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Statement of the Shadow Financial Regulatory Committee on the Federal Reserve Board's Request for Comment on the Acquisition of Healthy Thrift Institutions by Bank Holding Companies

November 13, 1987

Since its 1977 decision in the D.H. Baldwin case the position of the Federal Reserve Board has been that the operation of a thrift institution is not a "proper incident" to banking, and, accordingly, that bank holding companies may not acquire thrifts under section 4(c)(8) of the Bank Holding Company Act. In 1982, the Board modified that policy to permit bank holding companies to acquire failing thrifts. The Board is now seeking comment as to whether it should overrule the D. H. Baldwin policy in its entirety, leave that policy in effect, or modify it to permit bank holding companies to acquire healthy thrifts located in states in which such holding companies are eligible to acquire banks.

The Committee strongly urges the Board to overrule D.H. Baldwin in its entirety. There is simply no rational basis in economic or regulatory policy for perpetuating that policy. Furthermore, the Committee urges the Board to abandon for all thrift acquisitions the "tandem operations" restrictions it has imposed in those cases in which it has permitted the acquisition of failing thrifts.

The D. H. Baldwin rule was born out of the politics of the thrift industry as that industry existed in the mid-1970's. At a time when the industry, then predominantly mutual in form, was in relatively healthy condition, when Regulation Q afforded thrifts an interest rate advantage to compensate for their inability to offer demand deposits, and when the interstate banking movement had not yet started, the prospect that bank holding companies might acquire stock thrift institutions at locations at which they could not acquire banks raised the potential for embroiling the Board in extended political controversy. Today, however, circumstances have changed markedly. The condition of the thrift industry has worsened to the point at which a substantial segment of the industry -- not to mention the Federal Savings and Loan Insurance Corporation itself -- is insolvent. Deposit interest rate controls have been repealed and most thrifts can now offer all forms of transactions accounts. Interstate banking has progressed to

the point at which almost every state has sanctioned some form of interstate expansion. Finally, mutual-to-stock conversions have been widely authorized and a vast number of thrifts, having abandoned mutual form, are now able to be acquired.

Sound policy today should favor regulatory actions that are likely to result in the attraction of new capital to the thrift industry, and many bank holding companies are likely to be interested in acquiring thrifts as a means of expanding interstate. Because Congress has excluded FSLIC-insured and FHLBB-chartered thrifts from the definition of a "bank" in the Bank Holding Company Act, and thus from the reach of the Douglas Amendment, the Board could, by permitting the acquisition of healthy thrifts nationwide, provide a strong incentive for banking institutions to bring their resources to the ailing thrift industry.

While some regulators have expressed concern that a repeal of the D. H. Baldwin rule will result only in acquisition of the healthiest thrifts, and will not provide any incentive for banking organizations to bid for takeover of problem institutions, the Committee believes this concern is not well founded. Because the ownership of multiple thrifts on an interstate basis is subject to limits similar to those in the Douglas Amendment, and because more liberal rules apply to the interstate expansion of thrift organizations through the acquisition of problem institutions, a bank holding company that has invested in a healthy thrift, and thus obtained a sound base in the thrift industry, is more likely to be willing to bid on problem institutions in other states than it would under present policy. Indeed, the Board's present policy, which permits a bank holding company to acquire only problem thrifts, and then only subject to operating limits that deprive the holding company of the ability to integrate the troubled institution effectively into the holding company structure, may well have had the perverse effect of discouraging bank holding companies from entering the bidding for such institutions.

The Committee recognizes that there is a significant issue as to the powers that thrifts acquired by bank holding companies should be permitted to exercise. That issue need not be addressed in the pending rulemaking proceeding, and may be reserved for consideration on a case-by-case basis.