FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 71-126
May 28, 1971

AMENDMENTS TO REGULATION Y
(Activities "closely related to banking")

To All Banks and Others Concerned
in the Eleventh Federal Reserve District:

The Board of Governors of the Federal Reserve System on May 27, 1971, announced amendments to section 222.4 of Regulation Y ("Bank Holding Companies"), setting out seven activities construed to be "closely related to banking or managing or controlling banks" under section 4(c)(8) of the Bank Holding Company Act, and thus permissible for bank holding companies, subject to Board approval in individual cases.

The previously proposed activities relating to insurance activities and data processing are still under consideration. The new amendments, which become effective June 15, 1971, also specify the conditions to which acquisitions will be subject, and set forth procedures the Board will follow in processing applications filed under section 4(c)(8).

In a separate action, the Board also amended its "Rules Regarding Delegation of Authority", delegating to the Reserve banks the responsibility for administering applications filed under section 4(c)(8) involving newly formed subsidiaries.

Enclosed is a copy of the Board's press release, copies of the amendments described above, and an interpretation by the Board expressing views on several questions which arose during consideration of the above matters.

Also enclosed are copies of forms to be used by companies seeking acquisitions under section 4(c)(8), and forms to be used for certain required newspaper publication notices.

Printed copies of the amendments will be furnished at a later date for inclusion in binders of Federal Reserve Regulations furnished to all member banks.

Yours very truly,

P. E. Coldwell
President

Enclosures

FEDERAL RESERVE
press release

For release in morning papers
Friday, May 28, 1971 May 27, 1971

The Board of Governors of the Federal Reserve System today announced amendments to its bank holding company regulation to implement, in part, those portions of the "Bank Holding Company Amendments of 1970" that permit expansion of such companies into activities closely related to banking.

The regulatory amendments, effective June 15, list seven activities that the Board has found to be closely related to banking, or managing or controlling banks, and thus permissible for bank holding companies subject to Board approval in individual cases. The amendments also spell out the procedures to be followed by the Board in processing applications by individual companies that are filed under Section 4(c)8 of the Bank Holding Company Act.

Under the amendments, a bank holding company may apply to the Federal Reserve for permission to retain or acquire an interest in a company that engages solely in one or more of the following activities:

1. Making or acquiring, for its own account or for the account of others, loans and other extensions of credit (including issuing letters of credit and accepting drafts), such as would be made, for example, by a mortgage, finance, credit card, or factoring company.

2. Operating as an industrial bank, Morris Plan bank, or industrial loan company in the manner authorized by State law so long as the institution does not both accept demand deposits and make commercial loans.

3. Servicing loans and other extensions of credit for any person.

4. Performing or carrying on any one or more of the functions or activities that may be performed or carried on by a trust company (including activities of a fiduciary, agency, or custodian nature), in the manner authorized by State law so long as the institution does not both accept demand deposits and make commercial loans.

5. Acting as investment or financial adviser, including (a) serving as the advisory company for a mortgage or a real estate investment trust and (b) furnishing economic or financial information.

6. Leasing personal property and equipment, or acting as agent, broker, or adviser in leasing of such property, where at the inception of the initial lease the expectation is that the effect of the transaction and reasonably anticipated future transactions with the same lessee as to the same property will be to compensate the lessor for not less than the lessor's full investment in the property.

7. Making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas.

These seven activities are substantially the same as the ones proposed by the Board on January 25, 1971, when it announced plans to amend its Bank Holding Company Regulation Y as a first step toward implementing the 1970 amendments. Changes made in the original proposal are technical in nature or designed to clarify the Board's intent in view of public comments received since January in written form and in public hearings.

Three other proposed activities listed by the Board last January--two relating to insurance activities and a third to data processing--are still under consideration. The permissible activities do not include operating as a savings and loan association, acting as investment advisor to an open-end investment company or as a management consultant, or investing in an industrial development corporation. The Board is considering whether to propose adding these and other activities to the list.

Under the original 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 Act to cover companies 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. Companies covered by the 1970 amendments must register with the Federal Reserve by June 29, 1971.

In listing activities regarded as closely related to banking, the Board partially implemented 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."

The regulatory amendments do not limit the location of a permissible activity to any State or other geographical area but limitations may be imposed by order in individual cases.

Under procedures spelled out by the Board, a bank holding company desiring to engage in one of the permissible activities through a newly formed ("de novo") subsidiary must furnish the district Federal Reserve Bank with a copy of a notice of its proposal that was published within the preceding 30 days in a newspaper of general circulation in the communities to be served by that subsidiary. The holding company may engage in the activity 45 days after the notice is filed with the Federal Reserve unless the company is notified to the contrary within that time. In exigent circumstances a holding company might be permitted to begin such activity before expiration of the 45-day period.

A bank holding company desiring to acquire an established company engaged in a permissible activity must file an application with its Reserve Bank. This application must be accompanied by a copy of notice of the proposal that was published within the preceding 30 days in a general circulation newspaper in the communities to be served. The Board will publish notice in the Federal Register of any application to acquire or retain an interest in a going concern and will give interested persons an opportunity to express views, including by means of a hearing where appropriate, on the question whether the activity proposed can be expected to produce public benefits that outweigh possible adverse effects.

Any bank holding company may apply to the Board to engage in an activity not included specifically in the Regulation if it is of the

opinion that the activity is closely related to banking or managing or controlling banks. Applications of this type will be processed under the same procedures as applications to acquire a going concern engaged in one of the specified activities. However, the Board will publish a notice of opportunity for hearing only if it believes that there is a reasonable basis for the holding company's opinion that the activity applied for is closely related to banking.

The regulation specifies that each acquisition under Section 4(c)8 of the Act will be subject to these three conditions:

1. Services shall not be tied in to services of a holding company's banking subsidiaries, or otherwise conditioned in a manner that if offered by a bank would violate the provisions of section 106 of the 1970 amendments.

2. Activities shall not be altered in any significant respect from those considered by the Board.

3. The company acquired by a bank holding company must receive prior Board approval of any merger or acquisition of assets if the holding company will continue to own--directly or indirectly--more than five per cent of the voting shares of the subsidiary or its successor.

In a separate action, the Board delegated to the Reserve Banks the basic responsibility for administering applications filed under Section 4(c)8 as it relates to activities commenced through a newly formed (de novo) subsidiary.

The Board also delegated to the Reserve Banks the authority to determine when a proposal filed under Section 4(c)12 of the Act and

Regulation Y should be suspended for additional inquiry or Board determination. That section permits a company covered by the 1970 amendments to acquire shares of any company--subject to conditions prescribed by the Board--so long as it divests itself by January 1, 1981, of either its bank or of activities unrelated to banking. Under regulatory amendments announced earlier by the Board, a company that files an irrevocable declaration that it will cease to be a bank holding company by January 1, 1981, may acquire subsidiaries under a simplified procedure.

The Board also approved the application form to be used by a company seeking to make an acquisition under Section 4(c)8. This form--F.R. Y-4--is to be used by bank holding companies applying to acquire a going concern or where the activity to be acquired has not been determined by Board regulation to be closely related to banking. Copies of the form will be available at the Reserve Banks.

Attached are copies of the regulatory amendments approved by the Board, the forms to be used for newspaper publication of notice to establish, acquire, or retain a bank-related activity, and an interpretation relating to acquisitions to be made under Section 4(c)8.

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TITLE 12--BANKS AND BANKING

CHAPTER II--FEDERAL RESERVE SYSTEM

SUBCHAPTER A--BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Y]

PART 222--BANK HOLDING COMPANIES

Nonbanking Activities of Bank Holding Companies

By notice of proposed rule making published in the Federal Register on January 29, 1971 (36 F.R. 1430), the Board of Governors proposed to implement its regulatory authority under section 4(c)(8) of the Bank Holding Company Act to permit holding companies to engage directly or through a subsidiary in activities that are "so closely related to banking or managing or controlling banks as to be a proper incident thereto." A hearing was held before members of the Board on April 14, 1971, regarding all issues raised by the proposals, except the extent to which data processing and insurance agency activities are closely related to banking.

Following consideration of the comments received and the record of the hearing, as its initial implementation of its authority under § 4(c)(8) of the Act as revised by the 1970 amendments to the Act, the Board has amended § 222.4(a), (b), and (c) of Regulation Y to read as set forth below, effective June 15, 1971. (Former paragraphs (b) and (c) were nonsubstantive.) An accompanying interpretation expresses the Board's views on several questions that arose during the course of its consideration of this matter.

§ 222.4 Nonbanking activities.

(a) Activities closely related to banking or managing or controlling banks. In accordance with the procedures set forth in paragraphs (b) and (c) of this section, any bank holding company may engage, or retain or acquire an interest in a company that engages, solely in one or more of the activities specified below, including such incidental activities as are necessary to carry on the activities so specified. Any bank holding company that is of the opinion that other activities in the circumstances surrounding a particular case are closely related to banking or managing or controlling banks may file an application in accordance with the procedures set forth in paragraph (b)(2). As to such an application, the Board will publish in the Federal Register a notice of opportunity for hearing only if it believes that there is a reasonable basis for the holding company's opinion. The following activities have been determined by the Board to be so closely related to banking or managing or controlling banks as to be a proper incident thereto:

(1) making or acquiring, for its own account or for the account of others, loans and other extensions of credit (including issuing letters of credit and accepting drafts), such as would be made, for example, by a mortgage, finance, credit card, or factoring company;*/

* Operating a savings and loan association is not regarded by the Board as within the description of this activity. Whether to propose expanding activity (2) to include operating that type of financial institution is under consideration by the Board.

(2) operating as an industrial bank, Morris Plan bank, or industrial loan company, in the manner authorized by State law so long as the institution does not both accept demand deposits and make commercial loans;

(3) servicing loans and other extensions of credit for any person;

(4) performing or carrying on any one or more of the functions or activities that may be performed or carried on by a trust company (including activities of a fiduciary, agency, or custodian nature), in the manner authorized by State law so long as the institution does not both accept demand deposits and make commercial loans;**/

(5) acting as investment or financial adviser, including (i) serving as the advisory company for a mortgage or a real estate investment trust and (ii) furnishing economic or financial information;**/

(6) leasing personal property and equipment, or acting as agent, broker, or adviser in leasing of such property, where at the inception of the initial lease the expectation is that the effect of the transaction and reasonably anticipated future transactions with the same lessee as to the same property will be to compensate the lessor for not less than the lessor's full investment in the property;

** Acting as investment adviser to an open-end investment company or as a management consultant is not regarded by the Board as within the description of this activity. Whether to propose expanding activity (5) to include acting in either or both of those capacities is under consideration by the Board.

(7) making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas.***/

(b)(1) De novo entry. A bank holding company may engage de novo (or continue to engage in an activity earlier commenced de novo) directly or indirectly, solely in activities described in paragraph (a), 45 days after the company has furnished its Reserve Bank with a copy of a notice of the proposal (in substantially the same form as F.R. Y-4A) published within the preceding 30 days in a newspaper of general circulation in the communities to be served, unless the company is notified to the contrary within that time or unless it is permitted to consummate the transaction at an earlier date on the basis of exigent circumstances of a particular case. If adverse comments of a substantive nature are received by the Reserve Bank within 30 days after the company has so published its proposal,1/ or if it otherwise appears appropriate in a particular case, the Reserve Bank may inform the company that (i) the proposal shall not be consummated until specifically authorized by the Reserve Bank or by the Board or (ii) the proposal should be processed in accordance with the procedures of subparagraph (2).

*** Investing in an industrial development corporation is not regarded by the Board as within the description of this activity. Whether to propose adding that and other activities to the list in under consideration.

1/ If a Reserve Bank decides that adverse comments are not of a substantive nature, the person submitting the comments may request review by the Board of that decision in accordance with the provisions of § 265.3 of the Board's Rules Regarding Delegation of Authority (12 CFR 265.3) by filing a petition for review with the Secretary of the Board.

(2) Acquisition of going concern. A bank holding company may apply to the Board to acquire or retain the assets of or shares in a company engaged solely in activities described in paragraph (a) by filing an application with its Reserve Bank (Form F.R. Y-4). Every such application shall be accompanied by a copy of a notice of the proposal (in substantially the same form as F.R. Y-4B) published within the preceding 30 days in a newspaper of general circulation in the communities to be served. The Board will publish in the Federal Register notice of any such application 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 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.

(c) Tie-ins, alterations, relocations, consolidations. Except as 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 the authority of § 4(c)(8) of the Act:
(1) the provision of any credit, property or services involved 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) the activities involved 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 notice published with respect to such determination, except upon compliance with the procedures of paragraph (b)(1); and (3) no merger, or acquisition of assets other than in the ordinary course of business, 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.

Effective date. June 15, 1971

By order of the Board of Governors, May 20, 1971.

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon
Deputy Secretary

[SEAL]

TITLE 12--BANKS AND BANKING

CHAPTER II--FEDERAL RESERVE SYSTEM

SUBCHAPTER A--BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Y]

PART 222--BANK HOLDING COMPANIES

Nonbanking Activities of Bank Holding Companies

§ 222.123 Activities closely related to banking.

(a) Effective June 15, 1971, the Board of Governors has amended § 222.4(a) of Regulation Y to implement its regulatory authority under § 4(c)(8) of the Bank Holding Company Act. In some respects activities determined by the Board to be closely related to banking are described in general terms that will require interpretation from time to time. The Board's views on some questions that have arisen are set forth below.

(b) Section 222.4(a) states that a company whose ownership by a bank holding company is authorized on the basis of that section may engage solely in specified activities. That limitation refers only to activities the authority for which depends on § 4(c)(8) of the Act. It does not prevent a holding company from establishing one subsidiary to engage, for example, in activities specified in § 222.4(a) and also in activities that fall within the scope of § 4(c)(1)(C) of the Act--the "servicing" exemption.

(c) The amendments to § 222.4(a) do not apply to restrict the activities of a company previously approved by the Board on the basis of § 4(c)(8) of the Act. Activities of a company authorized

on the basis of § 4(c)(8) either before the 1970 Amendments or pursuant to the amended § 222.4(a) may be shifted in a corporate reorganization to another company within the holding company system without complying with the procedures of § 222.4(b), as long as all the activities of such company are permissible under one of the exemptions in section 4.

(d) Permissible leasing activities are limited to transactions where the lease is the functional equivalent of an extension of credit to the leasee. Accordingly, a company may engage in leasing under § 222.4(a) if, at the time of the acquisition of the property by the lessor, there is a lease agreement that will yield a return from (1) rentals, (2) estimated salvage value at the end of the minimum useful life allowed by the Internal Revenue Service, and (3) estimated tax benefits (investment tax credit and tax deferral from accelerated depreciation) that would result in full recovery of the lessor's acquisition cost. The Board understands that by law some municipal corporations may not enter into a lease for a period in excess of one year. Such an impediment does not disqualify a company authorized under § 222.4(a) from entering into a lease with the municipality if the company reasonably anticipates that the municipality will renew the lease annually until such time as the company is fully compensated for its investment in the leased property. A company authorized under § 222.4(a) may also engage in so-called "bridge" lease financing where the lease is short term pending completion of long-term financing, by the same or another lender.

(e) The authority of holding companies under § 222.4(a) to invest in corporations designed to promote the welfare of their community is intended to permit holding companies to fulfill their civic responsibilities. Under that authority a holding company may invest in community development corporations established pursuant to Federal or State law. It may also participate in other civic projects, such as a municipal parking facility sponsored by a local civic organization as a means to promote greater use by the public of the community's facilities. It does not, however, authorize investments (for example, ownership of an apartment complex) that are entered into to a substantial extent for profit even though to some extent the investment will benefit the community.

(f) Under the procedures in § 222.4(c), a holding company that wishes to change the location at which it engages in activities authorized pursuant to § 222.4(a) must publish notice in a newspaper of general circulation in the community to be served. The Board does not regard minor changes in location as within the coverage of that requirement. A move from one site to another within a one mile radius would constitute such a minor change if the new site is in the same State.

(Interprets and applies 12 U.S.C. 1843(c)(8).)

By order of the Board of Governors, May 20, 1971.

Kenneth A. Kenyon
Deputy Secretary

TITLE 12--BANKS AND BANKING

CHAPTER II--FEDERAL RESERVE SYSTEM

SUBCHAPTER A--BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 265--RULES REGARDING DELEGATION OF AUTHORITY

Nonbank Activities Commenced de novo

Effective June 15, 1971, the Board has implemented its authority under section 4(c)(8) of the Bank Holding Company Act to permit holding companies to engage directly or through a subsidiary in activities that are "so closely related to banking or managing or contolling banks as to be a proper incident thereto." As permitted by section 4(c)(8), the Board differentiated in the procedures that holding companies must follow in expanding their activities under section 4(c)(8) between activities commenced de novo and activities commenced by the acquisition of a going concern.

The Board has delegated to the Reserve Banks authority to permit holding companies to engage de novo in activities the Board has determined to be closely related to banking.

The delegation is reflected in the following amendment to § 265.2(f) of the Board's Rules Regarding Delegation of Authority:

§ 265.2 Specific functions delegated to Board employees and Federal Reserve Banks.

* * * * *

(f) Each Federal Reserve Bank is authorized, as to member banks or other indicated organizations headquartered in its district:

* * * * *

(20) Under § 222.4(b)(1) of this Chapter (Regulation Y), and subject to § 265.3 if a person submitting adverse comments that the Reserve Bank has decided are not substantive files a petition for review by the Board of that decision,

(i) to permit a bank holding company that has furnished it with a copy of a duly published notice of a proposal to engage de novo in activities specified in § 222.4(a) (or retain shares in a company established de novo and engaging in such activities) if its evaluation of the considerations specified in § 4(c)(8) of the Bank Holding Company Act leads it to conclude that the proposal can reasonably be expected to produce benefits to the public.

(ii) to notify a bank holding company that has furnished it with a duly published notice of the kind described in clause (i) that the proposal should not be consummated until specifically authorized by the Reserve Bank or by the Board or that the proposal should be processed in accordance with the procedures of § 222.4(b)(2).

(iii) to permit a bank holding company that has furnished it with a duly published notice of the kind described in clause (i) to consummate the proposal before the expiration of the 45-day period referred to in § 222.4(b)(1), because exigent circumstances justify consummation at an earlier time.

(21) Under § 222.4(c)(2) of this Chapter (Regulation Y) to permit or stay a proposed de novo modification or relocation of

activities engaged in by a bank holding company on the same basis as de novo proposals under the preceding subparagraph (20).

* * * * *

Effective date. This amendment is effective June 15, 1971.

By order of the Board of Governors, May 20, 1971.

Kenneth A. Kenyon
Deputy Secretary

Form F.R. Y-4A

FORM FOR PUBLICATION OF NOTICE OF
PROPOSED NONBANKING ACTIVITIES
TO BE ENGAGED IN BY A BANK HOLDING COMPANY
DE NOVO

Pursuant to § 4(c)(8) of the Bank Holding Company Act and regulations of the Board of Governors of the Federal Reserve System,

_____,
(Name of company, in bold-face type)

_____,
(City and State of principal place of business)

a bank holding company, proposes to [continue to] engage [, through a subsidiary known as _____,] in the following activities:

_____

_____
(Brief but reasonably comprehensive description of activities)

Such activities will be conducted at offices in the following locations:

_____
(Street address, city, and State)

Persons wishing to comment on this proposal should submit their views in writing within 30 days of the date of publication of this notice to

_____
(Name, city and State, and zip code of Reserve Bank in whose district the notice is published.)

NOTE: Bracketed language should be used only if applicable.

Form F.R. Y-4B

FORM FOR PUBLICATION OF NOTICE OF
PROPOSED ACQUISITION OF SHARES BY
BANK HOLDING COMPANY OF
GOING CONCERN
ENGAGED IN NONBANKING ACTIVITIES

Pursuant to § 4(c)(8) of the Bank Holding Company Act and regulations of the Board of Governors of the Federal Reserve System, notice is given that

_____,
(Name of company, in bold-face type)

_____,
(City and State of principal place of business)

a bank holding company, proposes to [retain] [acquire] [shares] [the assets of] _____,
(Name of company)

_____.
(City and State of principal place of business

and thereby to engage in the following activities:

_____

_____.
(Brief but reasonably comprehensive description of activities)

Such activities will be conducted at offices in the following locations:

_____.
(Street address, city, and State)

Persons wishing to comment on this proposal should submit their views in writing within 30 days of the date of publication of this notice to

_____.
(Name, city and State, and zip code of Reserve Bank in whose district the notice is published.)

NOTE: Bracketed language should be used only if applicable.