(b) It was asked whether it makes any difference that the shares of Y Company are not owned directly by X Corporation but instead are owned through Subsidiaries A and B. X Corporation owns all the voting shares of Subsidiary A, which owns one-half of the voting shares of Subsidiary B. Subsidiaries A and B each own one-third of the voting shares of Y Company.

(c) Section 4(c)(5) is divided into two parts. The first part exempts the ownership of securities of nonbanking companies when the securities do not include more than 5 percent of the voting securities of the nonbanking company and do not have a value greater than 5 percent of the value of the total assets of the bank holding company. The second part exempts the ownership of securities of an investment company which is not a bank holding company and is not engaged in any business other than investing in securities, provided the securities held by the investment company meet the 5 percent tests mentioned above.

(d) In §225.101, the Board expressed the opinion that the first exemption in section 4(c)(5):

"* * * is as applicable to such shares when held by a banking subsidiary of a bank holding company as when held directly by the bank holding company itself. While the exemption specifically refers only to shares held or acquired by the bank holding company, the prohibition of the Act against retention of nonbanking interests applies to the extent of the control company's control of the bank involved; and none of the five factors required by the Bank Holding Company Act to be considered by the Board in approving a stock acquisition would seem to have any application. In view of the objectives and purposes of the act, the word "acquire" would not seem reasonably to include transactions of this kind.

(e) The Board is of the view that the principles stated in that opinion are also applicable to the second exemption in section 4(c)(5), and that they apply whether or not the subsidiary owning the shares is a banking subsidiary. Accordingly, on the basis of the facts presented, the Board is of the opinion that the second exemption in section 4(c)(5) applies to the indirect ownership of shares of Y Company by X Corporation through Subsidiaries A and B.

[22 FR 2533, Apr. 13, 1957. Redesignated at 36 FR 21666, Nov. 12, 1971]