential acquisition of some 14,500 banks, not all of which will be in trouble, thank goodness, but nevertheless 14,500 banks, all of which, if they do get into trouble, might be handled on an emergency basis, with an interstate acquisition under a bill with no dollar cutoff.

To the extent the power is used under those circumstances, you have in effect created interstate branch banking. And I myself think that we are heading in that direction anyway, but obviously it will be a very emotional issue for many community banks around the country if they felt that that kind of a provision could create interstate competition within their own communities.

So balancing out these different factors, which I think are conflicting, I come out at a higher cutoff. Others come out at a lower cutoff. I might add that if you go to zero as cutoff, what you have really said is that you might just as well forget a limited Government insurance program of \$40,000 or \$100,000 for public funds. What you have got in that case is basically 100-percent insurance of all deposits, and I am not at all certain that if Congress had to address that issue directly it would move in that direction.

Putting the cutoff at zero means, in effect, that the Government is guaranteeing the banking system against failure.

Senator McINTYRE. Senator Proxmire.

Senator PROXMIRE. Gentlemen, you know that this bill was introduced by Senator McIntyre and myself by request, and I emphasize by request. I am not an enthusiastic supporter of this bill. In fact, I think that, on the basis of what I have heard and seen so far, we might be better off not passing this bill. There are several problems. One is that we have had a very severe, steady relentless increase in concentration of our big banks. I have before me a chart showing the increased

percentage of total deposits held by the 10 largest, 25 largest and so forth. The 10 largest banks have increased their percentage every 5-year period consistently without exception, and in the last year alone they went from 25.6 percent of all deposits to 28.9 percent, a colossal jump.

Furthermore, there has been, of course, an immense growth in the deposits of our banking system but fantastic with the 10 largest. They have gone from \$31 billion in deposits in 1950 to \$249 billion in deposits in 1974, outpacing inflation, anything that you can mention, and every year the growth seems to be bigger and the concentration heavier.

I am concerned that this bill, if it became law, might tend to concentrate even more the assets of our banks. Mr. Holland, Mr. Wille has said that the FDIC could handle successfully the potential failure of banks that have less than \$2 billion in assets. In fact, they could handle some of those that have a little more than \$2 billion. In view of that and in view of the fact that the FDIC is the insurer of all the banks in the country, the Agency that ultimately takes the risk of failure, I am not sure that there is the need for this legislation, particularly in light of Mr. Wille's recent statement that there are no serious problems in banks over \$1 billion.

MR. WILLE. Mr. Chairman, I would just like to correct that for the record. What I said was there are no billion dollar banks on our problem bank list. I would have to say that there are some problems in banks that are over \$1 billion.

SENATOR PROXMIRE. Well, there are always problems in every bank. There are even problems for Senators who think they have a safe seat. Nothing is absolutely 100-percent sure. But they aren't problem banks.

Mr. Holland?

MR. HOLLAND. Well, I can't make that statement for our problem bank list—that there are no billion dollar banks on it. And I think now banks have had a number of months to get better, so that this is not the worst situation we can count upon ever seeing. I believe it is wise to plan for contingencies.

I have a very healthy respect, and some friendship as well, with the people in the FDIC who handle these failing bank situations when they have to be taken care of, and they do an effective, competent, thorough job very much in the public interest. But they can be more effective the smaller the bank. It's a matter of judgment, I think, as to how large the bank gets before its chances of not being able to be handled are not worth the risk. When we are talking about risk, I think it would be very serious, if a very large bank that none of us would want to have fail turned around and failed.

SENATOR PROXMIRE. You see, what concerns me is whether this is the way to solve the problem of unsoundness in some of our banks. Isn't the responsibility really of good regulation or effective and efficient regulation? Isn't it up to the various regulatory authorities to see that the banks follow policies that would require the banks to be sound? I'm just concerned that this might provide some sort of a disincentive for effective regulation.

The regulators may feel:

It doesn't matter if the bank gets in bad shape. We can merge it out of existence. We can always have somebody take it over in Texas or New York or California. So we don't have to worry so much about insisting on sound practices.

Mr. HOLLAND. Well, I think we all take it as very much our obligation to push sound practices as much as we can. But it is only practical to say that we shouldn't take all the risk out of banking—

Senator PROXMIRE. Well, I wouldn't say to take all the risk out of banking. I think that certainly overstates the position I have taken. I would say to be able to eliminate the risk of failure, that's something different than taking all the risk out of banking. I could see that banks may lose money over several years, but they should have the capital to cushion the risk. They should be able to take risk to diversify their loan portfolios so, if they have some loans that turn out badly, they can still survive.

That's what I'm talking about.

Mr. HOLLAND. But even with the best kind of examiners—and I hope that we have got good ones and they are getting better—I don't believe we could sit here at the table and tell you that we have taken all the risk of failure out of banking.

Senator PROXMIRE. Well, now you have the power to tell the banks to cease and desist from unsound practices.

Mr. HOLLAND. Each of us does with respect to banks under our supervision.

Senator PROXMIRE. And so do, of course, the other regulatory agencies have the same kind of power. Why do the regulators lack the will to effectively regulate? Why weren't they able to take effective action with respect to Franklin National?

Mr. HOLLAND. Each of us may have our own view. It isn't that we lack the will to regulate effectively. This is a world with a lot of possibilities in it. Men might calculate that it might get better over time, and then look back and see that it has not gotten better. Our record is speckled with cases like that. It is a matter of human action trying to regulate human action.

Senator PROXMIRE. Let me give you some examples. The Wall Street Journal carried an article about the insider dealings at United States National, and yet regulators sat mute for 3 years. Franklin's asset structure took a long time to get into the shape it did. We are told that as far back as 1970 some analysts were moving their investors out of Franklin.

Greater disclosure might have protected other investors. Yet the regulators sat pat until 1974. Security National's real estate portfolio, with a loss of at least \$140 million, could not have been put together overnight. What does it take for the regulators to move against practices that have the potential to ripen into unsafe or unsound conditions?

Mr. HOLLAND. I think these experiences that you have just cited have been ones that have given us dedication for quicker and more vigorous followup where the examiners detect something. I can't cite the specifics of those cases, because the three banks you cited don't happen to be ones that we examined. I say that, knocking on wood. I believe that we all face the problem of how to get our examiners to detect problems and how to get our supervisors and our superior officers to follow up vigorously and firmly when the examiners spot problems and the bank managements have not responded to the examiner criticism.

Senator PROXMIRE. Now, what has happened in recent years, in the last 2 or 3 years, with the four banks that I have mentioned, has

been the exception, really, since the FDIC came into existence in—what was it—1933 or 1932? At any rate, over the great sweep of time, the more than 40 years we have had great success and very, very few bank failures; isn't that true?

Mr. HOLLAND. That is true. That is why we waited until now to bring this bill up to you.

Senator PROXMIRE. This is why it seems to me, if we can reestablish the good practices that we went through in the thirties and the forties and the fifties and the sixties, it seems to me that is a better answer than to have a situation that could result in having a bank taken over by larger banks. The only ones that you can point out the purpose of the bill, would be a big bank to move in and take over another bank and, therefore, get greater concentration than it should.

Mr. HOLLAND. Well, I believe very often in these cases, when a bank gets in that serious difficulty, the alternative of a multi-State acquisition would actually add less to concentration than trying to resolve it with any kind of merger or affiliation within the State. The most troublesome concentration of all is when there is a larger and larger share of the total banking resources in an individual market or an area that is tied up within an individual bank.

Being able to reach out of State in that case would avoid adding to such concentration.

Senator PROXMIRE. Well, I think you make that point clearly, if you agree with the fundamental notion here that we ought to rely on merger as a solution.

Let me read from your statement and indicate what I am talking about.

Maybe Mr. Wille would like to comment.

You say at the bottom of page 11 and the top of page 12, and I quote—this is from Mr. Holland's statement:

The problem created by the constraints imposed by section 3(d) has been sharpened as banks, particularly large banks, have moved increasingly from assets to liability management. This shift in emphasis has led many larger institutions to search far afield for money market funds.

While this has often been of considerable benefit to the customers and communities they have served—particularly in those areas where widespread branching is not permitted and local deposit generation is thereby limited—liability management has increased banks' exposure to the risks created by any substantial net outflow of such nonlocal and often volatile funds.

Isn't this exactly the kind of, at least pushed to an extreme, unsound banking practice that regulators could prevent and should prevent?

Mr. HOLLAND. I think when pushed to the extreme it should be criticized and remedied by bank examiners, insofar as they're capable of conceiving it and accomplishing it in a human kind of business. And I think you will find all the Federal bank regulators trying to sharpen up their measurements of liability management and liability risk and moving in accordingly. But I do believe, Senator, that the way the financial system of this country is evolving, there is no way around the inevitable move toward a large share of banking resources coming from outside the locality.

That is, as our own citizens and businesses and pension funds, and so forth, become more able to invest in money market instruments, become more knowledgeable, become more affluent, a larger share of funds will flow through these national money markets and our in-

stitutions will need to go to those markets for funds that are needed in their localities.

When that happens, you begin to run the kind of risk——

Senator PROXMIRE. So you will have those Texas boys taking over the Wisconsin banks or the Wall Street crowd. Section 9 of the bill, which really concerns me very deeply, would allow the Board to approve an acquisition, even if the banks primary superior disapproved. And I take it that Mr. Wille has been critical of that provision too; is that right, Mr. Wille?

Mr. WILLE. Yes, sir.

Senator PROXMIRE. Who knows better the condition of a bank, the Board or the supervisor? You see, if existing supervision is inadequate, isn't it a question of how it can be changed to make it more effective? Why shouldn't the Board be prohibited from approving any transaction the primary supervisor or the FDIC disapproved, or why shouldn't the primary supervisor be allowed to appeal to a U.S. Court of Appeals, and the Board be required to document its finding of potential failure?

Mr. HOLLAND. Can I take that in reverse order? The kind of problem bank we are talking about, I think, is usually poised on the edge of a timing problem that would argue against trying to work out something through a court, and might even argue against airing in a court some of the kinds of considerations that are impelling an effort at an immediate takeover in order to save the institution from a deposit run.

Senator PROXMIRE. So, there would be no public record or public discussion?

Mr. HOLLAND. No, not in those cases. I would expect that we make the same kind of filing that do we in regular holding company cases, which would be a public statement of reasons for approval in every one of those cases.

The other question here is how to handle supervisory cooperation. How it is handled in this bill is exactly parallel with how it is handled in existing statutes for ordinary mergers and ordinary holding company affiliations. In every one of those cases the relevant language reads just as it does for this bill: that the approving regulator has the say. He is, however, expected to consult with the other agencies that are involved. Indeed, that has happened in every case that I know of, and there hasn't been any problem.

I do believe it makes sense to have the final responsibility rest on one approving agency, rather than on a triumvirate or tripartite group. I'm a believer in accountability in this kind of circumstance, particularly when it has such exigencies associated with it and such risk associated with it. There is a great deal to be said for saying, consult with the other agencies, get all their views, but in the end you bear the responsibility for making the decision. That means you're accountable to Congress, and to the courts if there is a suit, if the people believe it was a poor decision.

Senator McINTYRE. I'm sitting here wondering: is it fair to say the larger the bank, the greater the incentive to effect a merger, rather than to liquidate? I have been wondering, since I have been on this subcommittee, I am told by those who know more about banking than I do, that this country has been through, we have been through——

and we may not be out of it yet—a period of great economic and financial stress; and at the same time, told by those who know more about banking investment than I do, that we need to restructure banking, we are outmoded. It isn't adequate for the 1980's and the 1990's.

Now, Mr. Wille, you say that you can envision difficulty anytime you tackle a bank that is in trouble with assets of over \$2 billion. I understand we have banks in this country with assets of \$50 billion. Now, why shouldn't we put together some sort of legislation that would permit us to bring everything to bear in the event that we had a bank of that size in serious trouble, because suddenly they're in trouble, I mean they're going along fine and everybody thinks they're in great shape, and all of a sudden the Bank of America or one of the large banks is in serious trouble.

What would be the effect on this country's economic position? What would be the ripple effect? See, why shouldn't we have some sort of legislation like this to give us every tool to bring to bear in the case of a major bank crash or deterioration?

Mr. WILLE. If that question is addressed to me, Mr. Chairman, I would say that my statement does support, with some amendments, this proposal. I could see some limited usefulness to this kind of an interstate acquisition bill. I think one of the things that is very interesting historically to look at, is the Bank of the Commonwealth experience in Detroit, because there was a situation where a large bank was in trouble—a large State member bank. It was in trouble, but we did not end up merging that bank out of existence. A merger frequently is the easy supervisory answer to a problem bank. Yet what we did in the case of Bank of the Commonwealth was to look at the competitive structure of the Detroit market and the identity of the acquiring banks that possibly could have been included in a purchase or merger transaction with that bank, and came to the conclusion that if the merger market were limited to the city of Detroit, the answer would be anticompetitive and against the public interest. We have a section of the FDIC Act which allows us to assist a bank whose continued existence we believe to be essential to provide adequate banking service in a community.

Now, the definition of community is a very broad one. If you have a big bank, the community served by that bank could conceivably be nationwide. Similarly, if you have a bank which is primarily headquartered in Detroit, the community may be the whole Detroit area. In this particular case, we came to the conclusion that the Bank of the Commonwealth was worth preserving as an independent institution, and we were able to propose and to develop a rehabilitation plan to keep that bank alive without failure, having made the finding that it was in danger of closing and that its continued existence was essential for adequate banking service in the community.

I happen to think we would be able to do that in the case of most of the larger banks to which this bill is addressed. I can't be absolutely certain, however, that we would be able to work it out with that particular kind of rehabilitation program we did with the Bank of the Commonwealth; and one of the things that gave us a lot of uneasiness in the Bank of the Commonwealth experience, I might add, was that the debentureholders and shareholders of the bank had to approve

the final plan, and there was a delay involved in getting those approvals, but they were obtained.

The net effect was that we were able to save a billion dollar bank with an infusion of only \$35.5 million on a 5-year loan.

If you compare those proportions, I think that you will see that so long as we can handle the major banks in any State or the largest banks in the country on the same basis, the kind of solution worked out in the Bank of the Commonwealth situation is probably within the financial capability of the FDIC. My only reason for support of this particular proposal on interstate acquisition is there are some cases that I can conceive of where that solution would not work, and I think then you are quite right that having this anchor to windward might be helpful.

Senator McINTYRE. Governor, the Comptroller has suggested that out-of-State acquisitions, if permitted should extend to banks as well as bank holding companies. Do you have any comment for that?

Mr. HOLLAND. Yes, Mr. Chairman. We thought about that possibility when we went through the review that led to this legislative proposal. We didn't put it forward for two reasons. One is because that would require a change in the legislation over which he has direct responsibility, and we were making this proposal for legislation that we administer. We thought we were best advised to confine our suggestions to our own legislation. But the same logic regarding competition and rescue would attach to an interstate merger by a bank as to this interstate holding company acquisition. We could, however, envision one disadvantage of interstate branching, or at least one objection to it in a number of States where there are not only laws but traditions and attitudes about branch banking, local as well as interstate for that matter. We did believe that in a State where the State law, State banking practices, and State banking supervisor were not in favor of branching, that the State supervisor might be better able to handle his own supervisory activities and apply his own rules if he were dealing, not with what was a branch of a bank headquartered out of State, but rather with a local corporation—a bank that was owned by an out-of-State holding company and thereby would still remain a corporation in his State subject to all his rules and controls.

Senator McINTYRE. Mr. Wille, do you want to comment on that?

Mr. WILLE. The Comptroller is absolutely right, that the logic of the Fed's proposal would lead to an extension of this same authority to the Bank Merger Act which incidentally is not implemented solely by the Comptroller of the Currency. It is also implemented by the Federal Reserve for State member banks where they are the resulting banks in particular mergers and by the FDIC where non-member banks are the resulting banks. The judgment as to whether the Fed's concept should be extended that far is obviously a political one going to the likelihood of acceptance of that kind of a bill given the number of banks in this country that we have and the fact that all 50 States would be involved. Beyond that, I have no comment on the Comptroller's suggestion. I think it is logically purist to suggest that the Fed's bill be extended that far.

Senator McINTYRE. Governor Holland, would you please comment on the anomalous situation whereby an in-State holding company might be ineligible as merger partner while under this bill an acquisition by an out-of-State holding company would be permitted if we were to adopt this legislation. Should we or should we not amend the Bank Holding Company Act to perhaps require the exhaustion of in-State possibilities before going interstate?

Mr. HOLLAND. Some of the same logic that we were mentioning before applies to that as well. One could make the case that if an out-of-State holding company is to be empowered to buy a bank, at least an in-State company should be allowed to also even if ordinarily State law didn't provide for that. The reason we didn't make that suggestion runs to some of the reasons that Frank and I were mentioning before. But logic is, I think, a little weaker in favor of that than it is in favor of the interstate holding company suggestion. In the first place, that would be a direct Federal empowering of an in-State holding company that under a State's own statutes had been held not to be able to make such an acquisition. That seems like a larger step than needs to be taken in terms of providing a kind of accident insurance for banks. If a State wants to do that, it is able to do so with its own legislation. If I may say so, I would hope that in a number of those States there would be a move to parallel in their State holding company legislation this kind of action by the Federal Government, because I believe it is a sensible, practical sort of accident insurance, if I can use that term, for big banks in trouble.

However, there is one additional fact here that ought to be borne in mind respecting in-State acquisitions. An in-State holding company buying another bank in the same State would be more likely to raise the level of concentration of banking resources in that State, and would be more likely to represent a more anticompetitive acquisition than would an acquisition by an out-of-State holding company. We had that in mind, too, in confirming our suggestion to an out-of-State takeover only.

Senator McINTYRE. Do you care to comment, Chairman Wille?

Mr. WILLE. The problem that you raise is one that actually could be easily corrected by State law as Governor Holland has mentioned. If the bill is passed in this form which allows interstate acquisition by bank holding companies but doesn't do anything to permit intrastate acquisitions where such acquisitions are not presently allowed by State law, the easy response if a State wants to change that result is to amend its own State statutes so that intrastate holding companies would have the same emergency powers of acquisition and of course that would enlarge even further the proof of possible merger partners for a bank in distress. So that Governor Holland is quite correct there, that this particular problem is one which could be remedied by State action if the States were so minded.

As to the question of concentration, concentration is a complex subject but it depends on what concentration you're looking at. If you're looking at concentration at the State level, Governor Holland is correct in saying that this extension of the bill could increase concentration at the State level which might not be desirable.

On the other hand, the concentration that Senator Proxmire was talking about was concentration on the national level looking at

nationwide deposit totals and the aggregations of banking resources nationwide. Many economists believe that the only concentration to look at is the concentration in local banking markets and that is the subject on which numerous people differ, myself included, so that when you talk about concentration there is not one easy answer.

I might say that I can conceive of a situation within a State where the acquisition by an in-State holding company is not necessarily anticompetitive and where it may be more desirable as a competitive matter than an interstate acquisition.

Senator McINTYRE. Well, here is an example I would like both of you to answer. You take the case of a unit banking State, we might have the situation where an out-of-State bank-holding company could acquire a bank and still be only a one-bank holding company as permitted by State law, while an existing one-bank holding company under an acquisition would in effect become a multibank holding company. Are we not therefore faced with a policy choice of which of these courses would have a more desirable result?

Mr. HOLLAND. Well, if I understand your example, we have in our legislative suggestions said that in that case we believe it is more consistent with the indicated thrust of public policy to let the out-of-State holding company acquire a single bank within the State than to let a multiple in-State bank holding company develop by an in-State acquisition of a second bank by an existing one-bank holding company. It's a matter of judgment.

Senator McINTYRE. You say this even though the State in question may prohibit banks from coming in from outside?

Mr. HOLLAND. Yes. Because, if I understand your example, it is also prohibited for its within-State holding companies to acquire a second bank. So either way, you see, one would be overriding express State statutes, and it is a case of which one will do the greater harm to what was intended in shaping those State laws. I believe in that case the acquisition by the out-of-State bank holding company would do less damage and would be more effective for the kind of rescue you would accomplish.

Senator McINTYRE. Chairman Wille.

Mr. WILLE. I would answer that question myself by saying either the Congress or a given State legislature is going to have that policy choice and one or the other would have to face up to it in the final determination.

Mr. HOLLAND. If I may, Mr. Chairman, I would just like to say, I don't regard this bill—though it talks about letting a big bank be bought by a holding company—as doing big banks any favor. Or even as guaranteeing their deposits. Because the power is in the law doesn't mean that it will be used in every case. This bill is permissive, not mandatory. It's rather the fact that a sick whale is harder to take care of than a smaller fish. One of the problems of sheer size is that it can be harder to handle. It is in a sense that kind of disadvantage in size that this bill is trying to be some accident insurance against.

Senator McINTYRE. Chairman Wille, regarding your full deposit insurance scenario, what is the current posture of the FDIC given the choice of liquidation and deposit payout versus effecting a merger with the likely assumption of questionable assets? Are you forced in any way to follow the path of least resistance; that is, the path of least cost?

Mr. WILLE. Yes; in some way we are required to follow the path of least cost. I don't consider that to be the area of least resistance necessarily. Our statute says that we may pay out insurance up to \$40,000 in the case of most depositors, or \$100,000 in the case of public depositors if there is a bank failure, or we can attempt to work out of receivership a purchase and assumption transaction such as we did in Franklin and the United States National Bank whereby the deposits of the failed bank go over to a healthy bank. The statute says that we must in making the decision on a purchase and assumption, consider the cost "to the corporation" and that means obviously the cost to the FDIC fund of the choice we select. Frequently this turns on the proportion of uninsured deposits and the quality of the assets in the failed bank. Your comment about assets going over to an acquiring bank, I think, is not correct. In fact, if we have a deposit assumption, in most cases there is not a transfer of questionable assets to the sound bank acquiring those deposit liabilities. In most cases where a smaller bank fails, FDIC has provided cash rather than the assets of the failed bank, and any problems in the asset structure of the bank that's going down are worked out by the FDIC in receivership.

Now, when we get a large bank such as Franklin or U.S. National, that's when you get into the problem of how much cash FDIC can advance without jeopardizing public confidence in the other banks among the 14,500 in the country. In both of those cases, we attempted to use as much of the asset structure of the failed bank as would be acceptable to the takeover bank, and fortunately, the amount of assets required to be taken over by European-American was substantially less than the asset total of Franklin because the deposits they took over on the day of closing were substantially less than the asset total of the bank. What the European-American took over by way of sound Franklin assets was \$1.4 billion which roughly equaled the deposits they took over less the purchase price paid. Similarly, in the U.S. National, we attempted to work out a transaction in which as much as possible of the sound assets of the U.S. National were taken over the the successful bidder; in that case, the Corcker Bank.

Senator McINTYRE. To what extent, Governor Holland, does this bill preserve alternative approaches, and what weight should anti-competitive considerations be given, and where should they come into play?

Mr. HOLLAND. This bill would add an alternative option. At least for banks above its size cutoff, it provides an alternative way of remedying a failing bank situation. In the course of considering such an application, the Bank Holding Company Act itself compels us to take into consideration the degree of competition and any anticompetitive effects that would come from an acquisition. I would expect the Board, as it looked at this as an option, to be influenced by the degree of anticompetitiveness of any other option.

If there were an in-State option that was reasonably good financially and it wasn't anticompetitive, I would expect that acquisition would be the one to be approved by whomever was the authority and this out-of-State provision wouldn't even come into play.

But if there were nothing other than an anticompetitive or maybe financially shaky alternative within the State, then I would expect the provisions of this bill to be used. Of course, when we're operating

under this bill, the provisions elsewhere in the Bank Holding Company Act would require the Board to consider whether or not this acquiring bank holding company was bringing in an anticompetitive force.

Let me give you an example. Suppose, for example, the bank in trouble happened to be located in a city that was just across the river from another State and there was a large city just across the river in the second State, and one of the larger banks in that neighboring city was one of the organizations trying to buy the failing bank in the first city.

I think, in that case, we would have to give some anticompetitive weight to the proximity between those two organizations and see if there wasn't more procompetitive rescue option that could be used without that bank being allowed to expand its position in those respective States.

These days we are learning that competition doesn't stop at State lines, particularly in those places where we have metropolises that spread across several States.

Senator McINTYRE. Well, Mr. Wille, how do you assess the Fed's suggestion that the permissible number of out-of-State acquisitions might number more than one, but say less than five?

Mr. WILLE. Oh, I think that is an appropriate pullback from the open-ended kind of bill actually submitted by the Fed, which would allow any number of acquisitions by the same out-of-State bank holding company in the same State, so long as the State law allows multi-bank-holding companies.

It's new suggestion is one which is designed, I am sure, to allay the fear that one of our major bank holding companies, such as Bank-America or Citicorp, could have multiple acquisitions in one State, whereas it might not be allowed for an instate holding company.

I think the suggestion that the number of acquisitions by any single out-of-State bank holding company be limited is perfectly appropriate.

Senator McINTYRE. Governor Holland, Chairman Wille has suggested that the uncertainty of whether in a problem situation all of the bank's deposits will be 100 percent safe or quickly available, has been a significant discipline on the management policy of most banks.

Could the net effect of this bill be to remove that discipline and encourage greater risk in asset and liability management than otherwise might be taken? How do you assess this potential problem?

Mr. HOLLAND. It doesn't seem to me the bill adds that much more assurance to holders of deposits in larger institutions. We face this kind of consideration, of course, in rescuing a bank of any size.

The more sure the depositors of that bank are that they will get paid off in case of trouble via one or another procedure that can be used to pay them off, the less incentive they have to themselves discipline bad banking behavior. That disincentive already exists to some extent. I don't believe this bill will add to it much. I really don't.

To be honest with you, I don't believe the large depositors and large creditors of a giant bank will be that much more reassured by the knowledge that there is a possibility that the Federal Reserve Board might approve that organization being taken over by another large organization if it gets in trouble.

I think they would be inclined to exercise about as much discipline on that management one way or the other.

I might say that the experiences of the last 2 years, when indeed no big depositor lost money in U.S. National or Franklin National, have nonetheless sufficed to stir a good many corporate treasurers to ask tougher questions of their banks. I cite that as an indication that the larger depositors can be disciplinarians even when they have had the experience of not having lost money.

Senator McINTYRE. Mr. Wille, in your Kansas City speech, you identify five problem areas, one could conclude that you are implicitly suggesting that each of these issues: one, the interstate issue; second, the full deposit insurance issue; third, the capacity of the FDIC in problem areas; fourth, the role of the Fed in bank regulation generally; and five, the treatment to be accorded shareholders and debenture holders of banks in distress; should each be the subject of future inquiry by this committee before the action contemplated in this bill shall be taken; is that correct?

Mr. WILLE. Yes, sir. I believe that the members of the committee should be very conscious of some of the implications of this bill as I outlined them to the best of my ability in that Kansas City speech.

Senator McINTYRE. Would incorporation of the amendments you suggested suffice?

Mr. WILLE. It would not answer all of those issues, but some I take more seriously than others. As I explained in that speech, I have less reservations about the interstate branching implications of this proposal than others.

I have considerable concern, as I have said, about the 100 percent deposit insurance aspect of the proposal, and I might say that, while I agree that corporate treasurers have been asking a lot harder questions of banks in which they have deposited money in the last few years, the question that I would have is whether they would continue to do that if this bill became law since they would know that every bank over \$100 million or \$500 million or \$2 billion was likely to, if it got into trouble, have a solution worked out for it whereby it was acquired by another sounder banking organization.

With respect to the issue on the FDIC's capacity to handle large banks in distress, I have indicated to you that our experience would lead us to believe that in most cases of banks below \$2 billion, FDIC could successfully handle such problems—and possibly even larger banks, especially if we followed the Bank of the Commonwealth example where direct assistance was given to a major competitor in a given market in order to preserve that competitive influence.

The role of the Federal Reserve System in bank regulation generally is implicit in the bill as it is now written, because it would give the Board of Governors additional authority in an area where it hasn't really had it before, especially if it could override the express wishes of the primary supervisor of the bank in question.

I acknowledge our proposed amendments would reach that particular aspect of the bill.

Finally, the question of fairness to shareholders and debenture holders is a very difficult one. I don't think that really is considered in the bill as proposed nor is it solved in all cases by my suggested amendments.

If you have a proposal which has been developed by the supervisory agencies or by the acquiring bank alone, there are powers in the comptroller, as you know, to waive shareholders approval in the case of the failing bank—a power we exercised in the Security National situation—so, that, in effect there may be no opportunity for the shareholders to reject the price offered by the acquiring bank—Chemical Bank in that case—and similarly under the bill as proposed I assume that if the bank to be acquired was a national bank, the same waiver could apply, and you might have a situation in which the terms of the transaction were not necessarily to the benefit of or not necessarily fair to the shareholders of the bank in trouble.

We have seen as we did in Franklin and in U.S. National that the franchises which the bank had by way of branch offices, the one in Long Island, the other in southern California, were enormously valuable to the takeover bank, despite the condition of the bank, and that the terms of the transaction were such that they did not have to discount the value of those franchises because they were taking over unreasonable risks or problems on the asset side.

Whether or not the considerations that go into competitive bidding would apply—and FDIC always tries to follow competitive bidding in receivership cases—in an arranged or negotiated interstate takeover of the kind contemplated by the proposed bill is hard to say.

Obviously the interstate acquisition might take one or two forms, either form that was present in the Chemical-Security transaction or it might take the form of a sale out of receivership, so it is a little hard to answer the question as to the impact of this particular proposal on debenture holders and shareholders, and I don't think the amendments that have so far been suggested really handle that question adequately if competitive bidding or FDIC assistance is not required.

Senator McINTYRE. We have been discussing here this morning mainly the controversial part of this bill, the interstate features. Do you think there is any merit, Mr. Wille, in a temporary type of bill covering the situation for a year or two? Do you see any merit in that, learn by experience, and so forth?

Mr. WILLE. Our experience with temporary bills is they frequently become permanent, as you know, and I think that some of the issues presented by this bill should be faced up to by the committee, not with the thought that it is a temporary bill, but that it is likely to become permanent.

Now, I hesitate in answering that because of the remark that Governor Holland made earlier with respect to the banks which are currently being watched by the Federal Reserve System.

We obviously take a different view of some of the problems to which he referred and have not ourselves included any billion dollar bank on the FDIC's problem list which includes State member banks as well as national banks along with insured nonmember banks.

Senator McINTYRE. Would you like to comment on that question, the temporary 1-year or 2-year—

Mr. HOLLAND. Yes, Mr. Chairman. We didn't advocate that because you never know when one of these circumstances is going to arise. It may arise in a few months. It may not arise for 5 years. But we could understand if the Congress said there were some imponder-

ables in here and some questions about how frequently this would happen and how much interstate penetration there would be. Perceiving those questions or those imponderables, I can see that you might want to check on how the Fed was doing. If you put a time limit on this bill and had us come back and testify before it were either renewed or made permanent, I am sure my colleagues would find that satisfactory. I certainly would.

I would like to suggest that it be longer than a year, because I don't think these kinds of events will take place very often; but making it a couple of years' or 5 years' duration and then having us account to you for our stewardship under this provision sounds very reasonable to me.

Senator McINTYRE. Before he left Senator Proxmire left some questions to ask and I will ask Mr. Weber, staff counsel, to direct those questions to the witness, please.

Mr. WEBER. Section 1 of the bill would allow the Board to permit such acquisition in emergency situations or in potential failure situations. This goes much too far.

If a bank is not even in the potential failure category, why does the Board need this extraordinary power?

Shouldn't there be a bill of particulars on what an emergency is as delineated in the statute, and should not the FDIC have a right of first refusal on these mergers if they think they can handle the insurance risks in a better way?

Mr. HOLLAND. Would you like me to comment on that, Mr. Chairman?

Mr. WEBER. Either or both. I am just reading these questions for Senator Proxmire.

Mr. HOLLAND. If there is a better option available than allowing multi-State acquisition, I would expect the supervisors, who I expect to be working very closely together in these cases, to choose that better way.

We see this as something in the order of a last resort arrangement, not a first resort that we give preference to over good acquisitions within a State or a good endeavor to rebuild the bank out of strong new capital and new entrepreneurship in the area.

Those are alternatives which clearly have been preferred by State legislatures and up to now by Congress, and I would respect that.

I don't believe that the definition of what is an emergency and what is a failing bank needs to be as specified in advance as the thrust of that question might suggest.

I have to say that sometimes those of us in the bank supervisory and regulatory business are a little puzzled at the rather elaborate wording in the Bank Merger Act that distinguishes this expeditious action area from the probable failure area.

Those two provisions—one that allows for some shortening of the time delay and the more extreme one that involves getting rid of the delay entirely—have seemed some sort of a puzzle. Why doesn't Congress have just the one where we get rid of all time delay? But we understood that it grew out of a concern for providing as much time as was practical in connection with the situation at hand.

In point of fact, we have used both provisions. I think we have used them nearly 50 times in the 10 years since they were written into

the Bank Merger Act. I believe the record of those uses really makes quite clear, on a case-by-case basis, the meaning of an emergency situation requiring expeditious action and one involving probable failure. I would expect that most bankers and lawyers would find that kind of case evidence clearer than an attempt to write some sort of generalized definition of the term.

Mr. WILLE. My comment on that would be kind of similar.

I would get to the FDIC point in just a moment.

The Senator's inquiry goes to the question which Governor Holland has answered; that is, the difference between the 10-day action and the immediate action under the bills' provisions.

That format was taken bodily out of the Bank Merger Act sections to which this bill attempts to conform the Bank Holding Company Act and I agree there is some puzzlement as to why you would use the 10-day provision if you have got a pressing emergency that you feel should be handled either on an overnight or a weekend basis or something like that.

On the other hand, the law is written with the option of either 10 days or zero delay. That would not be an inhibiting factor as far as the Federal Reserve Board is concerned.

The question about the FDIC's prior concurrence I think is misplaced unless the FDIC is being asked to provide guarantees against loss, a hold harmless agreement or financial support of one kind or another in the proposed transaction.

Some of these interstate acquisitions probably will not involve the FDIC in any way, and I don't see any reason in those cases why there should be FDIC prior approval.

The proposed amendment which we have drafted at the request of the committee would go to the issue that I am pointing out here, that our approval should only be required in advance if it appears that FDIC financial assistance of one form or another is necessary.

Mr. WEBER. The next question: Under section 1 the Board is not even required to select the least anticompetitive alternative.

There is no definition of "public interest" which will allow the Board to choose an out-of-state acquisition over an in-state alternative.

Further, the term "weighing" may have the effect of lessening the antitrust standard over their acquisitions.

The standard is now that the Board cannot approve an anticompetitive acquisition unless the competitive factors are "clearly outweighed" by some need in the community. This is a fairly high standard and perhaps should be tightened.

Your language indicates a lessening of this requirement by insisting the word "weighing" which indicates that all of these factors are equal. They are not.

The competitive factors are paramount. This language may cast some doubt upon the existing standard.

Mr. HOLLAND. We didn't intend it to do so, and I would expect that we would give heavy weight to anticompetitive possibilities as we tried to apply this.

We did believe it was wise to use a single phrase like weighing public interest here rather than trying to specify in a hierarchical kind of way or in some kind of order the various factors that are supposed to be applied in the bank holding company acquisition, because in one

of these failing bank situations it is hard always to predict the particular circumstances or the particular troublesome involvements.

There may be times when even on an interstate basis the only bidder, the only one willing to walk in there and pick up that headache—and that is what that failing bank is going to be, a king-sized headache—may be one who has already some competitive presence in some markets in which the failing bank deals. If one has to weigh that choice against the alternative of having the bank closed, then it seems to us that the clear test ought to be which one we think the public interest is better served by. We would intend to give strong weight to the anticompetitive factor, but we feel that we will also have to give strong weight to whether the bidder has the financial strength to do what needs to be done to save the situation. It seemed to us that a single label was the safest way to try to deal with a situation that is hard to predict in all its details.

If Congress were to take the Senator's suggestion and to provide an ending date on this legislation, say, 2 or 5 years out and have us come back, the Congress could see very clearly how that was applied.

I believe that would be a better way to do it than to try to write in detailed definitions in the bill because in the nature of the case these situations are hard to forecast and hard to describe in advance.

Mr. WILLE. I think that is a fair comment, that the normal anti-competitive considerations which might be involved in a bank merger or bank holding company application just aren't viewed the same way when a failing bank is involved and you are trying to prevent the public trauma of a deposit payoff or interrupted banking service.

Even the Department of Justice has indicated considerable flexibility on this particular issue.

I would say that in the normal case they would never have given a clearance for the acquisition of the Franklin assets and liabilities by Manufacturers, Hanover, Chemical, or the Citibank of New York.

They did indicate that there were adverse competitive factors present in such an acquisition by any one of those three, but I am rather certain that the Antitrust Division would not have attempted a suit to block that particular acquisition even had it gone to one of the three banks.

So that by the nature of the case, as Governor Holland points out, assuming that there are no less anticompetitive options available, the case is just not the same as the normal bank acquisition.

Mr. WEBER. The final question: Doesn't the section 2 provision actually result in a statutory preference for out-of-state acquisitions in unit banking States that do not allow multibank holding companies?

Thus, one of the effects of this legislation will be to bring pressure upon States to change their branching and holding company laws.

Isn't this one of the real thrusts of this legislation?

Since arguably this bill isn't really necessary to assure a safe and sound banking system—doesn't it really pose a threat to existing rules against interstate banking?

Mr. HOLLAND. We don't regard this proposal as a "camel's nose." This is a limited proposal, endeavoring to try to deal with the situation that we don't believe you can be sure that we can deal with under present banking law and with our present banking structure.

It is that kind of limited protection that we seek.

I believe passage of this bill is thoroughly consistent with States continuing to prohibit multioffice banking within the boundary of their State, and continuing to enjoy that kind of arrangement.

I don't see that it either prefers or oppresses that kind of situation.

Mr. WEBER. Mr. Wille?

Mr. WILLE. I wouldn't have any comments. I think the drafting of this proposal is the Fed's and Governor Holland can answer that.

Senator McINTYRE. There may be some additional questions which we will be furnishing you for the record.

I just want to say, as I have said so many times. I thank both of you for your excellent testimony here. You are helpful and I appreciate your being here with us.

We will recess this subcommittee until 10: o'clock Monday morning.

[Whereupon, at 11:40 a.m., the subcommittee hearing was adjourned to reconvene at 10 a.m. Monday July 28, 1975.]

EMERGENCY ACQUISITION OF BANKS OR BANK HOLDING COMPANIES

MONDAY, JULY 28, 1975

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS,
Washington, D.C.

The subcommittee met at 10 a.m. in room 5302, Dirksen Senate Office Building, Senator Thomas J. McIntyre (chairman) presiding.

Present: Senators Proxmire and McIntyre.

Senator McINTYRE. The committee will come to order.

This morning the subcommittee will conclude its consideration of S. 890, the Emergency Acquisition of Banks or Bank Holding Companies. This morning we will hear from Mr. Joe Sims, Acting Deputy Assistant Attorney General, Antitrust Division, Department of Justice.

I'd appreciate it if you would summarize your statement and also introduce who is accompanying you at the table. Please summarize your statement, with the understanding that it will be incorporated in the record in its entirety.

Mr. SIMS. With me today is Neal Roberts, assistant of the Anti-trust Division.

I will try to summarize the statement as briefly as I can.

STATEMENT OF JOE SIMS, ACTING DEPUTY ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE

Mr. SIMS. S. 890 would do basically two things. The two major features of this proposed legislation are emergency procedures and the out-of-State option. It would also permit bank holding companies, in certain limited emergency situations, to acquire banks located in States other than those in which the holding companies' principal banking operations are conducted.

The two principal features of this proposed legislation—emergency procedures and the out-of-state option—are closely related. Both are designed to help resolve the practical and competitive problems that can develop when a bank encounters such serious financial difficulties that its acquisition by another strong banking institution is the only practical means of avoiding a bank failure and the resulting erosion of public confidence in the banking system itself. Both deserve the support of this subcommittee and of the Congress.

On the procedural point, Mr. Chairman, I will note that S. 890 would amend the Bank Holding Company Act to conform it to the Bank Merger Act. We believe that this would add desirable flexibility to the Act and we strongly support the addition of these new procedures.

If I might turn now to what is probably the more controversial part, the feature which adds the out-of-State option. Under present law, a bank holding company may only acquire additional bank subsidiaries in the State in which its principal banking operations are conducted. The out-of-State option provided by this bill would empower the Federal Reserve Board, in certain limited circumstances, to approve an acquisition of a bank by a bank holding company whose principal banking business is in another State.

The Board would be empowered to approve such an acquisition only if it found that an emergency requiring expeditious action exists with respect to a bank with assets greater than \$500 million or a bank holding company controlling such a bank, or if it found that immediate action is necessary to prevent the probable failure of such a bank or a bank holding company controlling such a bank.

The Board could not approve an out-of-State acquisition unless it also found that, in weighing the competitive, financial, and other factors required by the act, the public interest would best be served if the bank or banks involved in the application were acquired by an out-of-State bank holding company. Currently, multistate banking at the retail level is prohibited by restrictions on both banks branching across State lines and multistate bank holding company operations. These restrictions are controversial restrictions on which many people have very different opinions.

Considerations of whether these restrictions are still desirable today is not necessary to deciding whether or not to approve the conditions suggested in S. 890. Rather, it would create only a very limited exception, and only where such an exception would serve the public interest. We strongly support the out-of-State option.

The availability of this option could make the resolution of problems similar to those encountered in the U.S. National and Franklin National situations, a much easier task. The competitive problems which arose in those contexts were serious, and legislation of this nature could be extremely helpful if similar problems should arise in the future.

Really, Mr. Chairman, it boils down to a simple proposition. If a bank is failing or in such other serious difficulty that banking authorities believe that the most reasonable solution to the problem is acquisition by another bank or bank holding company, today the options are limited to those banks within the state in which the failing bank is located.

S. 890 would allow the acquisition in appropriate situations by bank holding companies in other states as well. This would do two things.

No. 1, it would enable the bank supervisory authorities to have more flexibility in determining who should be able to acquire the institution and presumably, would give them a considerably better chance of making arrangements which would be both competitively desirable and which would least adversely affect the financial institutions and other government agencies.

Second, it would in our view provide a procompetitive opportunity in some instances where none exist today. There are situations in which large banks, perhaps the largest bank in a particular State, would be in such serious financial conditions as to make acquisition both desirable and appropriate.

If the potential acquirors are limited to those within that State, especially in the situation where the bank is one of the largest banks in the State, the competitive issues are going to be serious.

If on the other hand, the opportunity is present for the Federal Reserve System to look outside the State to those bank holding companies which do not compete or compete only to a significantly lesser degree with the failing institution, the opportunities for solving the problem without serious competitive difficulties are measurably increased.

Thus, we strongly support the out-of-State option with one caveat. Under the terms of S. 890, the out-of-State option only becomes a possible alternative where the assets of the failing bank exceed \$500 million. This might be a reasonable criteria in some States. However, it is far too large to serve any purpose in some States. Congress should ensure that the potential benefits of this legislation extend to all banking customers and all communities, regardless of where they live or in which State they are located. Thus, it should consider alternatives to the proposed minimum figure, or alternative criteria, for example, a bank could be acquired by an out-of-State holding company if the bank were a specified size, or one of the largest commercial banks in the State or if it controlled a specified percentage of total State commercial bank assets.

Since the bank structures of the State vary considerably, it seems unlikely that statutory language would cover all appropriate situations. Therefore, we believe the most desirable solution would be to eliminate any legislative minimum assets size and rely instead, on general standards.

These should be sufficient for any State and should set forth in clear terms the intents of Congress in this area. In this way the purposes of the legislation can be expertly applied in the widely varying structure and a proper account can be taken of concentration and local markets served by the troubled bank and its potential acquirers.

To summarize, we feel that the out-of-State option feature is as important a feature as the emergency procedure feature. It is a familiar maxim that substantive rules of law work only as well as the procedures which implement them. Equally valid is the proposition that procedures made flexible enough to accomplish a particular goal cannot do so if the underlying substantive rules are too rigid.

The goal of Congress in considering this legislation is, of course, to provide for the resolution of the problems presented by failing or floundering banks in a manner consistent with the public interest, including the preservation of competitive banking structures. We believe that S. 890 is consistent with this goal, and we therefore strongly support it.

I'd be happy to answer any questions.

[Complete statement follows:]

STATEMENT OF JOE SIMS, ACTING DEPUTY ASSISTANT ATTORNEY GENERAL,
ANTITRUST DIVISION, DEPARTMENT OF JUSTICE

I appreciate the opportunity to appear before the Subcommittee to present the views of the Department of Justice on S. 890. This bill would amend the Bank Holding Company Act to provide special new procedures for the acquisition of failing banks or bank holding companies and for the acquisition of banks or bank holding companies where an emergency exists which requires expeditious action. It would also permit bank holding companies, in certain limited emergency situations, to acquire banks located in states other than those in which the holding companies' principal banking operations are conducted.

The two major features of this proposed legislation—emergency procedures and the out-of-state option—are closely related. Both are designed to help resolve the practical and competitive problems that can develop when a bank encounters such serious financial difficulties that its acquisition by another strong banking institution is the only practical means of avoiding a bank failure and the resulting erosion of public confidence in the banking system itself. Both deserve the support of this Subcommittee and of the Congress.

Procedurally, the goal of this legislation is to add new and, we believe, desirable flexibility to the Bank Holding Company Act. Under the Act as it now stands, there is only one procedure through which bank acquisition transactions can be consummated. This procedure entails notice to a bank's primary supervisory authority of its pending acquisition, and a thirty day period during which that supervisor may make recommendations on the proposed acquisition to the Federal Reserve Board.

It also provides for a hearing in the event that the supervisor disapproves of the acquisition. Finally, it imposes a thirty day waiting period after approval before consummation of the acquisition is permissible. Thus, the only procedure available under the Act involves various mandatory delays, regardless of the circumstances surrounding the acquisition in question.

As a general matter, we believe that this procedure is sound. Each of the steps required serves a valid purpose, and the delays they cause do not work a hardship in the ordinary situation. However, we believe that there are situations in which delays are undesirable. Additional procedural flexibility should be incorporated into the Act to cover such situations.

Recent events have demonstrated the usefulness of procedures which permit a failing bank to be acquired in an expeditious manner by a strong banking institution in which the public has great confidence. The experience with the U.S. National Bank of San Diego in 1973, and the Franklin National Bank of New York in 1974, caused significant public concern. We would defer to the federal banking agencies for expert opinion with respect to the problems that could have resulted had U.S. National or Franklin National been closed and not immediately succeeded by a strong acquiring bank. However, it seems clear that interruption of the financial affairs of bank customers and the affected communities was minimized by the rapid manner in which the transitions took place. In addition, the ability to deal expeditiously with these situations undoubtedly prevented a possible serious loss of confidence in the banking system itself, by assuring that the system could and would continue to function, even with the demise of particular institutions. This confidence has traditionally been recognized as an important factor in maintaining the liquidity and solvency of banks, even in today's climate of substantial federal deposit insurance.

The acquisition transactions that helped resolve these two serious problems, and have helped to resolve a relatively small number of other less serious situations in the past, were structured as transactions subject to approval under the Bank Merger Act. Unlike the Bank Holding Company Act, this Act already has procedures which can be used in emergency situations. Even though our antitrust enforcement responsibilities have made us generally wary of procedures by which acquisitions are quickly consummated, our experience with such situations under the Bank Merger Act indicates that these emergency approval powers have not been abused.

The question thus presented by this legislation is whether bank holding company acquisitions should be accorded equally expeditious alternative emergency procedures. If the acquisition of a seriously troubled bank by a strong bank holding company can quickly revitalize the bank, and restore the confidence of its depositors, such procedures should be available.

Holding company affiliation with a failing or seriously floundering bank, appears to confer two obvious benefits. First, infusion of necessary new capital, and

the ability to balance off temporary, one-time losses, can be provided by an institution with sufficient available resources. Second, notice to the public that a bank rumored to be in serious trouble is now backed by a sound financial institution can reestablish confidence in the bank itself, heading off further, perhaps irreversible liquidity problems.

For these reasons, we believe that alternative emergency procedures should be available under the Bank Holding Company Act. S. 890 would provide such procedures, virtually identical to those already available under the Bank Merger Act. Thus, we support this aspect of the bill.

The second major feature of S. 890 would amend the Bank Holding Company Act to provide that I shall refer to as the "out-of-state option." Under present law, a bank holding company may only acquire additional bank subsidiaries in the state in which its principal banking operations are conducted. The out-of-state option provided by this bill would empower the Federal Reserve Board, in certain limited circumstances, to approve an acquisition of a bank by a bank holding company whose principal banking business is in another state. The Board would be empowered to approve such an acquisition only if it found that "an emergency requiring expeditious action" exists with respect to a bank with assets greater than \$500,000,000 or a bank holding company controlling such a bank, or if it found that "immediate action is necessary to prevent the probable failure" of such a bank or a bank holding company controlling such a bank. Further, the Board could not approve an out-of-state acquisition unless it also found that, in weighing the competitive, financial, and other factors required by the Act, the public interest would best be served if the bank or banks involved in the application were acquired by an out-of-state bank holding company. The bill would authorize the acquisition and operation of the bank involved by the acquiring holding company notwithstanding state laws, other than those which prohibit multi-bank holding companies.

With certain grandfathered exceptions, multi-state banking at the retail level is currently prohibited by restrictions on both banks branching across state lines and multi-state bank holding company operations. The reasons traditionally given in support of the restrictions upon multi-state banking include the possible development of undue economic, social and political power in the banking industry, and preservation of state and local control of locally-generated resources. On the other hand, such legal restrictions deprive local borrowers and depositors of the benefits which would be afforded by new competition from out-of-state banking organizations. Whether these restrictions are desirable or not is a highly subjective question on which opinions differ considerably. However, consideration of this proposed legislation does not require an answer to that question, since it would not significantly reduce existing restrictions on multi-state banking. Rather, it would create only a very limited exception, and only where such an exception would serve the public interest.

We strongly support the out-of-state option. The availability of this option could make the resolution of problems similar to those encountered in the U.S. National and Franklin National situations, a much easier task. The competitive problems which arose in those contexts were serious, and legislation of this nature could be extremely helpful if similar problems should arise in the future. Those situations not only raised the questions of whether and when an emergency takeover would be required, but also the question of what institution should be allowed to make the acquisition. Clearly, even where the institution to be acquired is ailing, various potential acquiring institutions can and do present varied competitive issues. Acquisition by a major direct competitor is clearly less desirable than by a smaller or more distant institution. Thus, even where acquisition of the troubled bank is the only answer, the availability of suitable alternative purchasers is very important.

The present absolute restrictions on multi-state banking limit the purchasers of a distressed bank to banking institutions located in the same state. Where the troubled bank is relatively large, as was the case with both U.S. National and Franklin National, the competitive effects of the restrictions upon multi-state banking are the most severe, since only the very large institutions located in the same state would, as a practical matter, be capable of acquiring the troubled bank. Typically, large banks are located in major cities, and in many states have widely dispersed branch networks. Thus, when a troubled bank and its potential acquirers are all large banks in the same state, they are very likely to compete in the same markets. Merger or acquisition transactions among them are most likely to eliminate existing competition and increase concentration in local banking markets. Yet in spite of these competitive realities, present law does not permit

regulatory authorities to approve the acquisition of a distressed bank by an out-of-state institution, even though in many cases it would be competitively far preferable.

Thus, passage of legislation along the lines proposed would be highly desirable from a competitive standpoint. Out-of-state acquisitions would be permissible in situations where the purchase of a large failing or floundering bank by an in-state banking institution would be anticompetitive. An alternative procompetitive resolution of such situations would thus become possible. An exception to the general proscription of multi-state banking would be created, but it would be a very limited exception, and one which would clearly serve the public interest. Accordingly, we urge the Congress to adopt this feature of S. 890.

I would like to point out, however, what we believe to be a serious deficiency in the bill as presently drafted. Under its terms, an out-of-state acquisition only becomes a possible alternative where the assets of the troubled bank exceed \$500 million. This appears to be an attempt to approximate those situations where the large size of a troubled bank substantially lessens the number of institutions financially capable of making the acquisition and makes the competitive dangers of an in-state purchase more serious. It may also be an attempt to approximate the size of a bank whose failure, due to a lack of available alternative purchasers, may have serious repercussions across the nation's entire financial community. A \$500 million figure might be a reasonable criterion in some states. However, it is too large to serve any purpose in other states, where a bank of that size either does not exist, or is far too large for any other bank in the state to acquire, or is so competitively significant that its acquisition by any in-state purchaser would be significantly anticompetitive. Moreover, while the \$500 million figure may be relevant to dangers of national or regional repercussions resulting from the failure of a large bank, it is unsatisfactory when one considers the dangers of more localized disruptions which could result from the failure of a bank which is "large" in terms of the state in which it is located, but does not possess assets of \$500 million.

Congress should ensure that the potential benefits of this legislation extend to all banking customers and all communities, regardless of where they live or in which state they are located. Thus, it should consider alternatives to the proposed minimum figure. These might include a single smaller asset-size criterion, or alternative criteria, *e.g.*, a bank could be acquired by an out-of-state holding company if the bank were a specified size, or if it were one of the largest commercial banks in its state, or if it controlled a specified percentage of total state commercial bank assets. Of course, before an acquisition by an out-of-state holding company could be made, the other statutory criteria also would have to be met.

However, since the banking structures of the states vary considerably, it is unlikely that any specific legislative criteria could be developed to cover all appropriate situations. Therefore, we believe the most desirable solution would be to eliminate any legislative absolute minimum asset size and rely instead on general standards. These should be sufficient to avoid anti-competitive resolution of emergency situations in any state, and should set forth in clear terms the intent of Congress in this area. In this way, the purposes of the legislation can be selectively and expertly applied to the widely varying structures of commercial banking in the several states. Proper account can be taken of concentration, state laws governing bank expansion, local markets served by the troubled bank and its potential acquirers and the nature of the emergency. Congress might also consider procedures which would involve other regulatory agencies responsible for the resolution of emergency situations in the decision-making process.

To summarize, we feel that the out-of-state option feature of S. 890 is as important and as necessary as the emergency procedure features. It is a familiar maxim that substantive rules of law work only as well as the procedures which implement them. Equally valid is the proposition that procedures made flexible, enough to accomplish a particular goal cannot do so if the underlying substantive rules are too rigid. The goal of Congress in considering this legislation is, of course to provide for the resolution of the problems presented by failing or floundering banks in a manner consistent with the public interest, including the preservation of competitive banking structures. We believe that S. 890 is consistent with this goal, and we therefore strongly support it.

SENATOR MCINTYRE. Mr. Sims, in your testimony you say that the question of whether the current laws which prohibit interstate banking are desirable or not is one which we do not have to answer here be-

cause this legislation would not significantly reduce existing restrictions on multistate banking. You then go on to propose that the dollar limit which the Federal Reserve Board proposed should be eliminated. Would that not be a significant reduction of the restrictions on multistate banking?

Mr. SIMS. I think not, Mr. Chairman, because the legislation would still provide, as it does now, that this procedure would be used only in limited situations where a bank was failing or floundering and after proper evaluation of the relevant criteria determines that the out-of-State purchaser was the most appropriate purchaser.

It seems to me under those conditions, the number of times when this opportunity would be taken would be very small indeed. Looking back into the past, the recent past, there have been a relatively small number of situations where you can imagine this procedure having been appropriate and thus it being even possible that an out-of-State purchaser would have been chosen if that were the possibility.

I would not see any reason there would be a larger number of those situations in the future.

Senator McINTYRE. One of the concerns which has been expressed with this piece of legislation is that concentration of control of banking assets and deposits would be further heightened by allowing large bank holding companies to cross State lines, gain footholds in new States, and accelerate their already growing proportion of banking business in this country. Would you comment on this issue please?

Mr. SIMS. Commercial banking in the United States is probably one of the most unconcentrated major industries in the country. There are some 14,000 or slightly less than that commercial banks. I don't know what the exact concentration figures are, based on national rankings, but it is not overwhelmingly significant. Even if it were a very large number, banking is largely a local activity. Concentration ratios have significance only in responsible and reasonable relevant economic markets.

There are banking markets in the country which are highly concentrated but there are no banking institutions, because of the various restrictions on banking and State line restrictions, which have dominant positions in all or even many of the banking markets in the country. I don't believe the concentration issue in banking is a significant issue in the context of this legislation.

Senator McINTYRE. Well, just for your information, you may know this, out of the more than 14,000 banks, the top 100 control 50 percent or a little greater of all of the assets. And the top 10 control 29 percent of all assets.

Mr. SIMS. Concentration rates are obviously relevant where they apply to a relevant economic bank. Banking is not for most purposes, a national market; it is a localized business and the fact that the top 100 banks control 50 percent of national banking assets has very little significance for a goodly portion of the retail banking business.

Senator McINTYRE. I'm glad you straightened me out. Should a bank holding company which has been given permission to go ahead and cross State lines in one of these circumstances be forbidden to expand beyond the branches which it acquires?

Mr. SIMS. As I understand the legislation, Mr. Chairman, a bank or bank holding company would be subject to relevant State laws in all

respects except to the extent that this legislation preempts those State laws and this legislation would not preempt State multibank holding company laws except in the instance of a failing or floundering bank.

Senator McINTYRE. If the law were wide open for additional branches once they get their foot in the door, what would be your opinion?

Mr. SIMS. I think to the extent that State law permitted branching or multibank holding company operations by those banks or bank holding companies within its State, at least my initial judgment is that this legislation would not prohibit a bank once it had acquired a bank or bank holding company within a different State to go ahead and expand within the State to the extent other banks were permitted by State law.

Senator McINTYRE. In this situation, therefore, do you think it would be a good policy under this law that the bank entering into a new State would be grandfathered in to just the existing branches as of the time it entered?

Mr. SIMS. I don't understand the question.

Senator McINTYRE. Well, if the bank comes across State lines to effect a merger or the bail-out of a failing bank, should we hold it to whatever branches existed at that time or allow it to expand further?

Mr. SIMS. To the extent State law would otherwise permit further expansion, I would be reluctant to see acquiring out-of-State holding companies limited to the facility it acquired, largely because that would put them at a competitive disadvantage with other banking institutions in the State.

To the extent banking laws of that State prohibited branching and/or multibank holding corporations, I see no reason those restrictions wouldn't continue to apply to an out-of-State holding company that acquired banks under this legislation, and I see no reason to exempt them from those limitations.

Senator McINTYRE. OK.

Let me ask you a question which concerns us from the standpoint of the bill as it is before us now or as Mr. Wille would amend it. We are concerned that allowing interstate acquisition of only the largest banks would create two classes of banks. As you know, the FDIC insures depositors of all member banks up to \$40,000.

When it is cheaper for the FDIC to arrange an acquisition than it would be to absorb the losses from a payout, the FDIC will likely try to arrange a merger. Now, if the FDIC and the Federal Reserve Board were to arrange mergers for all the large banks and only payouts for all the small banks which failed, wouldn't all large depositors, that is all those who deposit more than \$40,000 in an account, flock to the large banks? Wouldn't we have legislated a monopoly on large accounts for large banks?

Mr. SIMS. I don't believe, Mr. Chairman, that the out-of-State option possibility presented in S. 890, would have that result. My understanding of the FDIC current practice, and I believe this is related in Mr. Wille's testimony before you, is that they make an effort to merge out all troubled banks. Payout is an option which is considered secondarily and not primarily.

In fact, it has been rather standard practice to merge out large banks. The out-of-State option really doesn't do anything except provide a larger source of potential acquiring institutions. It doesn't really add any impetus to the idea of merging banks out as opposed to paying banks out.

A large bank or indeed, any bank which is in this kind of difficulty is going to be dealt with, I would think, initially on the basis of attempting to merge the bank out because it's simpler for everybody involved. Even without the out-of-State option it would be my expectation that there would be a significant effort made to have the large banks in trouble merge. I don't think the out-of-State option feature itself adds significantly to that possibility.

Senator McINTYRE. The Comptroller has suggested that out-of-State acquisitions, if permitted, should extend to banks as well as bank holding companies. Would you please comment?

Mr. SIMS. Certainly the rationale is similar. There are some further difficulties in dealing with bank mergers than there are in dealing with bank holding companies. It is conceivable to me that a bank holding company with some or all of its operations located in one State could acquire a bank in another State and yet not have serious difficulty with differing State standards or rules and regulations.

On the other hand, if a bank located in one State acquired branches of another bank, located in another State, I would think there would be some managerial difficulties in complying with State law and regulations which might not exist in the holding companies' situation.

I see some additional problems which would have to be considered and dealt with. The rationale is applicable to both situations.

If a bank is in trouble, the further away it is from its potential acquirers the less directly competitive they are likely to be, and the less likely it is that the acquisition will have adverse competition effects. This is true in both holding company and branching situation, but I could see some managerial problems in branching situations which would have to be considered.

Senator McINTYRE. There has been a fair amount of scepticism of enacting the bill at this time. If one accepts Chairman Wille's statements that the FDIC has the capability of handling successfully and with reasonable dispatch the potential failure of virtually any bank with less than \$2 billion in assets, and depending upon the circumstances, banks of even larger size, then are we not legislating on behalf of this country's 51 largest banks?

Mr. SIMS. I'm not—

Senator McINTYRE. Has Mr. Wille been lucky?

Mr. SIMS. I'm not positive of what Mr. Wille meant when he said the FDIC was capable of handling situations involving banks with up to \$2 billion. He may have meant they had the financial and operational capability to do so. He's obviously in a much better position than I am to evaluate that point.

On the other hand, my concern is with competitive impact of these kinds of transactions and it seems rather clear to me that the larger the institutions involved, the more likely you are going to be limited to banks with which the failing institution is directly competitive or likely to be, and the more likely you are to have competitive issues and on some occasions serious competitive issues.

Those have been avoided in recent years but the two or three large troubled bank situations have come in States like New York or California where there are a relatively large number of potential acquirors, some of which have not directly been competing with the troubled bank.

If we had troubles with a large bank in many other States, competitive issues would have been much more significant. I view this proposed legislation as preventive legislation in large part, providing the procedural flexibility to prevent, in those cases where it's likely to occur, the danger of having to accept anticompetitive results in order to preserve the reputation and viability of banking institutions or a banking system in a local area because of the lack of opportunity to go outside the State borders.

Because of that I would think that this legislation is highly desirable.

Senator McINTYRE. The bill uses the term "emergency," yet, nowhere is the term defined. What should be the parameters of an "emergency" as encompassed under this bill?

Mr. SIMS. Mr. Chairman, I have a little bit of difficulty answering that because I am not a banking expert and am far from it. What we have done in the past, and what the Bank Merger Act has contemplated in the past, has been to rely on the banking agencies to make the determination that the situation with the banking institutions was such that it required expeditious action.

Really, based on our lack of expertise and their ownership of a considerable amount of the governmental expertise in this area, I would think that I would have to defer to the banking agencies for a proper definition of "emergency".

We have not had any difficulty with the agencies.

Senator McINTYRE. How do you assess the Board's suggestion that the permissible number of out-of-State acquisitions might number more than one but, say, less than five?

Mr. SIMS. I view that suggestion as an attempt to defuse some of the fear about wholesale takeovers by out-of-State institutions in any particular State.

The rationale offered by Governor Holland seems to be perfectly logical. I would not like to limit potential acquisitions in any State to one institution. Then you run the danger of the institutions watching banks and trying to predict or speculate on whether this is likely to be the most desirable situation to exercise their option.

On the other hand, some limitation—five, perhaps three, the number is anybody's guess, would, it seems to me, significantly lessen the fear and totally eliminate the possibility that one out-of-State organization was going to come in and take over the banking institutions of a particular State. His rationale seems logical, if in fact, that fear is a considerable fear and that fear is such that it is likely to prove an impediment to the enactment of this legislation.

Senator McINTYRE. Page 49 of the transcript of Mr. Wille's testimony of last Tuesday—I want to read and ask you to comment from a part of his answer.

As to the question of concentration, concentration is a complex subject but it depends—it depends on your view, I think, on what concentration it is that you're looking at. If you're looking at concentration at the state level, Governor Holland is correct in saying that this extension of the bill could increase concentration at the state level which might not be desirable.

On the other hand, the concentration that Senator Proxmire was talking about was concentration on the national level looking at nationwide deposit totals and the aggregations of banking resources nationwide. Many economists believe that the only concentration to look at is the concentration in local banking markets and that is the subject on which numerous people differ, myself included, so that when you talk about concentration there is not one easy answer.

I might say that I can conceive of a situation within a state where the acquisition by an in-state holding company is not necessarily anticompetitive and where it may be more desirable than an interstate acquisition.

Would you comment on that?

Mr. SIMS. Yes, I guess I agree with that. Clearly, concentration is a difficult complex subject and it does, as I tried to indicate before, make a whole heck of a lot of difference what you mean when you say concentration.

At a national level, concentration in banks is considered by many to be a serious political problem but I don't believe it is considered to be a serious economic problem. Concentration in various local banking markets, which are in our view the most relevant measure of banking concentrations, in many States is quite high.

The out-of-State option for acquisition of failing or floundering bank holding companies or banks, seems to provide an opportunity in many cases for perhaps even a decrease in concentration as a result of taking care of the floundering bank problem.

On the other hand, it is conceivable that in a particular situation acquisition by a particular out-of-State holding company of a particular bank might be less procompetitive and or more anticompetitive than acquisition by an interstate operation. I would think that that would be the rarer situation than the contrary one.

Senator McINTYRE. Mr. Sims, Senator Proxmire hoped to be here this morning but unfortunately he can't make it. His staff member, Mr. Marinaccio, has three or four questions he would like to ask you for Senator Proxmire.

Mr. MARINACCIO. Mr. Sims, in your statement you say that the availability of the authority which would be granted under this bill would make the resolution of problems similar to those encountered in U.S. National Bank and Franklin National Bank much simpler.

Why should the focus of the resolution of Franklin and U.S. National type situations be on multistate banking? Shouldn't we first assure ourselves that by better regulation the failures of large institutions would be prevented.

You know that the regulatory authorities have power to prevent potential unsafe or unsound practices. This together with examination powers is a mighty potent weapon that has never been effectively utilized.

Why not rely on regulation? Why rely on mergers? Why focus on multistate banks to solve this problem?

Mr. SIMS. I have no disagreement with that focus at all. Obviously, there are significant weapons at the hands of the bank regulators with the use of which hopefully these kind of situations could be prevented or significantly lessened in number. I am not really in a position to say, based on my own knowledge or evaluation whether or not they are doing a super job, a good job, a fair job or a bad job, or an average job. I am not an expert in banking regulations.

Banking regulation is a first line of defense. I think what we're talking about here today is what happens when for whatever reasons,

whoever's fault it is, you arrive at a situation where something needs to be done in order to take care of the situation.

I think what we're talking about here is giving increased flexibility to the banking regulators to take care of the situation if and when it does arise. I don't think we're talking about it as a substitute.

Mr. MARINACCIO. Mr. Wille recommended that the minimum acquisition size under the bill be raised to \$2 billion or over. Since there are only 50 banks in this size category, does it not concern you that over the years—unless we focus on regulation—a shakeout might result in a small number of these banking institutions operating in and dominating every major banking market in the Nation.

Are you not concerned about the effect of this bill on concentration in the Nation as a whole?

Mr. SIMS. No, I'm not. I don't see this bill significantly adding to concentrations in relevant banking markets. I would point out though, that my testimony is slightly different than Mr. Wille's. I prefer to see the size criteria lowered as opposed to raised and I think to the extent that there is a fear that this is a bill which is going to affect directly only the 50 largest banks, lowering the size criteria and allowing the Federal Reserve Board to utilize this procedure in its discretion ought to lessen that fear.

Mr. MARINACCIO. Mr. Wille testified that Congress should address a number of issues before it adopts this legislation—although he agreed with the bill in principle. And the areas Mr. Wille said should be addressed are the role of the Federal Reserve in supervision generally; treatment to be accorded shareholders and bondholders of banks in distress; interstate banking; and 100-percent insurance for all deposits.

These are significant issues. What is your view of the effect of this provision of this bill on the incentive on banking management and depositors on careful and prudent management of banking institutions?

Mr. SIMS. I'm trying to be precise on exactly what this bill does. It does two things. It amends the Bank Holding Act. No effect, from that position I would think, at all on any of those factors. We have that procedure today and it's being used today. The other aspect of the bill is the out-of-State option, and all the State option does is increase the number of potential acquirers. It doesn't exacerbate the situation which might lead to a failing or floundering bank.

I really have some great difficulty in believing that the incentives are simple and just the worry about whether or not there is going to be payout of their failing bank or whether there is going to be a merger of their failing bank.

There are a lot of other incentives, and considerable incentives to avoid these kind of situations whether or not it's a payout or merger transaction.

I'm quite dubious about this lack of incentives.

Mr. MARINACCIO. I am concerned that this bill provides no remedy for public scrutiny of the alternatives available to the Board in choosing one acquiring bank holding company over another. Shouldn't there be a provision in this bill which in principle adopts the approach of the antitrust laws for the entry of consent judgments; namely, some judicial scrutiny?

Mr. SIMS. I'm not sure what my answer to that question is. I have not considered that precise point before. I guess my initial reaction and it is simply that, initial reaction, is that this procedure is simply a carbon copy in all major respects of the Bank Merger Act procedure.

The Bank Merger Act procedure has worked very well. We have been consulted at various stages of the transaction; we have had competitive input, the bank regulators have considered competitive issues, and the procedure has not been abused. I guess on the basis of that record, my initial reaction is that such procedures were not necessary.

Mr. MARINACCIO. One final question. Under section 1 the Board has not—is not required to select the least anticompetitive alternative. There is no definition of public interest which will allow the Board to choose an out-of-State acquisition over an in-state alternative. Further, the term “weighing” (line 25, page 4) of the bill, may have the effect of lessening the antitrust standard over their acquisitions. The standard now is that the Board cannot approve an anticompetitive merger unless the competitive factors are clearly outweighed by some need in the community. This is a fairly high standard and should perhaps be tightened.

The language of the bill indicates a lessening of this stringent requirement by inserting the word “weighing” which indicates that all of these factors are equal. They are not. The competitive factors are paramount. This language might cast some doubt upon the existing standards and lower the standards toward these mergers.

What is your comment on that?

Mr. SIMS. I do not read the bill to do that. The word “weighing” to me is simply an indication that the Board should follow the standards set out in section (c), and I don't believe the word “weighing” changes the standard at all.

However, I see no objection and probably some reason to changing the language of the bill if this is viewed to be a possible area of ambiguity, to make it clear that the Board, in deciding who and when to allow to proceed in this procedure, should follow the standards of section (c) set out the same way they do today.

Mr. MARINACCIO. Do you think that there ought to be some clear-cut definition of what constitutes an emergency and what constitutes a potential failure?

Mr. SIMS. As I indicated earlier, I don't believe that I or the Department of Justice is enough of a banking expert to really answer that question effectively.

I think that is an issue that probably ought to be left to the discretion of the banking agency, and we have to admit our knowledge had no share of that discretion.

Senator McINTYRE. Before I let you go, I take it that you believe there should be no dollar cutoff?

Mr. SIMS. That would be our preference; yes, sir.

Senator McINTYRE. Your answers have certainly been refreshing and clear cut.

I want to thank you and your associate for your fine and helpful testimony.

Mr. SIMS. Thank you.

Senator McINTYRE. I would like to call now Mr. Ralph A. Beeton, president-elect, Association of Registered Bank Holding Companies. I understand that you are accompanied by Mr. Donald L. Rogers, the executive director of the Association of Registered Bank Holding Companies.

Glad to welcome you here this morning. I have your relatively short statement. It will be printed in its entirety in the record. Proceed.

Mr. BEETON. Thank you, Mr. Chairman.

STATEMENT OF RALPH A. BEETON, CHAIRMAN OF FIRST VIRGINIA BANKSHARES CORP., FALLS CHURCH, VA., ACCOMPANIED BY DONALD L. ROGERS, EXECUTIVE DIRECTOR

Mr. BEETON. Mr. Chairman and members of the subcommittee, my name is Ralph A. Beeton, and I am chairman of First Virginia Bankshares Corp., Falls Church, Va. I am appearing here today in my capacity as president-elect of the Association of Registered Bank Holding Companies. Accompanying me is Donald L. Rogers, who is executive director of our association.

We appreciate the opportunity to present our views on the Federal Reserve Board's bill, S. 890, to amend the Bank Holding Company Act to permit bank holding companies to acquire banks across State lines in emergency situations. Our association consists of bank holding companies which are regulated by the Board pursuant to the act, and therefore, our member companies have a direct interest in this proposal.

It is essential that the Congress establish a national policy to deal with large bank failures in an efficient manner in order to avoid prolonged delays which could undermine public confidence in the banking system. We believe it is in the public interest to amend the act to give the Board authority to approve the acquisition of a bank by an out-of-State bank holding company where the bank to be acquired is facing financial difficulties. The need for this legislation was demonstrated in a most dramatic way by the failure of the Franklin National Bank last year.

Before discussing the specific provisions of S. 890, we believe it is important to enumerate the principles that should be inherent in legislation of this nature:

1. The Board should be authorized to act in an expeditious manner without unnecessary delays.

2. The Board should exhaust all possibilities of the rescue of a bank in trouble by a banking organization within the same State as the bank, before seeking an acquisition by an out-of-State bank holding company.

3. The Board should give domestic banking organizations the first priority in rescuing a bank in financial difficulty and should only seek assistance from foreign-chartered institutions as a last resort.

4. The Board should consult the other appropriate Federal and State banking agencies having jurisdiction over the bank in trouble at each stage of the determinations required by the legislation.

5. The Board should be authorized to act before a bank has reached the stage of imminent failure so that there is still some degree of equity left in the bank and a greater probability that the acquired bank will be a successful operation.

6. The national policy established by the legislation should not be thwarted by any prohibitive or restrictive State statutes to the contrary.

Paragraph (3) of section 1 of the bill would limit bank holding company acquisitions across State lines to situations where the bank in trouble has assets in excess of \$500 million or the bank holding company in trouble controls a bank having assets in excess of \$500 million. This asset test would cover approximately 200 of the largest banks in the country and would exclude 33,800.

There are two aspects of this asset definition that concern us. First, there are 11 States (Alaska, Arkansas, Kansas, Maine, Montana, New Hampshire, North Dakota, South Dakota, Vermont, West Virginia and Wyoming) where the largest banks have less than \$500 million in assets.

In these States, it does not appear likely that a smaller bank or bank holding company would have the financial and managerial resources to undertake the rescue of the largest banks. There could also be antitrust considerations in the acquisition of the largest bank by the second or third largest banking organizations. The failure of the largest bank in one of these States would have a significant impact in the State and would carry with it national repercussions.

Our second concern relates to the 33 bank holding companies that have more than \$500 million in assets, but do not control one bank with more than \$500 million in assets. Obviously, the failure of a bank holding company of this size would be of national concern, even though it has no affiliated bank as large as \$500 million.

Any asset limitation must of necessity be an arbitrary one, and, therefore, we would prefer that there be none, so that the Board would have maximum flexibility to act. If there has to be an asset limitation, then it should be no more than \$100 million in order to cover the problem areas we have discussed above. This would increase the number of banks protected by the bill from 200 to about 950.

Section 2 of the bill would amend section 7 of the Bank Holding Company Act to permit the acquisition of a bank in trouble by a bank holding company even though there may be prohibitive or restrictive State statutes to the contrary. We support the principle embodied in this amendment because the States should not be permitted to undermine the national policy which would be established by the bill to handle banks in financial difficulties.

However, we object to the last clause of the amendment. The "unless" clause would discriminate against the bank holding companies in the 13 States (Alaska, Arkansas, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Nebraska, Oklahoma, Pennsylvania, and Washington) where bank holding companies are prohibited from acquiring additional banks within their home State.

The home State bank holding companies in these States would be eliminated as possible candidates to bid on acquisitions and, thus, the number of viable alternatives would be reduced.

Of necessity, the Board in these States would have to look to an out-of-State bank holding company for assistance. We believe it is logical and equitable for the home State bank holding companies to have an equal opportunity with the out-of-State bank holding companies to make emergency acquisitions. Therefore, we urge that the "unless" clause be stricken from section 2 of the bill.

The thrust of this legislation is to permit the Board to act quickly in emergency situations. We are concerned that there could be long delays if the bank holding company seeking to acquire a bank in trouble was required to meet the stock registration requirements of the Federal and State securities laws in order to issue stock to consummate the acquisition.

Since the actions taken here are directly comparable to emergency bank merger cases and should not involve shareholder approval, the primary purpose of the securities laws to provide disclosure to shareholders would not be applicable.

Therefore, we do not believe the shareholders would be harmed by exempting emergency acquisitions from the securities laws and, in fact, the bank shareholders would stand to benefit from a speedy resolution of the bank's problems. We suggest that paragraph (3) of section 1 of the bill be amended as follows:

(f) Notwithstanding any other provision of this section or the provisions of any Federal or State securities statute * * *

We agree with the proposed amendments in the bill to reduce the waiting and comment periods in sections 3(b) and 11(b) of the act. The comparable authority for emergency actions in the Bank Merger Act has worked well, and the Board should have similar flexibility under this act.

I want to stress again our belief that it is imperative that the Congress establish a national policy with respect to major bank failures in the future.

Hopefully, the Board will never be required to exercise the authority provided in this legislation, but the Board should be given the necessary powers to act expeditiously to protect the public when required.

I shall be happy to answer any questions you may have concerning our statement.

[Complete statement follows:]

STATEMENT OF RALPH A. BEETON, PRESIDENT-ELECT, ASSOCIATION OF REGISTERED
BANK HOLDING COMPANIES

Mr. Chairman and members of the Subcommittee, my name is Ralph A. Beeton and I am chairman of First Virginia Bankshares Corporation, Falls Church, Virginia. I am appearing here today in my capacity as president-elect of the Association of Registered Bank Holding Companies. Accompanying me is Donald L. Rogers, who is executive director of our Association.

We appreciate the opportunity to present our views on the Federal Reserve Board's ("Board") bill, S. 890, to amend the Bank Holding Company Act ("Act") to permit bank holding companies to acquire banks across State lines in emergency situations. Our Association consists of bank holding companies which are regulated by the Board pursuant to the Act, and, therefore, our member companies have a direct interest in this proposal.

IMPORTANCE OF NATIONAL POLICY

It is essential that the Congress establish a national policy to deal with large bank failures in an efficient manner in order to avoid prolonged delays which could undermine public confidence in the banking system. We believe it is in the public interest to amend the Act to give the Board authority to approve the acquisition of a bank by an out-of-state bank holding company where the bank to be acquired is facing financial difficulties. The need for this legislation was demonstrated in a most dramatic way by the failure of the Franklin National Bank last year.

PRINCIPLES INVOLVED

Before discussing the specific provisions of S. 890, we believe it is important to enumerate the principles that should be inherent in legislation of this nature:

1. The Board should be authorized to act in an expeditious manner without unnecessary delays.
2. The Board should exhaust all possibilities of the rescue of a bank in trouble by a banking organization within the same State as the bank before seeking an acquisition by an out-of-state bank holding company.
3. The Board should give domestic banking organizations the first priority in rescuing a bank in financial difficulty and should only seek assistance from foreign-chartered institutions as a last resort.
4. The Board should consult the other appropriate Federal and State banking agencies having jurisdiction over the bank in trouble at each stage of the determinations required by the legislation.
5. The Board should be authorized to act before a bank has reached the stage of imminent failure so that there is still some degree of equity left in the bank and a greater probability that the acquired bank will be a successful operation.
6. The national policy established by the legislation should not be thwarted by any prohibitive or restrictive State statutes to the contrary.

\$500 MILLION LIMITATION

Paragraph (3) of section 1 of the bill would limit bank holding company acquisitions across State lines to situations where the bank in trouble has assets in excess of \$500 million or the bank holding company in trouble controls a bank having assets in excess of \$500 million. This asset test would cover approximately 200 of the largest banks in the country and would exclude about 13,800.

There are two aspects of this asset definition that concern us. First, there are 11 States (Alaska, Arkansas, Kansas, Maine, Montana, New Hampshire, North Dakota, South Dakota, Vermont, West Virginia and Wyoming) where the largest banks have less than \$500 million in assets. In these States, it does not appear likely that a smaller bank or bank holding company would have the financial and managerial resources to undertake the rescue of the largest banks. There could also be antitrust considerations in the acquisition of the largest bank by the second or third banking organizations. The failure of the largest bank in one of these States would have a significant impact in the State and would carry with it national repercussions.

Our second concern relates to the 33 bank holding companies that have more than \$500 million in assets, but do not control *one* bank with more than \$500 million in assets. Obviously, the failure of a bank holding company of this size would be of national concern, even though it has no affiliated bank as large as \$500 million.

Any asset limitation must of necessity be an arbitrary one, and, therefore, we would prefer that there be none, so that the Board would have maximum flexibility to act. If there has to be an asset limitation, then it should be no more than than \$100 million in order to cover the problem areas we have discussed above. This would increase the number of banks protected by the bill from 200 to about 950.

RESTRICTIVE STATE LAWS

Section 2 of the bill would amend section 7 of the Bank Holding Company Act to permit the acquisition of a bank in trouble by a bank holding company even though there may be prohibitive or restrictive State statutes to the contrary. We support the principle embodied in this amendment because the State should not be permitted to undermine the national policy which would be established by the bill to handle banks in financial difficulties.

However, we object to the last clause of the amendment. The "unless" clause would discriminate against the bank holding companies in the 13 States (Alaska, Arkansas, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Nebraska, Oklahoma, Pennsylvania and Washington) where bank holding companies are prohibited from acquiring additional banks within their home State. The home State bank holding companies in these States would be eliminated as possible candidates to bid on acquisitions and, thus, the number of viable alternatives would be reduced. Of necessity, the Board in these States would have to look to an out-of-state bank holding company for assistance. We believe it is logical and equitable for the home State bank holding companies to have an

equal opportunity with the out-of-state bank holding companies to make emergency acquisitions. Therefore, we urge that the "unless" clause be stricken from section 2 of the bill.

SECURITIES LAWS

The thrust of this legislation is to permit the Board to act quickly in emergency situations. We are concerned that there could be long delays if the bank holding company seeking to acquire a bank in trouble was required to meet the stock registration requirements of the Federal and State securities laws in order to issue stock to consummate the acquisition. Since the actions taken here are directly comparable to emergency bank merger cases and should not involve shareholder approval, the primary purpose of the securities laws to provide disclosure to shareholders would not be applicable. Therefore, we do not believe the shareholders would be harmed by exempting emergency acquisitions from the securities laws and, in fact, the bank shareholders would stand to benefit from speedy resolution of the bank's problems. We suggest that paragraph (3) of section 1 of the bill be amended as follows: "(f) Notwithstanding any other provision of this section or *the provisions of any Federal or State securities statute * * **" (New language italic.)

WAITING AND COMMENT PERIODS

We agree with the proposed amendments in the bill to reduce the waiting and comment periods in sections 3(b) and 11(b) of the Act. The comparable authority for emergency actions in the Bank Merger Act has worked well, and the Board should have similar flexibility under this Act.

CONCLUSION

I want to stress again our belief that it is imperative that the Congress establish a national policy with respect to major bank failures in the future. Hopefully, the Board will never be required to exercise the authority provided in this legislation, but the Board should be given the necessary powers to act expeditiously to protect the public when required.

Senator McINTYRE. You said in your statement:

Our second concern relates to the 22 bank holding companies that have more than \$500 million in assets, but do not control *one* bank with more than \$500 million in assets. Obviously, the failure of a bank holding company of this size would be of national concern, even though it has no affiliated bank as large as \$500 million.

Wouldn't the situation where a bank holding company fails be better handled by looking at each individual bank than by some way of saving the bank holding company?

Mr. BEETON. I don't understand——

Senator McINTYRE. What's the situation where a bank holding company fails? You've got to look at each individual bank and the bank holding company?

Mr. BEETON. I think if you look at our own company we have 1 bank out of 23 banks that is a little under \$500 million. This bill would not cover the company even though my company is about \$1 billion in total assets.

The bill simply would not be applicable to us where you have the \$500 million limitation. This is a situation where at least one bank in the holding company hasn't reached that level. Now, as I say, in our own case we are \$1 billion in resources with 23 banks and Falls Church is just under \$500 million, so that would not be covered.

Senator McINTYRE. You express concern where a large bank holding company finds itself in trouble. Is it safe to assume that in such a case a bank subsidiary will ordinarily be tapped for additional resources and to what extent is this possibility taken into account under present regulations?

Mr. BEETON. It's not possible.

Senator McINTYRE. It's not possible?

Mr. BEETON. It's not possible.

Senator McINTYRE. Mr. Beeton, the situation on the Senate floor requires my presence for a few minutes. I hope to be back but I'll ask Mr. Weber to ask the remaining questions for me.

If I don't get back, thank you very much for being here.

Thank you, Mr. Rogers.

Mr. ROGERS. Yes, sir.

Mr. WEBER. Doesn't the acquisition of an instate bank by a bank holding company where the acquisition is not permitted under State law cause some anticompetitive results to the other banks and the bank holding companies located within that State?

Mr. BEETON. Is the question does the acquisition by an in State bank by an out-of-State bank holding company cause problems within the State?

Mr. WEBER. What we're trying to get a handle on are the policy problems you run into where you have a situation where a bank is owned by a bank holding company as limited by State law. If you have a bank holding company within a given State under the emergency situation, the acquisition of another bank would obviously make it a multibank holding company and therefore, in contradiction to interstate law.

On the other hand, a merger partner could come in and acquire a bank and become a one bank holding company, which would comply to State law. What should your choice be under the circumstances from a congressional policy standpoint?

Obviously one way or the other we are going to have to override State law.

Mr. BEETON. Well, we think it's healthy and probably in the best interests of the current banking structural balance to have the in-State one bank holding company. In these cases a national policy is required to prompt such company to acquire an additional bank if the acquisition otherwise measures up to the bank holding company act requirements or the State bank requirements.

Mr. WEBER. Given the incentive for a bank or bank holding company to gain a foothold in another State via the acquisition route, does this create in any way additional incentive for a bank holding company to overreach its own capital limitations?

Mr. BEETON. I don't think the bank holding company would seek to support and have a further commitment to a failing bank without adding the capital. I don't believe it would be authorized to do that, in the first instance by the Federal Reserve Board and I do not think prudent management would follow that course of action.

Mr. WEBER. There is a question of what the prospects are for a repeat of the capital-short environment which provided the basic thrust of this legislation whether it is likely to again come into play.

Mr. BEETON. With respect to the capital shortage that has existed in the past.

Mr. WEBER. That's correct. But to what extent could we expect to encounter that again in the future?

Mr. BEETON. Oh, well, much depends on the economic forces of the day. Economic decisionmaking or forecasting is so tentative

and active that it is difficult to—it would be difficult, considering the past 15–18 months' environment, to predict just when occasions might arise in the future for the need of this bill.

I'm not—I don't have available information that the supervisory authorities might have in their files but I don't think there is anything on the immediate horizon which would tell us that we're going to have a period similar to that 6 months period (May–November) that we had a year ago, but we exist in a world market and these are difficult times and have been difficult times, and I think that we need the legislation in the event that we should again have periods of liquidity crisis such as existed last year.

Mr. WEBER. You seem to be very sympathetic to this bill, but you make no mention of whether present regulation might not be improved so as to obviate the need for this legislation. What are your thoughts about this?

Mr. BEETON. As a practitioner or user of the regulations and all three regulated banks in our bank holding company, I cannot be critical of the methods and standards that the various agencies use. In my particular bank holding company, we use the FDIC, the Comptroller of the Currency and Federal Reserve System examiners and I find them all to be helpful.

The differences are the various problems can come up within a banking organization, particularly one of some size, dealing in other than local markets. I mean the problems can come up quickly—much like a storm at sea.

It is very difficult to try to regulate judgment making as long as we have the private banking system that exists in the United States today. It is very difficult in my judgment to think of all the regulations that you might have short of just supplanting the judgment-making process with regulation.

The judgment making process in banks—I just don't see how you could improve upon that or have any new form of regulation which would take the place of this in this bill.

Mr. WEBER. In your statement you call for a national policy to deal with large bank failures. This would seem to imply two things. One, the possibility of future failures; and two, raises the issue of whether we as a nation should continue to be hung up about the relationship of public confidence and bank failure.

Would you please comment on these two points?

In other words, should we be so concerned about the way the public confidence will react in light of recent history of bank failures? Should we be so concerned?

Mr. BEETON. Well, in my view there is a necessity to maintain as high a level of public confidence in all financial institutions as possible. Oftentimes a problem appears to be a problem today, will be worked out tomorrow and that will depend upon things that are beyond the control of the bank or the other similar institutions.

Something might occur outside (externally) that will create problems but I think that's the highest level of the confidence should be maintained and that we should to continue the policy that has existed with regard to that.

Mr. WEBER. On page 2 of your statement, you express strong preference for exhaustion of in-State remedies before going interstate.

This would seem to be in direct opposition to the testimony of the Justice Department that from a concentration standpoint out-of-State acquisitions are preferred.

Would you please comment?

Mr. BEETON. Well, that statement is made with respect to the current banking structure; that is, we support the State banking structure, at least the structure built around the State system as opposed to the Justice Department—pardon me, go back a minute.

Concentrating entirely within the State for taking over failing banks or an emergency situation merging with another bank, you would have the tendency to increase your concentration because if the first, second, third or fourth largest bank should have to be taken over there would be few viable sizable banks in the States that could take one or the other of those over.

So you have the concentration problem. Our statement here is intended to go as far as we can within the State and hopefully not violate any of the concentration prohibitions; but we do subscribe to the notion of permitting in-State banks to have the first choice and allowing them to assume the burden of the failing bank whenever possible and then going out-of-State, if that's the next step.

But it does provide the flexibility for the Board to do that rather than to take many months as happened last year in the Franklin case to try to perhaps work out something with in-State banks but then there was a question at the end of whether any of the domestic banks in New York could take over the Franklin Bank because or possible antitrust problem.

Mr. WEBER. What is the rationale for your preference of acquisition by domestic institutions as opposed to foreign institutions?

Mr. BEETON. We regulate the domestic institutions and up to now, we don't regulate the foreign institutions. You have substantial concentration in foreign banking. A representative of the Justice Department mentioned earlier this morning that we have almost 15,000 banks in this country and compared to any other nation of similar size we are highly decentralized. We have decentralized banking by numbers but perhaps concentrated in asset size at the upper end to a certain extent.

Mr. WEBER. We, as you know, the subcommittee at some point toward the end of the year, hopes to take the up Fed's bill concerning regulation of foreign banks. In your point 4, on page 2, when you say the Board should "consult" with the primary regulators, does this, in your opinion, mean concurrence of the primary regulator?

Mr. BEETON. No, that isn't. We know that all of the agencies work together. I've had firsthand experience with regard to one failing bank and I know they work together, but we do not think that you should receive—that the Board should have to receive the prior certification of an emergency situation prior to acting because when an emergency exists, it exists and in the interest of time, we think that the requirement should not be included in the bill.

Mr. WEBER. So you believe the ultimate authority to handle it would be the Federal Reserve Board. The Federal Reserve Board as the single authority to approve or disapprove?

Mr. BEETON. Yes.

Mr. WEBER. In his prepared statement Chairman Wille said, "A merger frankly is the easy supervisory answer to a problem bank." Now Chairman Wille also mentioned two additional options: (1) stepped up financial assistance to a failing bank; and (2) the chartering of a new bank to assume the assets of a failing one.

How do you view the effectiveness of each of these tools and do you agree with Mr. Wille that in banks with assets of under \$2 billion that the FDIC's present ability to act is adequate?

Mr. BEETON. Well, now, to answer the first question. He's in the insurance business and up to this time he's been able apparently to fund the problem banks by making arrangements to have their deposit liabilities assumed by others through the use of current receipts.

Now, as a subscriber or user to the insurance program of the FDIC, I can say they raise the level of premium assessments or reduce rebates each time they do that. So, therefore, it does add to our costs as insureds, each time that the corporation (FDIC) has had to do that. I'm convinced that this is one alternative to the problem. I can tell you that the loss to the stockholders and, therefore, the equity that is involved in the bank, suffers from the chartering of a new bank or the assumption of the bank's liabilities by another bank even though the Chairman spoke of the fiduciary relationship that exists between the FDIC as receiver and those shareholders. It is in my view more costly than working out an arrangement between another bank or bank holding company to take over the failing bank.

I think that I can demonstrate to you that you would be saving more money in the end by working out an acquisition of a failing bank rather than trying to rely on the corporation (FDIC) which has about \$6 billion in trust funds and another \$3 billion available borrowing capacity to take over failing banks. But in this case it would seem to me that the private sector could work out the failing bank problem first with the private—another bank in private sector, a bank holding company rather than relying on the FDIC.

I'm sure the Board will certainly consider its alternatives in that regard.

Mr. WEBER. I'd like to ask you several questions that other witnesses have answered.

The Comptroller has suggested that out-of-State acquisitions, if permitted, should extend to banks as well as bank holding companies. Would you please comment?

Mr. BEETON. Should?

Mr. WEBER. Should extend to banks as well as bank holding companies.

Mr. BEETON. Yes, if you could have out-of-State merger as well as bank holding companies acquisitions. Our association has not taken a position on that. Personally, I would say that the logic would appear to be about the same.

There are some administrative difficulties in my view in his proposal, simply because a State bank may be involved. Our present banking structure—in our present banking structure assuming you permitted interstate mergers, you could have State banking authorities of one State supervising a bank that is engaged in interstate banking through branches in more than one State. But from the national bank point of view I could see the logic to his proposal. He supervises all national banks.

Mr. WEBER. What about the concept of emergency? No where is the term defined. What should be the parameters in this type of legislation?

Mr. BEETON. I think when it's known upstairs that there is not enough money in the bank to pay the incoming credit letter that a true emergency exists, a situation can develop over a period of time or it is suddenly discovered that there is a tremendously large loss that results either from a trading account fictitious loans, or from some form of embezzlement or other type of activity.

I would think that the Federal Reserve Board would be in the best position to make that determination. It is very difficult to define.

Mr. WEBER. What about the Board's suggestion that the permissible number of out-of-state acquisitions might number more than one, but, say, less than five?

Mr. BEETON. I think that that would be a—certainly an approach to the problem or the question that some concern has been expressed over more concentration within States. I would think that that would be an approach to it. I would rather see it as it is, being aware of the Board's past concern over concentration and administration of other laws, I would think it would be better to leave it more flexible and if a problem develops, then the Congress could address the problem at that time.

Mr. WEBER. I have some additional questions here but perhaps only for the record. I have no further questions.

Mr. MARINACCIO. I have only one question. Of course, public confidence is extremely important in bank institutions. How best can public confidence be enhanced—whether by better regulation or by disclosures or rather by this kind of merger legislation, which some feel might create a disincentive to effective regulation. You say that the Board be authorized to move while there is still some degree of equity left in the institution.

Why shouldn't the controlling group controlling shareholders—why shouldn't it be a condition that before the Board could approve one of these acquisitions controlling shareholders equity would be eliminated? This would prevent controlling shareholders from being unjustly enriched by unsound banking practices—we all know that the remaining properties of distress banks represent valuable properties in most cases.

May I have your comment on that, please?

Mr. BEETON. I'm not quite sure what you want me to comment on.

I don't believe that the controlling shareholder exists, depending upon what you mean by controlling shareholder. Whether some particular law will enrich that person. I don't think that any of the banks or other businesses or bank holding companies start out on the premise that they are going to be a failure and therefore that they are going to have some special rights or privileges as a result of bad judgment on the part of the directors, officers or trustees that they have entrusted their funds to.

I simply don't believe that there would be any advantage to any shareholder as a result of the poor policies within a bank or bank holding company related to this bill.

Does that answer your question? I'm not quite sure.

Mr. MARINACCIO. Not really, but I think the focus of the question was if shareholders and the management representing shareholders

particularly controlling shareholders do engage in unsafe and unsound practices to the extent to which they put in extreme distress whether or not their equity control should be eliminated before their public remedy has given them that advantage.

Mr. BEETON. I certainly don't think that they ought to be permitted to—these outside forces should be permitted to put the bank or bank holding company in such distress and there should be regulations to prohibit that.

Senator PROXMIRE. Gentlemen, what concerns me most about this legislation is the effect it may have on concentration, making the big banks bigger and concentrating banking resources. We've had a very strong tendency over the last few years and particularly the last 3 or 4 years of greatly increasing the size of our biggest banks, the 10 biggest banks, the biggest banks have greatly increased their proportionate share of total assets over a few years ago.

It seems this legislation may very well defeat that. I recognize it is a very serious problem, but I think the nature of the problem is that the banking capital has become a much smaller proportion of bank liabilities. Big banks have super leverage. Now with the average capital or the 10 biggest banks around 4 percent, they are vulnerable to a sharp blow or setback or some major mistakes. This was not the situation before. I just wonder if there isn't some way that we can reestablish the fine record we had in the 1930's, and 1940's and 1950's—Since the FDIC was established in the early 1930's, we had no significant bank failures until the 1970's. Why do we need this?

Mr. BEETON. We need this in the event that as a result of a series of judgments or in the event that the financial markets change and they are tentative and do change rapidly almost, so it is very difficult at times to plan or forecast matters or things that come into play in the economic market.

We can in the trading account, we don't have trading accounts or deal in foreign funds but I can see the rapidity with which events can occur.

Senator PROXMIRE. Why can't we have better and more careful regulation, insisting on sounder banking, measures that would help prevent the three or four banks that got into serious trouble in the last 3 or 4 years? Why wouldn't this do the job?

Mr. BEETON. If you did that, you would have to have a series of regulations about what investments a bank can or cannot make, and this would be entirely different than currently exists. Even then the matter of judgment is going to be broken and you are going to have situations which in my view, develop just from being in business.

Senator PROXMIRE. They didn't develop by the way, in the 1940's, 1950's or 1960's. It seems to me if the regulators had been doing their job and were on top of the situation and acted in time, we wouldn't have had these problems and the very difficult situations we admittedly have now.

It seems to me the answer is sound regulations rather than permitting the big shark to swallow the not so big shark. Perhaps I should say whale. I should not say shark, not in this day and age of "Jaws."

Mr. BEETON. Again, it is a matter of what you would say to the particular bank management at the time and perhaps they need stronger tools to take action and perhaps that area of the regulation should be reviewed. I do think that when you do have problems and will continue to have them over the years that the Federal Reserve Board should have such authority as is set forth in this bill.

Senator PROXMIRE. My point is, they have the tools, they could act, but they haven't acted. They could have acted since 1969 with respect to U.S. National and 1970 with respect to Franklin but they didn't do this.

Mr. BEETON. I'm not too familiar with this observation. But there is a case in New Orleans I think it was in the courts for 7 or 8 years. It was a problem bank. I'm just—if you need more authority to regulate the management judgment making process within the banks, then they should have it.

Senator PROXMIRE. I'm not talking about that. It is an extremely high standard proof I think.

Mr. BEETON. Well, I think they were trying to get rid of the controlling shareholders in the bank in New Orleans.

Senator PROXMIRE. Would you gentlemen agree that these issues I'm going to list should be resolved before we move forward with the legislation?

This was the statement by the Chairman of the Federal Deposit Insurance Corporation who testified here and who has lots of experience. These are the issues he said we should resolve first.

The future of interstate banking; two, 100 percent insurance for all deposits; three, the financial and legal capacity of the FDIC to work out the problems of the large banks in distress; four, the role of the Federal Reserve in banking regulations generally; and fifth, the treatment to be accorded shareholders and bondholders of a bank in distress.

You feel that this is a pretty good list of issues that we should resolve and should be resolved before we act on this legislation?

Mr. BEETON. I feel that the distinguished chairman has given you a list to work on but I also feel that in view of the nature of this particular bill with its limited scope, that you could proceed with this and then take up those other issues that he has referred to there.

Senator PROXMIRE. All right.

Thank you very, very much.

I understand that Chairman McIntyre had to be elsewhere. I want to thank you for your testimony.

The subcommittee will stand recessed.

[Whereupon, at 11:30 a.m. the hearing was adjourned.]

[The following letters were received for the record:]

GOVERNMENT RELATIONS

AMERICAN BANKERS ASSOCIATION 1120 CONNECTICUT AVENUE, N.W., WASHINGTON, D.C. 20036

EXECUTIVE DIRECTOR
GERALD M. LOWRIE
202/467-4097

July 25, 1975

The Honorable Thomas J. McIntyre
Chairman, Subcommittee on Financial Institutions
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D. C. 20510

Dear Senator McIntyre:

The purpose of this letter is to outline the views of the American Bankers Association on the first section of S. 890 which would amend the Bank Holding Company Act of 1956 by providing the Federal Reserve Board with special procedures and additional flexibility in dealing with bank holding company acquisitions of banks or bank holding companies in emergency situations.

For purposes of comment, the bill can be divided into two sections: the first would streamline the emergency procedures for a bank holding company's acquisition of a bank or bank holding company facing financial difficulties; the second section would permit a bank holding company to acquire an out of state bank or bank holding company in similar circumstances. Our comments in this letter are directed toward the first section of the bill which we view as relatively noncontroversial. We would like to defer forwarding the posture of our Association on the second section of the bill pending a more thorough analysis of the recently submitted statements of the Federal bank regulatory agencies as to its implications.

Under existing provisions of the Bank Holding Company Act, the Federal Reserve Board is required to give 30 days advance notice to the primary supervisor of any bank involved in a contemplated acquisition by a bank holding company and to provide for a hearing if the primary supervisor objects to the acquisition. There is also a provision for an additional 30 day delay subsequent to approval of the acquisition by the Federal Reserve Board so as to provide the U. S. Department of Justice with an opportunity to initiate an action challenging the acquisition under the antitrust statutes. Unlike the Bank Merger Act, no provision is contained in the Bank Holding Company Act which authorizes the Federal Reserve to expedite these procedural requirements in emergency or failing bank situations.

Section one of S. 890 would amend the Bank Holding Company Act so as to bring its emergency procedures into conformity with those presently applicable under the Bank Merger Act. More specifically, the Federal Reserve would be authorized to reduce to 10 days the period for submission of views by the primary supervisor of the bank involved in emergency situations, completely dispense with notification of the primary supervisor, or require the immediate submission of his views. Furthermore, the Board may discount any adverse recommendation received from the primary supervisor when the Board finds "that it must act immediately...in order to prevent the probable failure of a bank or bank holding company involved in a proposed acquisition..." In addition, under the proposed amendment, when the Board acts in accordance with the 10-day notice procedure, the acquisition can be consummated 5 days after Board approval. Finally, when the Board grants immediate approval, an acquisition can be consummated immediately, without time to afford the U. S. Department of Justice an opportunity to challenge an acquisition prior to consummation.

Based on comments and statements made by the Federal bank regulatory agencies in connection with the problems encountered over the past two years in dealing with certain bank failures or potential failures, we recognize a need for augmenting the existing acquisition procedures available to the Federal Reserve Board in dealing with such emergencies. Accordingly, we view section one of S. 890 as representing an appropriate extension of the failing bank doctrine and as providing a reasonable means of handling emergency situations for bank holding companies and banks. Our Association, therefore, endorses favorable consideration of this portion of the bill by your Subcommittee on Financial Institutions.

As indicated above, the second section of the bill, providing for the acquisition of failing banks or bank holding companies by bank holding companies across State lines, is more controversial in nature and raises many important policy issues on which even the bank regulators have found difficulty in reaching agreement. While some of the concerns may be more hypothetical than real, we too see a number of basic questions which must be carefully addressed.

Our Association appreciates this opportunity to express our views on the first part of the bill, and we will convey our recommendations on the second part of S. 890 in the very near future.

Sincerely,


 Gerald M. Lowrie
 Executive Director
 Government Relations



OFFICE OF THE EXECUTIVE VICE PRESIDENT-ECONOMIST

July 25, 1975

Senator Thomas J. McIntyre
 Chairman
 Senate Subcommittee on Financial
 Institutions
 Dirksen Building--Room 5300
 Washington, D. C. 20515

Dear Senator McIntyre:

RE: S. 890

The Conference of State Bank Supervisors (CSBS) whose regular members comprise the primary regulatory and supervisory authorities for the Nation's nearly 10,300 state-chartered commercial and mutual savings banks is pleased to express its views with respect to S. 890.

The bill contains two major proposals. The first would amend Section 3 of the Bank Holding Company Act which now requires that in connection with proposed bank holding company mergers, acquisitions or consolidations the Fed shall give thirty-day advance notification to the primary regulator - the Comptroller of the Currency or the appropriate state bank supervisor. S. 890 proposes to amend Section 3 of the Act to permit the Federal Reserve Board, when it determines that a bank of \$500 million or more in assets, or a bank holding company controlling a bank of such size is in severe financial difficulty to: (a) shorten to 10 days the period required for the primary regulator of the bank involved in a bank holding company acquisition to submit his views or recommendations; (b) require the immediate submission of such views; or (c) eliminate entirely the notification to the primary supervisory authority if the Fed finds it "must act immediately on any application for approval under this section in order to prevent the probable failure of a bank or bank holding company involved in a proposed acquisition, merger, or consolidation transaction..."

While the Conference of State Bank Supervisors agrees in principle with the desirability of facilitating emergency-type acquisitions, consolidations or mergers of failing

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banks or bank holding companies, it is strongly opposed to the waiver of notification requirements as specifically proposed in S. 890. The Conference believes that in all intrastate and interstate acquisitions, consolidations or mergers under the Bank Holding Company Act provisions, the primary regulator - the Comptroller of the Currency or the appropriate state bank commissioner - should be notified in advance of action contemplated by the Fed; that the concurrence of such primary regulatory be given before the Fed could act under the proposed amendments to the BHCA; and that such actions be consistent with the principle of competitive equality as set forth by Congress and the Courts relative to the McFadden Act.

In situations involving emergency mergers or acquisitions, the primary supervisory authority would almost without exception be actively and intimately involved in the process of locating and evaluating possible acquirers of the troubled institution. It would seem unrealistic to disregard the views of the primary regulator in such instances, or for the Fed to proceed in these situations absent notification to or concurrence of such official. Notification and concurrence requirements would also tend to lessen the danger of usurping state authorities in the matter of determining the banking structure within a state, a prerogative to which the Congress has shown deference in the past.

The second important proposal contained in S. 890 would amend the Bank Holding Company Act by authorizing the Federal Reserve Board to approve out-of-state acquisitions or mergers when the Fed determines that a bank of \$500 million or more in assets, or a bank holding company controlling a bank of such size is in severe financial difficulty. At the present time, under the Bank Holding Company Act, an out-of-state acquisition is prohibited to bank holding companies unless the acquisition is specifically authorized by the laws of the state in which the bank to be acquired is located. The effect of this requirement is that out-of-state acquisitions, for all intents and purposes, are prohibited to bank holding companies. S. 890 would give deference to state law in interstate acquisitions by prohibiting more than one acquisition in the same state by the same out-of-state holding company if state law prohibited multibank holding companies, and the bill would not permit an emergency acquisition by an in-state holding company if state law prohibited such acquisition.

CSBS does not believe that any clear showing has been made that the out-of-state acquisition authority under the BHC Act is needed at this time as a matter of national policy.

FDIC Chairman Frank Wille, in a speech before the Conference of State Bank Supervisors on April 29, 1975, addressed himself to the capacity of the FDIC to work out the problems of a large failing bank. In Mr. Wille's speech, a copy of which he provided to your subcommittee at the time of his appearance on July 22, he noted that the FDIC's trust fund is now \$6.2 billion; that its current income is running about \$1 billion per year; and that the Corporation has

the right to call on the Treasury for \$3 billion more if this is needed for insurance purposes. Mr. Wille added that the above constituted "considerable assurance that the FDIC, financially, can handle more frequent and even larger bank failures and near-failures..." than those involving the \$1.2 billion Bank of Commonwealth, the United States National Bank and the \$3.6 billion Franklin National Bank.

In addition to the absence of a clear showing that the out-of-state acquisition authority is needed at this time under the proposed amendments to the Bank Holding Company Act, S. 890 raises the questions of interstate banking, and whether, if such activities are valid for bank holding companies, they should also be permitted to banks. These are questions of such importance, and with sufficient ramifications to the banking structures of all fifty states, that Congress should consider them within a context broader than that involving a legislative proposal for handling banks or bank holding companies that might become serious problems at some future time.

In considering questions inherent in a bill of this nature, CSBS desires to point out that while the interstate provisions of S. 890 would permit a larger number of bidders for a troubled bank or bank holding company, and thus facilitate efforts of the regulatory authorities, the bill does contain incentives to solve such problems via out-of-state rather than by in-state means, even when anti-competitive factors do not exist relative to an in-state acquisition or merger. This situation would arise whenever an out-of-state bank holding company, desirous of gaining access to a distant market area, offers a higher premium to stockholders or debenture holders than that made by an in-state bank holding company for a troubled bank.

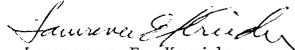
Another problem which the Conference of State Bank Supervisors has considered in connection with S. 890 is whether the \$500 million cut-off figure should be increased or lowered. There is a divergence of views among our Supervisors on this issue. Some believe, as does FDIC Chairman Frank Wille, that the cut-off figure should be raised perhaps to \$2 billion on the grounds that interstate acquisitions or mergers should be limited to those few situations where present methods for handling troubled banks and bank holding companies would be inadequate. On the other hand, some of our Supervisors believe the figure should be reduced to \$100 million or a lower figure, feeling that the failure of a smaller bank in a non-money center state could prove tragic to the residents of such state.

In summary, while CSBS supports amendments to the Bank Holding Company Act to permit prompt or immediate mergers or acquisitions of failing banks or bank holding companies, CSBS insists that notification to and concurrence of the primary supervisor be required before the Federal Reserve Board is permitted to act under amendments proposed in S. 890. Because there has not been a clear showing

that the out-of-state amendments to the Bank Holding Company Act are necessary at this time, and because of the serious questions raised by such a provision, CSBS cannot support this section of S. 890 as presently written.

If, despite reservations expressed by CSBS, the Subcommittee believes that as a matter of national policy a measure similar to S. 890 is necessary, CSBS urges that such legislative proposal be considered to be of an emergency nature; that it be limited in effectiveness to no more than two years after enactment, with the provision for a Congressional review one year following its enactment to determine whether or not it should be allowed to expire.

Sincerely,


Lawrence E. Kreider
Executive Vice President -
Economist

LEK:drj

President
 KENNETH J. BENDA, President
 Hartwick State Bank
 Hartwick, Iowa 52232

First Vice President
 CHARLES O. MADDOX JR., President
 The Peoples Bank
 Winder, Georgia 30680

Second Vice President
 EDWARD A. TRAUTZ, President
 East Lansing State Bank
 East Lansing, Michigan 48823

Treasurer
 WILLIAM P. GIVENS, President
 The Merchants National Bank
 Muncie, Indiana 47305



Independent
BANKERS ASSOCIATION OF AMERICA

OFFICE OF THE
 PRESIDENT

EXECUTIVE DIRECTOR: HOWARD BELL • SECRETARY: GENE MOORE
 BOX 217, HARTWICK, IOWA 52232

July 28, 1975

The Honorable Thomas J. McIntyre
 Chairman
 Subcommittee on Financial Institutions
 Committee on Banking, Housing and
 Urban Affairs
 5300 Dirksen Senate Office Building
 Washington, D.C. 20510

Dear Senator McIntyre:

Thank you for the invitation to appear before the Subcommittee on Financial Institutions of the Senate Committee on Banking, Housing and Urban Affairs with respect to S. 890, a bill to amend the Bank Holding Company Act of 1956 to provide for the acquisition of failing banks on an interstate basis in emergency situations. Unfortunately, and as we informed the staff early last week, due to scheduling conflicts, those bankers in the Association which specialize in this area are unavailable, and we hope the following written comments will be a satisfactory response. IBAA does, however, very much appreciate the Subcommittee's thinking of us with regard to this important subject.

First, we offer no objection to bring the Bank Holding Company's notification requirements into parity with similar stipulations in the Bank Merger Act, the effect of Section 1 (1) of S. 890.

Second, we are profoundly concerned over Section 1 (2) and (3) which would allow the Federal Reserve Board to permit bank holding companies to acquire additional banks located outside of the State in which the operations of such bank holding companies' banking subsidiaries are principally conducted.

Initially, we would like to turn to some technical points in these parts of the bill which we believe need to be cleared up in any event. The \$500,000,000 triggering mechanism of the new subsection (f) on page 4, lines 9-25, and page 5, lines 1-4, is addressed to both banks with assets in excess of \$500,000,000 and to bank holding companies controlling a bank with assets in excess of \$500,000,000. Obviously a failing bank with such assets could be acquired regardless of who was the owner. However, does the bill also mean that, if the bank holding company with a bank in excess of \$500,000,000 and with other smaller depositories in its structure got into difficulties for reasons quite beside anything related to any of its bank activities -- say, a faulty finance company subsidiary operation -- that these solvent bank properties could be acquired on an interstate basis simply because the holding company happened to own a perfectly sound \$500,000,000 bank? Indeed, does the action language of the bill go as far as its stated purpose on page 1:

"...to provide special procedures for the acquisition of failing banks or bank holding companies and for the acquisition of banks or bank holding companies in emergencies...."

It seems to us that these ambiguities are fairly important matters since they raise the question of whether this is legislation aimed at shoring up banks, those central facilities of community financial life which such depositories are, or at underpinning bank holding companies, which do not have anywhere nearly similar responsibilities to the public. If S. 890 is acted upon by the Subcommittee, IBAA would hope that the measure would definitively state that it is meant only to cover banks which are in serious trouble.

However, even more importantly we are disturbed over the modifications these changes would work on the present effects of the interstate acquisition ban which then Senator Douglas of Illinois attached to the Bank Holding Company Act on the floor in 1956. At that time, he was seeking some certain statutory tool, that was not dependent on judicial interpretations of the general antitrust laws, which are inherently vague and conducive to prolonged litigation, to prevent heavy concentrations of deposits and, hence, economic power in a few nationally oriented bank holding companies. IBAA believes he found that instrument, and we have been supporters of its letter ever since.

One can sympathize with the difficulties faced by the Federal financial regulators when dealing with situations such as that involving Franklin National Bank and can believe that Governor Holland's testimony on S. 890 had some merit. Nevertheless, as we assay intrastate concentration trends and court opinions based on present law dealing with the intrastate operations of multibank holding companies, IBAA cannot subscribe to an erosion of the Douglas formula for preventing such trends on an interstate or national scale. As discussed subsequently, if there are problems with failures, the better solution seems to be closer supervision instead of encouraging "take overs" as substitutes for scrutiny.

We would like here to cover the nature of intrastate tendencies to illustrate our point as far as the rise of concentration in general is concerned. Although bank holding companies' growth slowed after passage of the 1970 amendments to the Bank Holding Company Act, the share of commercial bank deposits held by bank holding companies continued upward from 55% in December 1971 to 65% in December 1973. By year end 1973, bank holding companies controlled more than 60% of commercial bank deposits in each of 21 states. Furthermore, the five largest banks (mainly multibank holding company banks) controlled more than 85 percent of deposits in the state's major metropolitan markets in 13 of these states.

Nearly all of the Nation's largest banks are now owned by multibank holding companies. In numerous states, especially those with unit banking or restricted branching, the bank holding company movement has, since 1970, entailed a rapid consolidation of banking units. (Samuel B. Chase, Jr., and John J. Mingo, "The Regulations of Bank Holding Companies", a paper presented at the December 1974 meeting of the American Economic Association, p. 3) As the bank holding company movement has matured, however, some fundamental changes in the direction and speed of holding company expansion have become apparent. A reduction in bank holding company expansion occurred in 1974 due largely to a drastic decline in the price of bank holding company stock which increased the difficulty of making acquisitions of other banks. (Business Conditions, Federal Reserve Bank of Chicago, February 1975, p.3. While the total number of bank holding company and merger applications acted upon by the Fed fell from 717 to 671 in 1974, a 6.4% decline, the "denial rate" increased significantly from 4.3% in 1973 to 7.1% in 1974. However, the rate of rejections of bank holding company formations was largely responsible, rather than an increase in the rate of rejections of acquisitions.)

While the Fed was belatedly tightening its policy toward bank holding company growth, a countervailing policy toward bank holding company growth by acquisition was established in 1974 by the Supreme Court in its landmark decision in United States v. Marine Bancorporation, Inc., et. al. (418 U.S. 602) In this antitrust case the Government challenged an acquisition by a bank holding company of a bank in a geographic market, though in the same state, other than the one in which it was a competitor, on the ground that it would lessen the competitive potential of the bank holding company. In its decision the Supreme Court held that in applying the doctrine of potential competition to commercial banking, courts must take into account the effect of extensive federal and state regulation of banks, and in particular, state statutory barriers to de novo entry and to expansion following entry into a new geographic market. (418 U.S. 602) In effect, the decision removes the restraints of the Clayton Act from geographic market extension mergers by bank holding companies in any state which limits branching or restricts the activities of bank holding companies. Thus, in 31 states where such state limitations exist, bank holding companies can acquire independent banks outside their geographic markets -- though only in the same states due to the Douglas Amendment -- relatively free of antitrust law constraints.

In a more recent decision in U.S. v. Citizens and Southern National Bank et. al., the Supreme Court further limited the effectiveness of the antitrust laws in restraining the growth of bank holding companies by acquisition or merger. Justice White, in a minority opinion, pointed out that the decision permits the dominant commercial bank in Atlanta further to entrench its position and that two other rivals, which together with C&S control more than 75 percent of the banking business in Atlanta, would probably follow suit, further increasing concentration in this market. (Supreme Court opinion of June 17, 1957.)

Given these trends, IBAA places great importance on those laws which discourage their emergence or perhaps more accurately, their further emergence, in an interstate or national dimension. We believe S. 890 would have the opposite effect.

Above, this letter made mention of another solution to the "Franklin" situation--closer supervision. One realizes this can be a hard course to take, especially when one considers that a very short period of disastrous trading in foreign exchange can impair solvency. Nevertheless, it is a better route than abetting larger and larger holding company grids that, in themselves, are more difficult to oversee and examine. If the

regulators need more examination or cease and desist authority in emergency circumstances, IBAA believes it could be devised and would be the better approach.

Finally, we would also point to Chairman Wille's statement to this Subcommittee that the FDIC "can probably handle successfully and with reasonable dispatch the potential failure of virtually any bank with less than \$2 billion in assets and, depending on the circumstances, banks of even larger size." (Appendix p. 14 to Statement of Frank Wille, Chairman of the FDIC on S. 890, July 22, 1975) Therefore, at a minimum, S. 890 and its \$500,000,000 floor seems to us to be "overkill". Furthermore, IBAA would also like to associate itself with those remarks of the FDIC Chairman in the same testimony demonstrating the great range of undesirable discretion vested in the Federal Reserve Board in determining when, or when not, to use the new authority it has requested. Indeed, outside of the \$500,000,000 base and some attention in Section 2, on page 5, lines 15-18, to State embargoes on multibank holding companies, the bill is devoid of meaningful checks on the Board's capacities, unless one considers Section 3, relating to notifications to the Justice Department, "meaningful". Even here, however, the Attorney General must commence action at the earliest time the acquisition could be consummated. If it is a probable failure situation, consummation can occur immediately upon Board approval. In effect, this means the Justice Department would have almost no say in the matter whatsoever.

With these considerations in mind, IBAA is able to support Section 1 (1) of the bill but does not believe the public interest would be best served by enactment of the balance. Hoping these comments are of use in the mark-up scheduled for tomorrow, I am

Very truly yours,



Kenneth J. Benda
President

KJB/pas

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