FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 71-28
February 1, 1971

PROPOSED AMENDMENTS TO REGULATION Y
(Bank Holding Companies)

To All Banks
in the Eleventh Federal Reserve District:

The Board of Governors of the Federal Reserve System issued for comment on January 25, 1971, proposed amendments to Regulation Y, "Bank Holding Companies".

The proposed amendments relate to activities that would be regarded as permissible for bank holding companies, subject to Board approval in individual cases, under a new law, "Bank Holding Company Act Amendments of 1970".

Also included in the proposals is a description of the general procedures to be used by the Board in processing applications of individual companies for approval to engage in these lines of business.

At the same time the Board proposed adding new language to the regulation spelling out the procedures it will use in implementing section 4(c)(12) of the Act. That section permits a company covered by the 1970 amendments to acquire shares of any company--subject to conditions prescribed by the Board--until January 1, 1981, so long as it divests itself by that date of either its bank or its activities unrelated to banking.

The text of the proposed amendments is attached, together with the accompanying press release. Interested persons are invited to submit in writing any relevant views. All comments should be submitted to the Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551, to be received not later than February 26, 1971.

Yours very truly,

P. E. Coldwell
President

Attachments

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FEDERAL RESERVE

press release

For immediate release January 25, 1971

The Board of Governors of the Federal Reserve System today proposed amendments to its bank holding company regulation as a first step toward implementing the "Bank Holding Company Act Amendments of 1970." That law extended the Board's regulatory authority over bank holding companies to those that control only one bank.

The regulatory amendments propose 10 activities to be regarded as closely related to banking or managing or controlling banks under the new law, and thus permissible for bank holding companies, subject to Board approval in individual cases. The proposal also spells out the general procedures the Board would follow in processing applications by individual companies to engage in these lines of business.

Comments on the proposed amendments to Regulation Y (bank holding companies) should be received by the Board no later than February 26.

Under the Bank Holding Company Act of 1956, only those holding companies that controlled 25 per cent or more of the voting stock of two or more banks were required to register with the Federal Reserve and limit their activities to banking and closely related activities. In the 1970 amendments Congress expanded the law to cover corporations and other entities that control only one bank, gave the Board greater latitude to determine when control exists, and amended other parts of the Act under which bank holding companies may engage in bank-related activities.

About 1,100 commercial banks with total deposits of $140 billion were believed affiliated with one-bank holding companies as of April 1, 1970. As of last December 31, there were 119 registered bank holding companies--those controlling two or more banks. Their subsidiary banks held deposits of more than $70 billion.

One of the regulatory amendments proposed by the Board today would apply to Section 4(c)(8) of the Act which states, in part, that a bank holding company may acquire "shares of any company the activities of which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

Under the proposal to implement this section of the Act, a bank holding company could apply to the Board for permission to retain or acquire an interest in a company that engages solely in one or more of the following activities:

1. Making loans for its own account or for the account of others. This would include, for example, operations as a mortgage, finance or factoring company.

2. Operating as an industrial bank.

3. Servicing loans.

4. Acting as fiduciary.

5. Acting as investment or financial adviser.

6. Leasing personal property where the initial lease provides for payment of rentals that will reimburse the lessor for the full purchase price of the property.

7. Acting as insurance agent or broker, principally in connection with extensions of credit by the holding company or any of its subsidiaries.

8. Acting as insurer for the holding company and its subsidiaries or with respect to insurance sold by the holding company or any of its subsidiaries as agent or broker.

9. Providing bookkeeping or data processing services for (a) the holding company and its subsidiaries, (b) other financial institutions, or (c) others, provided that the value of services performed by the company for such persons is not a principal portion of the total value of all such services performed.

10. Making equity investments in community rehabilitation and development corporations engaged in providing housing and employment opportunities for low and moderate income persons.

The Board expects to consider additional activities for inclusion in the regulation from time to time and will consider submissions after the initial regulatory amendments are adopted.

While the proposed regulatory change relating to section 4(c)(8) is under consideration, the Board does not plan to process applications filed under that section after December 31, 1970, the effective date of the new statute, except in unusual and exigent circumstances. A form to be used in submitting applications to acquire closely related activities is now being prepared by the Board.

In outlining proposed procedures to be followed in section 4(c)(8) cases, the Board said notice of any application to acquire an

interest in an existing company would be published in a newspaper in the affected area and in the Federal Register. Interested persons will be given an opportunity to express their views--including by means of a hearing, where appropriate--on the question whether performance of the activity by the holding company "can reasonably be expected to produce public benefits...that outweigh possible adverse effects..."

In cases where a holding company files an application to engage in an activity not specified in the regulation as adopted, the Board would publish notice of the application in the Federal Register and give interested persons an opportunity to request a hearing not only on public benefit aspects but also on the question whether the activity sought is closely related to banking.

Applications to engage in newly launched bank-related activities that the Board determines by regulation to be permissible would be deemed approved unless the applicant were notified to the contrary within 45 days after the Board advised that his application had been received. The applicant would be required to publish notice of his planned activity in the community affected.

At a later time, the Board contemplates consideration of extending this approval procedure to acquisitions of existing firms under guidelines designed to identify situations in which such acquisitions would promote competition.

As proposed, the regulation would not limit the location of a permissible activity to any State or other geographical area. Such limitations might be imposed, however, by regulation or order in particular cases.

At the same time the Board proposed adding new language to the regulation spelling out the procedures it will use in implementing section 4(c)(12) of the Act. That section permits a company covered by the 1970 amendments to acquire shares of any company--subject to conditions prescribed by the Board--until January 1, 1981, so long as it divests itself by that date of either its bank or of activities unrelated to banking.

Under these procedures, scheduled in the proposal to take effect as of January 26, 1971, prior approval of the Board would be required before any company may engage in any activity pursuant to section 4(c)(12). If the company filed an irrevocable declaration that it would cease to be a bank holding company by January 1, 1981, an application filed by it would be considered approved 45 days after the company was informed that its request has been received by the Federal Reserve unless the company was notified otherwise within that time. If a company had not filed the declaration, the Board would approve only those applications in which the company demonstrated that the activities sought were necessary to enable the more efficient marketing of assets subject to divestiture.

The Board also announced that it is considering limiting the scope of permissible activities under section 4(c)(5)--which relates to the acquisition of shares eligible for investment by national banks--to lending or fiduciary activities commenced by a new company. The only exception would be where the shares involved are of the kinds and amounts explicitly eligible for investment by national banks under Federal law.

Copies of the proposed amendments are attached.

A registration statement to be used by one-bank holding companies is being prepared by the Board and is expected to be issued in the near future. Such companies must register with the Federal Reserve by June 29, which is 180 days after the new legislation was signed into law.

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FEDERAL RESERVE SYSTEM

[12 CFR Part 222]

[Reg. Y]

BANK HOLDING COMPANIES

Interests in Nonbanking Activities

By Act of Congress approved December 31, 1970 (Public Law 91-607) the Bank Holding Company Act was expanded to cover companies that control only one bank. In conjunction with that expansion Congress amended section 4(c)(8) of that Act, under which bank holding companies may acquire interests in nonbanking activities subject to certain restrictions and upon certain conditions. Under that section as amended, the Board is authorized to promulgate regulations governing acquisition of companies whose activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

In determining whether a particular activity is a proper incident to banking or managing or controlling banks, the Board is required to "consider whether its performance by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." In promulgating regulations under that section, the Board is authorized to "differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of a going concern".

As its initial implementation of this authority, the Board is giving consideration to amending § 222.4(a) of Regulation Y to read as follows:

§ 222.4 Interests in nonbanking organizations.

(a) Shares of companies whose activities are closely related to banking or managing or controlling banks. Any bank holding company may apply to the Board, by filing an application with its Federal Reserve Bank, for permission to retain or acquire an interest in a company that engages solely in one or more of the following activities:

(1) making, for its own account or for the account of others, loans such as would be made, for example, by a mortgage, finance, or factoring company;

(2) operating as an industrial bank;

(3) servicing loans;

(4) acting as fiduciary;

(5) acting as investment or financial adviser, including for a mortgage investment trust or a real estate investment trust;

(6) leasing personal property, where the initial lease provides for payment of rentals that will reimburse the lessor for the full purchase price of the property;

(7) acting as insurance agent or broker principally in connection with extensions of credit by the holding company or any of its subsidiaries;

(8) acting as insurer for the holding company and its subsidiaries or with respect to insurance sold by the holding company or any of its subsidiaries as agent or broker;

(9) providing bookkeeping or data processing services for (i) the holding company and its subsidiaries, (ii) other financial institutions or (iii) others, Provided, That the value of services performed by the company for such persons is not a principal portion of the total value of all such services performed; or

(10) making equity investments in community rehabilitation and development corporations engaged in providing better housing and employment opportunities for low-income and moderate-income population.

Every application filed under this section shall be accompanied by a copy of a notice of the proposal published within the preceding 30 days in a newspaper of general circulation in the communities in which offices of the company are or are to be located. The Board will cause to be published in the Federal Register notice of any application to acquire an interest in a going concern and will give interested persons an opportunity to express their views (including where appropriate, by means of a hearing) on the question whether performance of the activity proposed by the holding company, under the particular circumstances involved can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Applications to engage in the foregoing activities *de novo* shall be deemed to be approved, unless the applicant is notified to the contrary within 45 days after being advised that the application has been filed. Except to the extent otherwise provided in an order in a particular case, the following conditions shall apply with respect to every acquisition consummated or activity engaged in on authority of this section: (1) performance of services of the company shall not be subject to any condition which, if imposed by a bank, would constitute an unlawful tie-in arrangement under section 106 of the Bank Holding Company Act Amendments of 1970; (2) activities of the company

acquired shall not be altered in any significant respect from those considered by the Board in making the determination, nor provided at any location other than those described in the application for such determination, except upon compliance with the foregoing procedures for engaging in an activity de novo; and (3) no merger, acquisition of assets, or assumption of liabilities to which the acquired company is a party shall be consummated without prior Board approval, if thereafter the bank holding company will continue to own, directly or indirectly, more than five per cent of the voting shares of such company or its successor.

* * * * *

The regulation as proposed does not limit the location at which permissible activities may be conducted to any State or other geographical area. Such limitations might be imposed by regulation, or by order in particular cases.

In view of the amendment to section 4(c)(8), the Board is considering limiting the scope of acquisitions by holding companies that may be made on the basis of section 4(c)(5) of the Act. Under that section, holding companies may acquire shares of the kinds and amounts eligible for investment by national banks under the provisions of section 5136 of the Revised Statutes. Under present interpretations of the Board, a holding company may acquire interests in many of the types of companies described above if located at a place at which one of the banks in the holding company may engage in the activities involved and such activities are otherwise conducted in accordance with certain other limitations on the activities of national banks.

The amendment to section 4(c)(8) requires the Board to consider acquisitions by a bank holding company not only from the standpoint of whether the activities of the company to be acquired are closely related to banking, but also from the standpoint of antitrust and related considerations. Accordingly, the Board believes that it should exercise its general regulatory authority over holding companies under section 5 of the Act to limit the scope of permissible activities under section 4(c)(5) to lending and fiduciary activities commenced *de novo*, except where the shares involved are of the kinds and amounts explicitly eligible for investment by a national bank under Federal statute law. Otherwise Congress' purpose in amending section 4(c)(8) might be substantially nullified. Any limitations on section 4(c)(5) would not affect the scope of activities permitted to a banking subsidiary of a bank holding company, but could affect acquisitions of a nonbanking company by such a bank, since any acquisition by a subsidiary bank would represent an indirect acquisition by the parent holding company.

To aid in the consideration by the Board of the proposed regulation, interested persons are invited to submit relevant data, views, or arguments. In accordance with the provisions of section 4(c)(8) interested persons are also given opportunity to request a hearing on the question whether an activity specified in the proposed amendment is "so closely related to banking or managing or controlling banks as to be a proper incident thereto".

The Board anticipates proposing from time to time additional activities for inclusion in the regulation. Accordingly, holding

companies or other interested persons may desire to submit proposals that they wish to have the Board consider for that purpose. However, to facilitate prompt implementation of the amended section 4(c)(8), the Board does not intend to consider such proposals until after adoption by the Board of its initial regulation. For similar reasons, the Board does not anticipate processing until that time applications for acquisitions on the basis of section 4(c)(8) received by the Reserve Banks after December 31, 1970, except in unusual and exigent circumstances.

Any such material or requests for hearing should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551, to be received not later than February 26, 1971. Such material will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information.

By order of the Board of Governors, January 21, 1971.

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon
Deputy Secretary

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FEDERAL RESERVE SYSTEM

[12 CFR Part 222]

[Reg. Y]

BANK HOLDING COMPANIES

Nonbanking Acquisitions by One-Bank Holding Companies

The Board of Governors proposes to add a new paragraph to section 222.4 of Regulation Y to read as follows:

§ 222.4 Interests in nonbanking organizations.

* * *

(d) Certain acquisitions by company covered in 1970. Except with respect to acquisitions made pursuant to a binding commitment entered into before January 26, 1971, no bank holding company may after that date, directly or indirectly, acquire any shares or commence to engage in any activities on the basis of section 4(c)(12) of the Bank Holding Company Act, except with prior approval of the Board. If the company has filed with the Board an irrevocable declaration that, unless granted an exemption under section 4(d) of the Act, it will cease to be a bank holding company by January 1, 1981, requests for such approval shall be deemed to be approved 45 days after the company is informed that the request has been received by its Reserve Bank, unless the company is notified to the contrary within that time. If the company has not filed such a declaration, only requests with respect to acquisitions or expansion of activities that the company demonstrates to the satisfaction of the Board are necessary to enable it more efficiently to market its assets subject to divestiture will be approved.

*   *   *   *   *

Section 4(c)(12) of the Bank Holding Company Act permits a company covered by the 1970 amendments to retain or acquire any shares or engage in any activities until January 1, 1981, if the holding company complies with such conditions as the Board may by regulation prescribe. In enacting this exemption, Congress had two types of companies in mind. The Board believes that the foregoing system of prior approvals is necessary to assure that the exemption is used only by those companies for purposes consistent with the Act.

The two types of companies Congress had in mind in enacting section 4(c)(12) are (1) a company that elects to divest itself of its bank before 1981 and thereby cease to be a bank holding company and (2) a company that will be required to divest a nonbanking subsidiary or cease to engage in a nonbanking activity owned or engaged in on December 31, 1970.

Under the proposal, approval of acquisitions by a company that elects to divest itself of its bank would normally be granted, under a simple notification procedure. Acquisitions by other companies normally would not be approved, unless the company demonstrates that the acquisition is necessary to assure that the company's required divestitures can be made as quickly as possible, as efficiently as possible, and with as little economic loss to the divesting company as possible.

To aid in the consideration of this matter by the Board, interested persons are invited to submit relevant data, views, or arguments. Any such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551, to be received not later than February 26, 1971. Such material will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information.

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