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DISCLOSURE -- A MOST EFFECTIVE REGULATOR

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I am pleased to participate in this most timely bank holding company seminar. When the program was scheduled several months ago, I am sure that none of us could have predicted that front page articles about banks and bank regulation would set the stage for these discussions. Nor could we have known that virtually everyone who reads the newspapers or news magazines, listens to the radio, or watches television would be given information which would result in questions about the operations and financial soundness of major banks and the effectiveness of our bank regulatory mechanisms.

There have been comments that the news media was irresponsible in reporting sensitive information, such as that contained in bank examination reports, and the names of banks which, according to the bank regulators, have problems of varying seriousness. However, as a member of the news media recently told me, "A news reporter may wish that he had not received certain information, but once received, it is extremely difficult to make a decision that it should be suppressed." Although it may be unfortunate that information about

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banks, not intended for dissemination, was made public, I believe, nevertheless, that this publicity will result in beneficial changes consistent with the philosophy and purposes of the federal securities laws and their impact on bank holding companies.

The securities laws enacted during the 1930's were largely a Congressional response to the securities abuses which preceded the "Big Crash" of 1929. In order to prevent the abuses from recurring, these laws were designed to provide full and fair disclosure of the character of securities, prevent frauds in connection with securities transactions, and to provide for regulation which would encourage and facilitate fair, honest, and efficient securities markets.

Banks, through their securities activities, have an impact on our securities markets, and the Commission, Congressional committees, and the Treasury Department are attempting to develop information that will provide a basis for determining whether such activities enhance or detract from our markets, and thus whether they should be encouraged or restricted.

With that brief comment regarding our responsibilities to consider the impact that banks and bank holding companies have on our securities markets, I would like to focus the remainder of my remarks on the Commission's responsibility to encourage full and fair disclosure.

When the Securities Act of 1933 was enacted by Congress, a fundamental policy decision was made that the federal government would not evaluate the quality of securities and permit only those meeting a specified standard to be offered to the public. Instead, Congress determined that it would be more consistent with a free enterprise system to establish a mechanism whereby issuers of securities would be required to provide full and fair disclosure of the character of securities so that investors themselves could make informed investment decisions in accordance with their investment goals and their ability and desire to accept risk. Thus, the Securities Act requires issuers to file registration statements containing material information with the Commission when offering securities to the public and also requires that a prospectus containing such information be made available to investors. In addition, the Securities Exchange Act of 1934 authorizes the Commission

to require public companies to file periodic and current reports regarding material corporate financial and operational affairs for the benefit of investors in the secondary markets. The simple objective of these requirements is to provide full and fair public disclosure of all material information on a timely basis.

Bank securities were exempted from the registration requirements of the Securities Act partly because banks were already subject to extensive regulation and oversight by bank regulatory agencies. Also, when the Exchange Act was amended in 1964 to extend current and periodic reporting requirements to all public corporations of significant size, the administration of these provisions for banks was vested in the appropriate bank regulatory agency. However, there is no exemption or exclusion from the disclosure and reporting requirements of the securities laws for bank holding companies, their affiliates, or subsidiaries. Consequently, as banks become subsidiaries of bank holding companies in order to, among other things, obtain greater flexibility in offering financial services, they are subject to the disclosure and reporting requirements applicable to

the parent holding company as well as the regulatory scheme of the appropriate bank agencies.

Historically, the basic approach of bank regulation has been the antitheses of securities regulation. Whereas we have built our whole regulatory structure on public disclosure and public enforcement proceedings, bank regulation has been built on the concept that disclosure of bank problems and regulatory enforcement actions are not in the public interest because such disclosure could erode public confidence in banks and the banking system and could precipitate a "run" on bank deposits.

Until recently, the SEC has been somewhat hesitant to require the same degree of disclosure by bank holding companies as we have required of other registrants because of the opposing philosophy of their primary regulators, the federal bank agencies, and because our broad disclosure requirements could impose a greater burden on banks affiliated with holding companies than those on banks which are not so affiliated. This latter concern has been ameliorated to a large extent since the late 1960's because most large banks have become subsidiaries of bank holding companies that are registered with the

Commission, and Federal Reserve Bulletin statistics indicate that over two-thirds of total commercial banking assets and deposits are held by holding company banks. Moreover, as major bank failures have occurred during the last two or three years, and as bank regulators have publicly stated that there were generally more problems with bank operations, the SEC has become increasingly insistent that more meaningful disclosure be provided by bank holding companies.

In December of 1974, after consultation with the bank agencies, the SEC published Accounting Series Release No. 166, which described in generic terms the nature of financial information that ought to be disclosed as the result of unusual business risks and uncertainties which were mostly due to recent changing economic conditions. There was nothing revolutionary or novel about this release. Over the years, the Commission has frequently alerted registrants to disclosure problems, and ASR 166 was designed to bring to the attention of accountants and the management of banks, real estate investment trusts, public utilities, petroleum companies, and others the responsibility that every public company has to provide full and fair disclosure of significant changes

in its operations. With respect to bank operations, the release suggested that financial institutions make appropriate disclosures to enable investors to understand the nature and current status of their portfolios, and, where loans considered doubtful as to collectibility had increased materially, it was suggested that registrants should highlight that fact. Frankly, we were somewhat surprised by the vigorous negative response of the banking industry. The release suggested only that registrants make the disclosures necessary for investors to understand their current operations, yet our action was interpreted as a threat to the ability of bank holding companies to obtain needed debt and equity capital from the public. The real surprise, in my opinion, was that some bankers believed that they should be allowed to offer their securities to the public without such disclosure.

In considering appropriate bank holding company disclosure, the Commission has not forged ahead without consulting with bank officials and bank regulatory authorities. Some bank holding company officials expressed, both to our staff and to bank regulators, their opposition to the type of information requested by the staff. On

one occasion, our staff was told that a bank holding company was asked by a bank regulator not to provide certain information to the staff. We met with the bank regulator and explained that, in order to process registration statements properly, our staff must receive such information, unless the bank regulator was willing to assume the responsibility and certify that the disclosure statements provided by the holding company were adequate. Subsequently, the information the staff had requested was made available by the registrant.

On another occasion, the top management of a major bank holding company requested a meeting with the Commission to explain its position opposing requests by our staff for information. We carefully considered the merit of their arguments after such a meeting and concluded that, while there may be legitimate differnces of opinion as to what information is material and therefore must be dicslosed to investors, our staff must have access to supplemental information necessary to assure themselves that disclosures made in a registration statement are adequate before declaring the statement effective.

I do not want to give the impression that our disclosure efforts have been opposed by all bank holding

companies or that the bank regulators have disagreed that disclosure by banks needed some improvement. In fact, some bank holding companies have exceeded our disclosure requirements without complaint, and bank regulators have been very helpful to us in our disclosure efforts.

After consultation with the bank regulators, there was agreement that it would assist bank holding companies in meeting their disclosure responsibilities if disclosure guidelines were formulated, and in April of 1975, an Interagency Bank Disclosure Coordinating Group was formed to develop and propose such guidelines. After a number of meetings, proposed Guides 61 and 3 were published for comment by the Commission in October of last year. Although there were some important areas of disagreement between the bank agencies and the SEC, members of the Coordinating Group generally agreed with most of the requests for disclosure.

Our staff is currently analyzing and summarizing the more than 100 letters of comment received on the proposed guides. When that review is completed the staff will formulate recommendations for appropriate actions. Many commentators claim that the proposed guides would require

the disclosure of extensive non-material information which would confuse investors and detract from the significance of more relevant and material data. Many also assert that the burdens imposed by the proposed guides on bank holding companies, particularly smaller companies, would significantly outweigh any corresponding benefits to investors. There is a general consensus in the responses that the proposed guides are seriously lacking in objective informational standards and that the lack of objectivity would impair the comparability of data and unfairly impact those companies with conservative reporting practices.

Perhaps the most strenuous objection is that the Commission is attempting to provide mechanical tests to indicate the adequacy of loan loss reserves, and that these will fail to accomplish their purpose and will be detrimental to the interests of both investors and reporting companies.

I want to assure you that the comments received are taken seriously and will be fully considered by the Commission. There may well be substantial revisions of the guides in response to the comments and further

discussions with the bank regulators, but it is too early for me to indicate the final form the guides will take. When finally approved, the guides will be promulgated as aids to registrants, but they are not intended to be forms which, if completed, will necessarily assure full and fair disclosure. The staff of the Commission's Division of Corporation Finance will continue to consider bank holding company filings on a case-by-case basis, suggesting disclosure appropriate to the facts of each case.

Since the proposed guides were published last October, registrants have been asked to use proposed Guide 61 as a pattern for the type of information to be included in registration statements. However, they have been told that if the information requested by the guide is not available, or if the registrant does not intend to provide it, a letter to the staff should indicate which parts of the guide are not being complied with and include an explanation for such noncompliance. The staff's main emphasis has been to obtain meaningful information about possible loan losses and loan loss reserves, whether or not in the exact form specified in the proposed guides. Usually this information has been available, at least for defined categories such as 30-60 days past due.

Although the first response to our requests for more meaningful disclosure by bank holding companies met with strong opposition, the original fears must have been somewhat alleviated when it was discovered that registrants providing such disclosure were successful in their capital raising efforts. As time has passed, there seems to be a more responsive attitude with respect to disclosure by bank holding companies. The filing just two days ago by J. P. Morgan of preliminary prospectuses in connection with offerings of notes and common stock is a most recent example.

The preliminary documents clearly set forth information about the registrant's real estate investment trust loans and loans on other real estate; the categories of loans which are subject to special accrual procedures because of the questionability of the collection of the loans and interest income; and the bank's system for computing loan loss reserves, indicating that substantial judgment is involved. The registrant also noted that it preferred not to disclose the total amount of "loans presenting a question as to future collectibility in full" because of the fear that such a disclosure would

be a deterrent to operating the bank in a conservative business-like fashion, but indicated that the special accrual categories of loans included a substantial portion of those which fit within the "question as to future collectibility in full" category.

The registrant has also included disclosures that are not suggested by Guide 61, but which appear to provide useful information. For example, in describing international loans, Morgan broke out those that were in developing countries as currently defined by the World Bank. In addition, more information about its New York City and State holdings is disclosed than the Commission in its recent release (Securities Act Release No. 5667/Jan. 7, 1976) indicated was necessary. There is disclosure of the amounts of City obligations held, classified as to those subject to the moratorium and those not subject to the moratorium, but due within three years, obligations of City Agencies, MAC, New York State, New York State Agencies and other municipal borrowers in New York State. The book values, the market or appraised values, and the effect of recent events in New York on interest income are also shown. Morgan is

by no means the only bank holding company which has determined that it is in their interest to provide more meaningful disclosure.

I consider this an encouraging development because I believe strongly that it will put pressure on all bank holding companies, and in fact all banks, to provide such disclosure, and it will encourage public trust and confidence in those institutions that merit it. Moreover, as I have stated on prior occasions, disclosure can be a more effective regulator than federal government agencies. I was pleased to read a speech given on the 10th of February by Governor Mitchell of the Federal Reserve Board in which he stated that:

> A meaningful improvement in financial reporting by banks and bank holding companies would, in turn, enable participants in markets for bank debt and equities more accurately to differentiate among institutions as to soundness, earning propsects and management capability. And from my point of view, the market reaction to bank performance and condition is a far more effective cathartic for management than jawboning by bank regulators.

On February 2, 1976, the <u>New York Times</u> reported that the Comptroller of the Currency, James E. Smith, acknowledged

that his office has not sought to pursue the kind of activist regulatory policy toward the nation's banks that he now feels it should. He was reported as stating that his office was not having the influence to impact the decision-making process in the larger banks that it has in the smaller ones. He also indicated that the banking industry has expanded so quickly in recent years that regulation was not able to keep abreast of all developments.

A recent Washington Post article suggests that most experts agree with the assessment that, "Bank regulation is a farce." I cannot agree with such an assessment. I have worked closely with the federal bank regulators for several years and believe that they are dedicated public servants seeking to protect our banking system and the public interest. In my opinion, however, there is a fatal flaw in the bank regulatory system, particularly for large banks, and that flaw is the philosophy of nondisclosure. In my opinion, a primary reason why bank regulators have a limited impact on the activities of major banks is because they are severely restricted in the actions they can take by banking law and regulation and by their own philosophy that disclosure of bank problem areas and

enforcement actions will erode confidence in banks. Managements of the large banks know that bank regulators will generally not take public enforcement action, that they will not take the drastic step of revoking their charters and requests by banking officials or even private cease and desist orders do not always provide the necessary incentive for bank management to take appropriate action. I am not suggesting that all enforcement actions by bank regulators be made public, but I am suggesting that bank regulators could be more effective, if bank management knew that their regulators could and would take public action if necessary. I am also suggesting that banks would be more self-regulating and thus need less governmental regulation, if their operations were more meaningfully disclosed.

I believe several things have become evident in the last few weeks. First, one would have to admit that bank holding companies have been subject to a type of disclosure that does not lend itself to a balanced presentation of the facts. Moreover, the claims by bank regulators that such banks do not have serious problems without the disclosure of basic factual data to support those claims and in the absence of disclosure of their

operations by the bank holding companies themselves can seem self-serving and cannot be considered very effective in promoting confidence in today's post Watergate climate. However, even in such a situation, with Congressional hearings in which banks and their regulators are severely critized and requests are made that bank examination reports be made public, I am not aware of any evidence that there have been unusual deposit withdrawals nor has there been an irrational reaction in the securities markets. In other words, while I would not have recommended such an empirical test of depositor and investor reaction, I believe we can conclude on the basis of the evidence that balanced periodic and timely disclosure of bank operations will be beneficial to investors and depositors and, even when there are some problems, will not result in investor or depositor behavior which would be detrimental to the banking system.

I agree with the statement made by Chairman Frank Wille of the Federal Deposit Insurance Corporation that "If there had been a steady flow of knowledge about banks and a steady disclosure of bank problems, then I think much of the newspaper disclosures would be less troublesome."

I would like to go even further and suggest that, if there had been such a steady flow of bank information, the facts contained in the newspaper articles would not even have been newsworthy and probably would never have been printed, and I seriously doubt that documents would have been stolen from the Comptroller's Office if periodic disclosure of bank operations was a routine matter.

I believe that the disclosure of a list of banks which have problems compiled by a federal bank agency is undesirable because it is difficult to convey precisely what such a list means. Moreover, I do not believe that bank examination reports should be public because they contain information, judgments, and recommendations of examiners to be used by top bank agency officials. If they are required to be public, I firmly believe they will be reduced to rather bland documents and will not effectively serve the purposes for which they are intended. Just as the Securities and Exchange Commission has gone to court and has been successful in preserving the integrity of our internal documents and decision-making process, so also should the integrity of bank agency internal documents and decision-making processes be preserved.

On the other hand, the material operational information, which may be the subject of examination reports, and which may cause bank regulators to place a bank on a problem list, should be disclosed by bank holding companies. The best way to avoid possible adverse, improper disclosure is to make it unnecessary by proper full disclosure.

The most recent argument I have heard in opposition to full disclosure of bank operations is that banks might adopt an overly cautious approach to lending. We should be aware that there are strong countervailing forces to overly conservative bank lending policies. Banks must serve the business community, and, if they have unduly restrictive lending policies, bank earnings would suffer, and bank managements know that they have a responsibility to their shareholders to establish loan policies that incorporate a balance between risks and income, and that the bottom line is most important to investors.

I believe that disclosure will be beneficial to investors, depositors, the banking system and to bank regulators, and it would appear that this view is gaining support. One of the best statements I have seen on the

value of disclosure is a speech not by a member of the Securities and Exchange Commission or a securities analyst or a member of Congress, but by Mr. A. W. Clausen, President of the Bank of America who stated:

> We recognize that candor and openness is an advantage rather than an impediment in the conduct of our business.

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> As bank holding company managements, we are slowly - and sometimes reluctantly - getting used to the SEC's ever-increasing demands for fuller disclosure. As bankers we are beginning to realize that our regulation (or, as we sometimes feel, our over-regulation) is no longer handled only by the traditional bank regulatory agencies. . .
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> Now I think it's time to take the next step; time to accept the best of these changes and, indeed, to go beyond. We've left leadership to the regulators for too long. Now we are ready to move into the vanguard with voluntary disclosure of relevant and appropriate matters of business practices, problems and policies.

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> We believe that corporate social performance reflects 1 aspect of

> the overall quality of management and thus, in the long run, affects the ability to attract capital and improve earnings. Thus we think appropriate guidelines for disclosure should go beyond the traditional securities-related areas addressed in the original enactments.
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> In the intervening 42 years, the American public has learned a good deal about the securities markets. Not least, investors have had ample opportunity to observe that honest and forthright management is the only route to viable capital markets. We know we need these markets to sustain strong economic growth and development. And we've learned that they serve our funding needs only when the increasingly sophisticated securities community is assured that it is getting from management full and fair and adequate and honest reporting of material events.
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> Thus, in a more perfect world, market forces and our own self-interest would eventually lead to these developments. By that I mean that the demands of our customers - or borrowers, lenders and investors - in time would compel greater disclosure.

I believe Mr. Clausen has made the case for the "full and fair and adequate and honest reporting of material events" far more eloquently than I have in my efforts over the past two or three years. I agree with him.

The federal securities laws do not put the burden of full and fair disclosure on the SEC, but on registrants, and the SEC has the responsibility to assist registrants to provide such disclosure. Although none of the Commissioners is authorized to speak for the Commission unless his statement is specifically approved in advance, I believe that when the business community is ready to accept its disclosure responsibilities fully and voluntarily, you can be sure that the SEC will be happy to step aside.

Thank you.