supervision over all policies and practices.

(c) The question raised is whether these activities are prohibited by section 4(a)(2) of the Bank Holding Company Act, which permits a bank holding company to engage in only three categories of business: (1) Banking; (2) managing or controlling banks; and (3) furnishing services to or performing services for any bank of which the holding company owns or controls 25 percent or more of the voting shares.

(d) Clearly, the activities of the company with respect to the four nonsubsidiary banks do not constitute ''banking.'' With respect to the business of ''managing or controlling'' banks, it is the Board's view that such business, within the purview of section 4(a)(2), is essentially the exercise of a broad governing influence of the sort usually exercised by bank stockholders, as distinguished from direct or active participation in the establishment or carrying out of particular policies or operations. The latter kinds of activities fall within the third category of businesses in which a bank holding company is permitted to engage. In the Board's view, the activities enumerated above fall in substantial part within that third category.

(e) Section 4(a)(2), like all other sections of the Holding Company Act, must be interpreted in the light of all of its provisions, as well as in the light of other sections of the Act. The expression ''managing * * * banks,'' if it could be taken by itself, might appear to include activities of the sort enumerated. However, such an interpretation of those words would virtually nullify the last portion of section 4(a)(2), which permits a holding company to furnish services to or perform services for ''any bank of which it owns or controls 25 per centum or more of the voting shares.''

(f) Since Congress explicitly authorized the performance of services for banks that are at least 25 percent owned by a holding company, it obviously intended that the holding company should not perform services for banks in which it owns less than 25 percent of the voting shares. However, if the second category—''managing or controlling banks''—were interpreted to permit the holding company to perform services for any bank, including a bank in which it held less than 25 percent of the stock (or no stock whatsoever), the last clause of section 4(a)(2) would be meaningless.

(g) It is principally for this reason—that is, to give effective meaning to the final clause of section 4(a)(2)—that the Board interprets ''managing or controlling banks'' in that provision as referring to the exercise of a stockholder's management or control of banks, rather than direct and active participation in their operations. To repeat, such active participation in operations falls within the third category (''furnishing services to or performing services for any bank'') and consequently may be engaged in only with respect to banks in which the holding company ''owns or controls 25 per centum or more of the voting shares.''

(h) Accordingly, it is the Board's conclusion that, in performing the services enumerated, the bank holding company is ''furnishing services to or performing services for'' the four banks referred to. Under the Act such furnishing or performing of services is permissible only if the holding company owns or controls 25 percent of the voting shares of each bank receiving such services, and, since the company owns less than 25 percent of the voting shares of these banks, it follows that these activities are prohibited by section 4(a)(2).

(i) While this conclusion is required, in the Board's opinion, by the language of the statute, it may be noted further that any other conclusion would make it possible for bank holding company or any other corporation, through arrangements for the ''managing'' of banks in the manner here involved, to acquire effective control of banks without acquiring bank stocks and thus to evade the underlying objectives of section 3 of the Act.

[25 FR 281, Jan. 14, 1960. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.115 Applicability of Bank Service Corporation Act in certain bank holding company situations.

(a) Questions have been presented to the Board of Governors regarding the applicability of the recently enacted Bank Service Corporation Act (Pub. L.

87–856, approved October 23, 1962) in cases involving service corporations that are subsidiaries of bank holding companies under the Bank Holding Company Act of 1956. In addition to being charged with the administration of the latter Act, the Board is named in the Bank Service Corporation Act as the Federal supervisory agency with respect to the performance of bank services for State member banks.

(b) *Holding company-owned corporation serving only subsidiary banks.* (1) One question is whether the Bank Service Corporation Act is applicable in the case of a corporation, wholly owned by a bank holding company, which is engaged in performing ''bank services'', as defined in section 1(b) of the Act, exclusively for subsidiary banks of the holding company.

(2) Except as noted below with respect to section 5 thereof, the Bank Service Corporation Act is not applicable in this case. This is true because none of the stock of the corporation performing the services is owned by any bank and the corporation, therefore, is not a ''bank service corporation'' as defined in section 1(c) of the Act. A corporation cannot meet that definition unless part of its stock is owned by two or more banks. The situation clearly is unaffected by section 2(b) of the Act which permits a corporation that fell within the definition initially to continue to function as a bank service corporation although subsequently only one of the banks remains as a stockholder in the corporation.

(3) However, although it is not a bank service corporation, the corporation in question and each of the banks for which it performs bank services are subject to section 5 of the Bank Service Corporation Act. That section, which requires the furnishing of certain assurances to the appropriate Federal supervisory agency in connection with the performance of bank services for a bank, is applicable whether such services are performed by a bank service corporation or by others.

(4) Section 4(a)(1) of the Bank Holding Company Act prohibits the acquisition by a bank holding company of ''direct or indirect ownership or control'' of shares of a nonbanking company, subject to certain exceptions. Section 4(c)(1) of the Act exempts from section 4(a)(1) shares of a company engaged ''solely in the business of furnishing services to or performing services for'' its bank holding company or subsidiary banks thereof. Assuming that the bank services performed by the corporation in question are ''services'' of the kinds contemplated by section 4(c)(1) of the Bank Holding Company Act (as would be true, for example, of the electronic data processing of deposit accounts), the holding company's ownership of the corporation's shares in the situation described above clearly is permissible under that section of the Act.

(c) *Bank service corporation owned by holding company subsidiaries and serving also other banks.* (1) The other question concerns the applicability of the Bank Service Corporation Act and the Bank Holding Company Act in the case of a corporation, all the stock of which is owned either by a bank holding company and its subsidiary banks together or by the subsidiary banks alone, which is engaged in performing ''bank services'', as defined in section 1(b) of the Bank Service Corporation Act, for the subsidiary banks and for other banks, as well.

(2) In contrast to the situation under paragraph (b) of this section, the corporation in this case is a ''bank service corporation'' within the meaning of section 1(c) of the Bank Service Corporation Act because of the ownership by each of the subsidiary banks of a part of the corporation's stock. This stock ownership is one of the important facts differentiating this case from the first one. Being a bank service corporation, the corporation in question is subject to section 3 of the Act concerning applications to bank service corporations by competitive banks for bank services, and to section 4 forbidding a bank service corporation from engaging in any activity other than the performance of bank services for banks. Section 5, mentioned previously and relating to ''assurances'', also is applicable in this case.

(3) The other important difference between this case and the situation in paragraph (b) of this section is that here the bank service corporation performs services for nonsubsidiary banks,

as well as for subsidiary banks. This is permissible because section 2(a) of the Bank Service Corporation Act, which authorizes any two or more banks to invest limited amounts in a bank service corporation, removes all limitations and prohibitions of Federal law exclusively relating to banks that otherwise would prevent any such investment. From the legislative history of section 2(a), it is clear that section 6 of the Bank Holding Company Act is among the limitations and prohibitions so removed. But for such removal, section 6(a)(1) of that Act would make it unlawful for any of the subsidiary banks of the bank holding company in question to own stock in the bank service corporation subsidiary of the holding company, as the exemption in section 6(b)(1) would not apply because of the servicing by the bank service corporation of nonsubsidiary banks.

(4) Because the bank service corporation referred to in the question is serving banks other than the subsidiary banks, the bank holding company is not exempt under section 4(c)(1) of the Bank Holding Company Act from the prohibition of acquisition of nonbanking interests in section 4(a)(1) of that Act. The bank holding company, however, is entitled to the benefit of the exemption in section 4(c)(4) of the Act. That section exempts from section 4(a) ''shares which are of the kinds and amounts eligible for investment by National banking associations under the provisions of section 5136 of the Revised Statutes''. Section 5136 provides, in part, that: ''Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation.'' As the provisions of section 2(a) of the Bank Service Corporation Act and its legislative history make it clear that shares of a bank service corporation are of a kind eligible for investment by national banks under section 5136, it follows that the direct or indirect ownership on control of such shares by a bank holding company are permissible within the amount limitation discussed in paragraph (d) of this section.

(d) *Limit on investment by bank holding company system in stock of bank service corporation.* (1) In the situation presented by paragraph (c) the bank holding company clearly owns or controls, directly or indirectly, all of the stock of the bank service corporation. The remaining question, therefore, is whether the total direct and indirect investment of the bank holding company in the bank service corporation exceeds the amount permissible under the Bank Holding Company Act.

(2) The effect of sections 4(a)(1) and 4(c)(4) of the Bank Holding Company Act is to limit the amount of shares of a bank service corporation that a bank holding company may own or control, directly or indirectly, to the amount eligible for investment by a national bank, as previously indicated. Under section 2(a) of the Bank Service Corporation Act, the amount of shares of a bank service corporation eligible for investment by a national bank may not exceed ''10 per centum [of the bank's] * * * paid-in and unimpaired capital and unimpaired surplus''.

(3) The Board's view is that this aspect of the matter should be determined in accordance with the principles set forth in § 225.111, as revised (27 FR 12671), involving the application of sections 4(a)(1) and 4(c)(4) of the Bank Holding Company Act in the light of section 302(b) of the Small Business Investment Act limiting the amount eligible for investment by a national bank in the shares of a small business investment company to two percent of the bank's ''capital and surplus''.

(4) Except for the differences in the percentage figures, the investment limitation in section 302(b) of the Small Business Investment Act is essentially the same as the investment limitation in section 2(a) of the Bank Service Corporation Act since, as an accounting matter and for the purposes under consideration, ''capital and surplus'' may be regarded as equivalent in meaning to ''paid-in and unimpaired capital and unimpaired surplus.'' Accordingly, the maximum permissible investment by a bank holding company system in the stock of a bank service corporation should be determined in accordance with the formula prescribed in § 222.111.

[27 FR 12918, Dec. 29, 1962. Redesignated at 36 FR 21666, Nov. 12, 1971]