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THE PLACE OF CONGLOMERATES AND CONGENERICS IN BANKING

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Since the passage of the Bank Holding Company Act of 1956[1] on May 9th of that year, conglomerates have been able to enter or remain in banking, practically speaking, only through the vehicle of the one-bank holding company. The 1956 Act required holding companies owning 25 percent or more of two or more banks, with certain exceptions, to register with the Federal Reserve Board. Registered bank holding companies could not own a nonbank subsidiary unless the Board determined that the subsidiary's activities were "so closely related to the business of banking or of managing or controlling banks as to be a proper incident thereto. . . ."[2]

Financial congenerics are firms active in several related areas of finance.[3] Banks which diversify into financially related fields via the one-bank holding company or financial firms not in banking which diversify into banking using the same vehicle are financial congenerics. Since the ability of a bank to diversify directly into financially related fields is very much circumscribed by the national and state banking regulatory authorities, financial congenerics active in banking have recently chosen the one-bank holding company as the vehicle for expansion within the desired range of activities. Exempted by the 1956 Act, one-bank holding companies have essentially been beyond regulation by banking authorities.[4] Thus, the history of conglomerates and congenerics in banking since 1956 is essentially the history of one-bank holding companies.[5]

There has been a very substantial increase in the number of one-bank holding companies since the passage of the 1956 Act. At the end of 1955,

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1 Act of May 9, 1956, ch. 240, 70 Stat. 133, *as amended*, 12 U.S.C. § 1841 *et seq.* (Supp. IV, 1968).

2 Hall, *Bank Holding Company Regulation*, 31 So. Econ. J. 346 (1965). *See also* Association of Registered Bank Holding Companies, Bank Holding Company Facts — 1969 (1969); Association of Registered Bank Holding Companies, Compilation of State Laws Affecting Bank Holding Companies (1966); Association of Registered Bank Holding Companies, The Registered Bank Holding Company: Its History and Significance in America (1969); Klebaner, *The Bank Holding Company Act of 1956*, 24 So. Econ. J. 313-16 (1958).

3 *See Financial Congenerics*, Bank Stock Q., June 1968, at 15-19; *Congress and the Congenerics*, Bank Stock Q., Sept. 1968, at 1.

4 As of this writing (December 1969).

5 *See* Weiss, *Bank Holding Companies and Public Policy*, N.E. Econ. Rev., Jan.-Feb. 1969, at 3-29. *See also* Upshaw, *Federal Regulation of Bank Holding Companies*, Fed. Reserve Bank of Richmond Monthly Rev., Oct. 1968, at 2-5 & Nov. 1968, at 2-5; *The Changing Structure of Bank Holding Companies*, Fed. Reserve Bank of Cleveland Econ. Rev., Apr. 1969, at 3-11.

there were 117 one-bank holding companies with commercial bank deposits of $11.6 billion.[6] During the next decade, the number increased, generally among small banks, by a little more than 40 per year.[7] By the end of 1965, there were a total of 550 one-bank holding companies with commercial bank deposits of $15.1 billion.[8] Until 1968, most one-bank holding companies were one of two types; either they were small, closely held, family controlled corporations, or relatively small banks controlled by large nonbanking corporations.[9]

The division in terms of numbers among one-bank holding companies, as of 1967, between congenerics, conglomerates, those in banking alone, and those which were unclassifiable was approximately in the ratio 2:2:1:2. Most were very small. In terms of the total assets of the holding companies concerned, about two-thirds of the congenerics and about one-third of the conglomerates had an asset size of less than $1 million. Some three-quarters of those holding companies which could be classified had an asset size of $10 million or less and only about 9 percent had an asset size of $100 million or more.[10]

Beginning in 1968, and in a few instances even earlier, there was a drastic change in the nature of one-bank holding company formations.[11] Many of the largest commercial banks in the United States formed or announced their intention to form one-bank holding companies. As of September 1, 1968, there were 684 one-bank holding companies with total deposits of $17.8 billion. By December 31, 1968, the number had only risen by seven, but deposits had jumped by $14.1 billion. In addition, between September 1 and December 31, 1968, 76 banks with deposits of $71.8 billion announced plans to form one-bank holding companies. Finally, during the same period, 16 institutions announced plans to purchase banks. Thus, a total of 783 one-bank holding companies with deposits of $108.2 billion had been formed or announced by December 31, 1968. This compared to the June 1968 figure of 106 multi-bank holding companies with deposits of $48.9 billion registered with the Federal Reserve Board. Nationally, 27.5 percent of commercial bank deposits were in existing or announced one-bank holding companies as of the end of 1968.[12]

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6 STAFF OF HOUSE COMM. ON BANKING AND CURRENCY, 91ST CONG., 1ST SESS., THE GROWTH OF UNREGISTERED BANK HOLDING COMPANIES — PROBLEMS AND PROSPECTS 5 (Comm. Print 1969) [hereinafter cited as STAFF REPORT].

7 *Hearings on Bank Holding Company Act Amendments (H.R. 6778) Before the House Comm. on Banking and Currency*, 91st Cong., 1st Sess. 65 (1969) (statement of Treasury Secretary David Kennedy) [hereinafter cited as *1969 Hearings*].

8 STAFF REPORT 5-7.

9 *Id.*

10 Data from Robert J. Lawrence, The Nature of One-Bank Holding Companies (unpublished paper in Banking Markets Section, Bd. of Governors of the Fed. Reserve System), in Hall, *Some Impacts of One-Bank Holding Companies*, in FEDERAL RESERVE BANK OF CHICAGO, PROCEEDINGS OF A CONFERENCE ON BANK STRUCTURES AND COMPETITION, MAY 19 AND 20, 1969 [hereinafter cited as PROCEEDINGS].

11 BARRON'S, Mar. 24, 1969, at 11.

12 *Id.*

The swift increase in the number of one-bank holding companies, and in the size of the participating banks, combined with the number of acquisitions announced, and actually consummated by major banks, raised considerable concern that a major trend in finance was well under way, namely, the formation of large bank-dominated financial congenerics and perhaps large bank-dominated conglomerates. This concern led to hearings before the Committee on Banking and Currency of the House of Representatives (the Patman Committee) in April 1969,[13] which resulted in a report by the Committee on July 23, 1969, of a bill to control one-bank holding companies.[14] Subsequently, on November 5, 1969, the House of Representatives voted a considerably more stringent bill for federal regulation of one-bank holding companies.[15] In effect, this bill would eliminate conglomerates in the banking field and substantially restrict financial congenerics active in banking.

There is little doubt that the rush into one-bank holding companies began when the major banks realized that the one-bank holding company would allow them to do indirectly what they could not do at all directly, or, at least, could not do directly with convenience or with assurance of continued success. After all, the banks were regulated by the various banking authorities while the one-bank holding companies were not; thus, the latter were free to move into any areas whatever except perhaps the securities business. The national banks had been enabled to move into several financial and related areas connected with banking as a result of favorable rulings by the Comptroller of the Currency, but a number of these rulings were challenged by court suits, leading to prolonged uncertainty. Moreover, by the very nature of the legislation governing the national and the state regulatory authorities, the regulators could never provide the scope allowed by formation of an unregulated one-bank holding company. In addition to these considerations, any bank holding company, regulated or unregulated, could issue commercial paper at the market rate of interest while this was impossible for the banks themselves who were subject to Regulation Q.[16] This was potentially important for a number of banks, hard pressed for reserves by the rundown of certificates of deposits due to Regulation Q, and by the increasing cost of using the Eurodollar market combined with the subsequent imposition of reserve requirements on Eurodollar borrowings.[17]

The rush into one-bank holding companies and the trend towards creation of bank-dominated financial congenerics crystallized opposition to

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13 *1969 Hearings.*

14 BANK HOLDING COMPANIES: REPORT TO ACCOMPANY H.R. 6778, H. REP. NO. 387, 91st Cong., 1st Sess. 37 (1969).

15 *See* 115 CONG. REC. 10,544-74 (daily ed. Nov. 5, 1969).

16 The Federal Reserve Board announced towards the end of 1969 that most commercial paper issued by bank holding companies was to become subject to Regulation Q.

17 Also, one-bank holding companies are not required to have preemptive rights and cumulative voting for directors, while national banks are. But this factor by itself did not cause switching to one-bank holding companies.

this major development and generated support for regulation of one-bank holding companies by banking authorities. The reasons for opposition to the trend may be summarized under the following headings: (1) the creation of bank-dominated economic power centers; (2) dangers to bank safety; (3) unfair competition due to tied loans and reciprocal dealing; (4) unequal access to credit; (5) changes in the boundaries of banking, leading to regulatory problems; (6) small town monopoly control through local bank conglomerates; (7) new competition from banks for existing non-banking businesses; and (8) increase in financial barriers to entry in certain non-banking businesses.

1. The Creation of Bank-dominated Economic Power Centers

A one-bank holding company, dominated by the management of the bank which initially created it, could acquire considerable economic power outside the banking industry as the center of a large financial congeneric or even as the center of a large conglomerate. In the case of the larger banks, mammoth corporations could result. This would unquestionably reduce the number and increase considerably the size of economic power centers in the United States. In particular, it would also increase the concentration of liquid assets. This argument against the formation of large bank-dominated one-bank holding companies applies to some extent to the formation of all large conglomerates and congenerics, but it particularly applies to banks as developed below.[18]

The increase in the size of such economic power centers poses some potential dangers. German banks, for example, gained great power over industry, starting in the mid-nineteenth century. The German banks are represented on many boards of directors and control many industrial corporations, through direct ownership of stock and indirect control over stock. This stimulated cartelization of many industries. The Japanese zaibatsu, essentially conglomerates of immense size, provided an even more effective concentration of economic power.[19] In the United States, the unfavorable effects of bank-dominated economic power centers would of course be less, due to the far lesser degree of concentration of American banking as well as the presence of the antitrust laws; but there would certainly be unfavorable effects.

2. Bank Safety

There has been some concern that the formation of unregulated one-bank holding companies could adversely affect the safety of the commercial bank deposits in the affected bank. The reasons are these: (a) unwise extensions of credit to the nonbanking subsidiaries can threaten depositors'

[18] *See 1969 Hearings* 9 (statement of Adolph A. Berle); *id.* at 196 (statement of the Honorable William McChesney Martin, Jr.); *id.* at 350, 360-61 (statement of Peter M. Gutmann); *id.* at 490, 492 (statement of B. Meyer Harris).

[19] *See* Bronfenbrenner, *The Japanese Experience*, in PROCEEDINGS 95-98.

funds; (b) some nonbanking subsidiaries of a one-bank holding company may have difficulties or fail. In such a case, though there is no legal compulsion, a strong bank affiliate may in fact support a weak nonbank affiliate.[20] But the contrary position may also be argued: (a) Federal Reserve member banks must have loans to their affiliates 120 percent collateralized; (b) banks insured by the Federal Deposit Insurance Corporation may not lend more than 10 percent of the capital assets of the bank to any one affiliate, and 20 percent to all affiliates; (c) it is safer for a bank's depositors if nonbank activities which may be risky are carried out via a one-bank holding company than if they are carried out directly by the bank.[21]

It must be recognized that any multi-firm organization offers the opportunity to shuffle assets between subsidiaries. Under some conditions, a one-bank holding company may find it advantageous to shift the risky assets to the bank. This is particularly so where the degree of stock ownership of the bank is substantially less than the degree of stock ownership of the other subsidiaries. It is far from easy for bank supervisors to prevent the risky assets from being shifted to banks under such circumstances.[22] This may lead to some bank safety problems.

The whole controversy over bank safety can only be understood in its historical setting. The experiences in banking in the late 1920's and early 1930's were disastrous. Commercial banks had pursued reckless loan policies towards their investment banking affiliates. Bank solvency suffered. As a result, the Banking Act of 1933[23] was passed, requiring the separation of commercial banking from investment banking. At the same time, the Pecora Investigation of 1933-1934, held by the Senate Banking Committee, demonstrated that many banking affiliates had been organized to engage in businesses prohibited to the banks themselves. With this historical background, many critics felt that the recent evolution of the unregulated one-bank holding company held the unpleasant potential of partially repeating the unsatisfactory earlier history.

3. Unfair Competition Due to Tied Loans and Reciprocal Dealing

The bank affiliate of a one-bank holding company might grant credit on condition that borrowers agree to do business with other subsidiaries of the

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20 *See 1969 Hearings* 295, 296-97 (statement of Honorable Charles E. Bennett); *id.* at 633, 634, 638 (statement of William G. Dewald); *id.* at 733-34 (memorandum from Robert Pitofsky).

21 CARTER H. GOLEMBE ASSOC., INC., THE NATURE AND CONTROL OF ONE-BANK HOLDING COMPANIES 5-6 (1969).

22 Hall, *Some Impacts of One-Bank Holding Companies*, in PROCEEDINGS 77-78. Hall has the following comment:

> [T]here are several notable examples of chain-bank organizations in which the owners had large equities in one affiliate and small equities in the bank. Low-quality assets were acquired by the affiliate and sold to the bank. When the bank went bankrupt as a result, the owners were still able to maintain the profits from the affiliates.

Id. at 78 n.5.

23 12 U.S.C. § 21 *et seq.*: 18 U.S.C. §§ 493, 657, 709, 1006, 1007, 3056 (1964).

holding company. Bank loan policy can be utilized to increase the business of factoring, insurance, leasing, and other subsidiaries of the holding company at the expense of independent competitors. Tie-in sales which involve bank loans and credit life insurance have existed for some time.[24] The power of a bank to persuade their loan customers to use other subsidiaries of the bank holding company is increased when the bank has developed market power due to a local monopoly, a strong oligopoly, or simply general tight credit.

It may be argued that existing antitrust law adequately protects against such practices.[25] Tie-in sales of services are prohibited under the Sherman Act,[26] but the provisions of section 3 of the Clayton Act[27] relate to commodities, not services. *Fortner Enterprises v. United States Steel Corp.*[28] may be relevant; there, the plaintiff charged that very attractive credit terms by United States Steel had been conditioned on the purchase by the customer of prefabricated housing material from United States Steel. The Supreme Court, by a narrow 5-4 majority, remanded for trial the plaintiff's charge of violation of sections 1 and 2 of the Sherman Act. The narrowness of the decision, the doubt about a broader applicability of the principle incorporated in this case and, in fact, the ambiguities in the applicability of the antitrust laws to the services offered by banks and their affiliates in a holding company, have caused many to support considerable restriction in the scope of the financial banking congenerics.

4. Unequal Access to Credit

There has been considerable concern that the rapid growth of one-bank holding companies would result in credit advantages for the affiliates of the bank as well as their customers, and credit problems for the competitors of the bank's affiliates. First, the competitors of the nonbank subsidiaries of the holding company may find it more difficult to secure credit from the bank. This is particularly serious where few or no other alternative bank credit sources are available. These competitors may also be faced with other problems, for example, the possible transmission to their bank-affiliated competitor of information submitted to the bank in connection with a loan application.

Second, the bank may favor the customers of its affiliates over the customers of the competitors of its affiliates in its credit policies. This could also have an adverse effect on bank safety, if it resulted in unsound loans. Third, banks cannot be expected to maintain an arms length position with borrowers who are its affiliates. In a period of tight money when credit is

24 *See 1969 Hearings* 196, 197 (statement of the Honorable William McChesney Martin, Jr.); *id.* at 262, 265 (statement of Ralph Nader).

25 *Id.* at 733, 738 (memorandum by Robert Pitofsky).

26 15 U.S.C. § 1 *et seq.* (1964).

27 15 U.S.C. § 14 (1964).

28 394 U.S. 495 (1969).

rationed, these may have ample access to funds while their competitors do not. However, as previously noted, all Federal Reserve member banks and all insured banks may not lend an amount greater than 10 percent of the capital assets of the bank to one affiliate and 20 percent to all affiliates. Member banks must also have loans to their affiliates 120 percent collateralized. These provisions greatly reduce the attractiveness of loans to their own affiliates by the larger banks.[29] Fourth, the bank holding company can obtain more capital for its affiliates more cheaply through the open market, than a small independent finance company, mortgage company or other competitor of an affiliate can manage.

5. Regulatory Problems Caused by Changes in the Boundaries of Banking

Banking is a highly regulated industry. The shifting boundaries of the banking field can cause a number of regulatory problems. First, there is the ability of bank holding companies to issue their own commercial paper at the market rate of interest allowing them partially and increasingly to avoid the restrictive Federal Reserve monetary policy during 1969, by circumventing Regulation Q. Second, by combining firms in different industries regulated by different sets of regulations, *e.g.*, banking and insurance, within the same one-bank holding company, regulatory conflicts and difficulties are bound to occur. Third, a congeneric or conglomerate admixture of bank and nonbank subsidiaries within the same one-bank holding company enhances the difficulty of supervising loans and bank solvency. To resolve this problem, public audit powers may have to encompass all the affiliates of the bank.

6. Small Town Monopoly Control Through Local Bank Conglomerates

In many small towns, there is only a single bank. In others, there are two or three. Under such conditions, the market power of the bank in the local area is often very substantial. When that bank is combined with other local businesses through a one-bank holding company, the already extensive local market power of the bank may be further enhanced. The local banker may be able to use information to strengthen his bargaining position with individuals outside the banking field. However, it may be argued that the alternative to such small local one-bank holding company conglomerates is not an independent bank but an absorption of the bank by a larger nonlocal bank.

7. New Bank Competition for Existing Nonbank Businesses

A great deal of politically important vociferous opposition to bank congenerics and conglomerates, and to the one-bank holding company has come

[29] *1969 Hearings* 30, 506 (questions by the Honorable William Widnall); *id.* at 234 (discussion by Governor Robertson); *id.* at 493, 496, 507 (statement and discussion of Horace Hansen).

from businesses adversely affected by the increased competition from banks, namely, insurance companies and agencies, travel agencies, accountants, data processing services, etc.[30]

One-bank holding companies engage in a variety of different activities. A total of 239 one-bank holding companies formed on or after January 1, 1965 were identified as of October 1969. These operated 575 nonbank subsidiaries engaging in 124 different nonbank activities. The more important were: insurance agents (120); real estate (54); insurance companies (41); personal credit institutions (17); mortgage companies (12); finance companies (10); savings and loan associations (10); and computer services(9).[31]

Generally, the businessmen in these fields feel that banks have many advantages which make it difficult to compete with a bank-affiliated insurance agency, travel agency, etc., on equal terms. These advantages include unequal access to credit, tied loans and the large size of many banks relative to the small businessmen active in the areas above. Many argue that the move by banks into such businesses through the one-bank holding company constitutes the use of a franchise in one field, banking, to gain advantage in other fields.[32]

8. Increase in Financial Barriers to Entry in Certain Nonbanking Businesses

When banks enter fields such as travel agencies, insurance agencies or data processing services, where the great preponderance of firms are small, their entry can precipitate an increase in the average firm size and a shakeout of the smaller firms. The increase in average firm size comes from the need to compete with the bank-affiliated firms, combined with the economies of scale likely to develop in the industries concerned due to the competition from these bank affiliates. For example, larger working capital probably will be required to compete properly. Hence, the financial barriers to entry into these industries are likely to rise and small businesses operating in these industries will have to grow larger.

This concludes the discussion of the reasons for opposition to the recent rush into one-bank holding companies. As detailed below, this opposition resulted in the framing of legislation to control one-bank holding companies, which passed the House of Representatives in November 1969.

But why did so many substantial banks discover and make use of the

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30 *1969 Hearings* 300-04 (statement of the Honorable Spark M. Matsumaga); *id.* at 524-28 (statement of Bernard Goldstein); *id.* at 546-50 (statement of Bruce McConnell, Jr.); *id.* at 697-99 (statement of Morton V. White); *id.* at 788-93 (statement of William Stringfellow); *id.* at 808-12 (statement of Peter H. Grimes).

31 Patman, *Large Numbers of Bank Holding Companies Aided by Grandfather Clause in H.R. 6778 as Reported*, 115 CONG. REC. 9779 (daily ed. Oct. 21, 1969).

32 Congress, in 1916, amended the National Bank Act to include section 92, restricting national banks in the sale of insurance in communities of less than 5000 population. But this limit does not apply to single-bank holding company nonbanking subsidiaries.

one-bank holding company device relatively recently, and within such a short period of time? The reasons may be summarized under these headings: (A) use of indirect methods to do what is forbidden directly; (B) the herd instinct; (C) economies of scale; (D) loss of market share by banks to non-bank financial institutions; (E) salary administration.

A. The Use of Indirect Methods to Do What Is Forbidden Directly

Banks are highly regulated. They are variously subject to the jurisdiction of the Federal Reserve Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the state banking authorities and the Antitrust Division of the Department of Justice. Many bankers have long been concerned about the restrictions of the scope of their business activities entailed by regulation. It is true that the definition of banking has changed over the years. Today it includes credit cards, traveler's checks, leasing and other activities not formerly considered part of banking. It is also true that rulings of the regulatory authorities in areas such as data processing, insurance and loan production offices, have broadened the scope of banking. Nevertheless, the scope of activities which banks may carry out directly is greatly restricted. The scope of activities which multi-bank holding companies may carry out is also severely restricted. The one-bank holding company device provided the perfect vehicle for banks to engage in activities otherwise prohibited or at least very difficult. Thus, banks which wanted to diversify through product extension, congenerics or conglomerates found a legal vehicle to accomplish this objective.

The one-bank holding company device also has allowed banks to use a method of financing not permitted directly, namely, the sale of commercial paper by the one-bank holding company at market rates of interest.[33] In this manner, the bank could escape the effect of Regulation Q on bank-issued commercial paper.[34]

B. The Herd Instinct

Why was there such a rush into one-bank holding companies by the larger banks? Here the explanation is two-fold. First, it took someone to show the way. The Union Bank of California, one of the major banks, did this when it created a one-bank holding company in 1967 to acquire non-bank businesses.[35] Other major banking institutions quickly saw the significance of this development and followed it. Second, after the trend had been established, it drew unfavorable attention from an increasing number of critics. As a result, an even greater rush into one-bank holding companies ensued by banks fearful of possible restrictive legislation and desirous of coming under the protective umbrella of a grandfather clause.

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[33] Multi-bank holding companies, as explained previously, could also issue commercial paper.

[34] *See* note 16 *supra*.

[35] *1969 Hearings* 900-04 (statement of Robert Volk).

C. Economies of Scale

Banking congenerics will exhibit some economies of scale in finance, production, sales, etc.[36] Conglomerates controlled by a bank are also likely to exhibit economies of scale in finance and perhaps in other aspects of business operation.

First, a one-bank holding company, whether a congeneric or a conglomerate, will probably be able to obtain capital at a cost below that of any of its smaller subsidiaries. Second, in the production area, there are likely to be economies of scale in similar services offered, such as servicing a checking account, servicing a credit card, preparing a payroll, etc. Third, when two or more services are purchased at the same time, such as financing for a car, credit life insurance and insurance on the car, economies of scale in sales are the likely result. Similarly, there may be economies in advertising, research and other business functions.

D. Loss of Market Share by Banks to Nonbank Financial Institutions

Over the years, many other financial intermediaries have gained in importance relative to banks. Savings and loan associations, credit unions, and a number of specialized financial institutions have grown more rapidly than the commercial banks.[37] In good measure this was due to exclusion of the commercial banks from a number of financial areas, or restrictions on their operation in these financial areas by the law and the regulatory authorities. Hardly any businessman likes to see a loss in market share. Over the past decade, bankers have become considerably more aggressive and adept at broadening the scope of their business and competing with other types of financial institutions. The one-bank holding company was the logical extension of this trend.

E. Salary Administration

Sometimes, it is best to conduct a new activity in a separate corporation since that activity requires a different kind of talent remunerated at higher levels. It may be difficult to achieve the requisite flexibility in salary scales within the same corporate structure. This factor has made it desirable to conduct some activities by means of subsidiaries of a one-bank holding company, even though they could be carried out directly by the bank.

This concludes discussion of the reasons which motivated the larger banks to convert to one-bank holding companies. But, as we have seen already, these proved insufficient to prevent congressional action designed to bring one-bank holding companies under the supervision of the banking authorities.

We now turn, first, to the Bill reported by the Committee on Banking

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[36] *Id.* at 196-98 (statement of the Honorable William McChesney Martin, Jr.).

[37] *Id.* at 897-98 (statement of Samuel Stewart); *id.* at 674 (study of the Honorable Richard Hanna).

and Currency and, second, to the drastically revised Bill voted by the House of Representatives.

On July 23, 1969, a much divided Committee reported, as amended, H.R. 6778, a Bill to amend the Bank Holding Company Act of 1956. The amended Bill was substantially weaker than the original measure proposed by Wright Patman, Chairman of the Committee, and also weaker than the administration proposals.[38] The critical vote came on amendments to H.R. 6778 as it was initially proposed by Patman; these were adopted June 26, 1969 by a 20-15 vote as 5 Democrats joined 15 Committee Republicans. The very much altered H.R. 6778 was then ordered reported on June 27, 1969 by a 29-5 vote.[39]

The Committee Bill, as reported, had the following features: (a) it provided for regulation of one-bank holding companies; (b) it placed one-bank holding companies under the Federal Reserve Board; (c) it required that nonbanking activities of bank holding companies be "functionally related" to banking; (d) it excluded insurance agencies (except for credit life or credit disability insurance) and mutual funds from permissible nonbanking activities for bank holding companies; (e) it stated that the Board could take into consideration whether entry into a nonbanking field was de novo or by acquisition of an existing company in determining whether entry was to be permitted or denied;[40] (f) Board action on an application to go into any nonbank field was required within 90 days; (g) a grandfather clause was established with a date of February 17, 1969. The bill as reported did not include coverage of (a) partnerships owning banks, and (b) bank holding companies which are labor, agricultural or horticultural organizations.

On November 5, 1969, the House of Representatives, by a final roll call of 352-24, drastically altered these provisions and voted far tougher legislation; the Senate is considering this bill in 1970.[41]

The bill as passed by the House did the following: (a) it provided for regulation of one-bank holding companies; (b) it placed one-bank holding companies under the Federal Reserve Board; (c) it required that nonbanking activities of bank holding companies be "of a financial or fiduciary nature"

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[38] 115 CONG. REC. 902-05 (daily ed. Feb. 17, 1969) (the Patman bill — H.R. 6778); *A Bill to Broaden the Definition of Bank Holding Companies, and for Other Purposes* (March 1969) (the Administration bill) (multigraphed — available from author); *Comparative Type Showing Changes in Existing Law Made by Proposed Bill* (March 1969) (the Administration bill) (multigraphed — available from author); Treasury Department, *Summary of the Background of Development of the One-Bank Holding Company Problem* (March 1969) (comment on the Administration proposal) (multigraphed — available from author).

[39] CONG. Q., July 4, 1969, at 1; AM. BANKER, July 8, 1969, at 1, col. 3; AM. BANKER, July 3, 1969, at 1, col. 3.

[40] This follows a suggestion of the author in his testimony before the Committee on Banking and Currency. *See 1969 Hearings* 354, 358 (statement of Peter Gutmann); *see also id.* at 440-41.

[41] 115 CONG. REC. 10,544-75 (daily ed. Nov. 5, 1969). *See Banking Industry Reels Under Impact of House H.C. Punch*, AM. BANKER, Nov. 7, 1969, at 1, col. 1.

and "functionally related to banking"; (d) it excluded the securities business, insurance (either as principal or agent, except for credit life or credit disability insurance), travel agencies, accounting services, data processing (with certain exceptions) and leasing (with certain exceptions) from permissible nonbanking activities for bank holding companies; (e) it stated that the Board could take into consideration whether entry into a nonbanking field was de novo or by acquisition of an existing company, in determining whether entry was to be permitted or denied; (f) Board action on an application to go into any nonbank field was required within 90 days; (g) a grandfather clause was established with a date of May 9, 1956; (h) the grandfather clause was not to apply to any bank holding company with bank assets of more than $30 million and nonbank assets of more than $10 million; (i) the definition of a bank holding company was changed to one where actual control of a bank is exercised instead of one requiring a 25 percent stock ownership; (j) the partnership exemption was removed; (k) the labor, agricultural or horticultural organization exemption was removed.

The bank holding company bill as passed by the House would have severe effects on conglomerates and congenerics in banking. First, it would render it practically impossible to have conglomerates in banking. Second, it would restrict bank congenerics substantially in their choice of business fields since some fields are totally excluded and all others must be "of a financial or fiduciary nature" and "functionally related to banking," as interpreted by the Federal Reserve Board. Third, it would require wholesale divestitures, since there were only some 117 one-bank holding companies as of the grandfather clause date, and even some of these might be required to divest themselves of their bank or of their nonconforming nonbank affiliates. This could have particularly severe effects on the small one-bank holding companies.[42] Fourth, it would improve the ability of multi-bank holding companies to broaden into financial congenerics since these registered holding companies are presently restricted to nonbanking activities which are incidental to banking.

The conclusion is clear. Conglomerates in banking are all but finished. Congenerics in banking will be subject to considerable restriction and regulation by the law and by the regulatory agencies.

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42 *1969 Hearings* 1176-84 (statement of W. C. Hartley); *id.* at 1186-87 (statement of Dick W. Stevens); Eisenberg & Monson, *A Tax Man Looks at One-Bank Holding Companies*, BANKERS MAGAZINE, Summer 1969, at 10-14.