FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 71-130
June 7, 1971

AMENDMENTS TO REGULATION Y AND
RULES REGARDING DELEGATION OF AUTHORITY

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

Enclosed are printed versions of the amendments to Regulation Y (Bank Holding Companies) and the Board's "Rules Regarding Delegation of Authority" which were furnished you in typewritten form in our Circular No. 71-126 of May 28, 1971. The enclosures include:

1. The current version of the entire §222.4 of Regulation Y, including paragraphs (d) and (e) which had been furnished in printed form earlier.

2. Amendments adding paragraphs (19), (20), and (21) to §265.2(f) of "Rules Regarding Delegation of Authority".

3. The Board's interpretation setting out its views on pertinent matters dealing with the enclosed amendments.

These amendments should be inserted in the binder of Federal Reserve Regulations furnished all member banks. The separate copies of paragraphs (d) and (e) of §222.4 of Regulation Y should be removed and destroyed, since they are furnished in the enclosed material.

Yours very truly,

P. E. Coldwell
President

Enclosures

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

RULES REGARDING DELEGATION OF AUTHORITY

AMENDMENT REGARDING NONBANK ACQUISITIONS BY CERTAIN ONE-BANK HOLDING COMPANIES

Effective March 18, 1971, § 265.2(f) is amended by adding new subparagraph (19) as follows:

SECTION 265.2—SPECIFIC FUNCTIONS DELEGATED TO BOARD EMPLOYEES AND FEDERAL RESERVE BANKS.

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

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(19) Under § 222.4(d) of this Chapter (Regulation Y),

(i) to notify a bank holding company that has informed it of a proposed acquisition of a going concern that, because the circumstances surrounding the application indicate that additional information is required or that the acquisition should be considered by the Board, the acquisition should not be consummated until specifically authorized by the Reserve Bank or by the Board.

(ii) to permit a bank holding company that has informed it of a proposed acquisition of a going concern to make the acquisition before the expiration of the 45-day period referred to in that paragraph, because exigent circumstances justify consummation of the acquisition at an earlier time.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

RULES REGARDING DELEGATION OF AUTHORITY

AMENDMENTS REGARDING NONBANK ACTIVITIES COMMENCED *DE NOVO*

Effective June 15, 1971, § 265.2(f) is amended by adding new subparagraphs (20) and (21) as follows:

SECTION 265.2—SPECIFIC FUNCTIONS DELEGATED TO BOARD EMPLOYEES AND FEDERAL RESERVE BANKS.

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

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(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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

BANK HOLDING COMPANIES

AMENDMENTS TO REGULATION Y

Effective June 15, 1971, section 222.4(a), (b), and (c) of Regulation Y is amended to read as follows:

SECTION 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;*

(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;**

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*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.

**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.

(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.***

(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).

(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

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***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 is 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.

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 March 18, 1971, section 222.4 of Regulation Y is amended by adding a new paragraph as follows:

(d) **Certain acquisitions by companies that became bank holding companies on December 31, 1970, as a result of the 1970 amendments.**—Except as provided in this paragraph, no bank holding company may acquire, directly or indirectly, any shares or commence to engage in any activities on the basis of § 4(c) (12) of the Act. A company may file with the Board an irrevocable declaration, in the form approved by the Board, that it will cease to be a bank holding company by January 1, 1981, unless it is granted an exemption under § 4(d) of the Act. A company that has filed such a declaration may (1) commence new activities *de novo,* either directly or through a subsidiary, without further action under this paragraph, until such time as the Board notifies the company to the contrary, and (2) make an acquisition of a going concern 45 days after the company has informed its Reserve Bank of the proposed acquisition, unless the company is notified to the contrary within that time or unless it is permitted to make the acquisition at an earlier date, based on exigent circumstances of a particular case. If the company has not filed such a declaration, no acquisition may be made, or activity commenced, on the basis of § 4(c) (12) except with prior approval of the Board. Normally 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. This paragraph does not apply to acquisitions made pursuant to a binding commitment entered into March 23, 1971.

Eflective July 1, 1971, section 222.4 of Regulation Y is amended by adding a new paragraph as follows:

(e) **Activities of companies in which national banks may invest.**—No bank holding company or subsidiary thereof that is not a bank or subsidiary of a bank may, after June 30, 1971, acquire shares on the basis of § 4(c)(5) of the Act unless such shares are of the kinds and amounts explicitly eligible by Federal statute for investment by a national bank. A national bank or a subsidiary thereof may acquire or retain shares on the basis of § 4(c)(5) in accordance with the rules and regulations of the Comptroller of the Currency. So far as Federal law is concerned, a State-chartered bank or a subsidiary thereof may (1) acquire or retain shares on the basis of § 4(c)(5) if such

shares are of the kinds and amounts explicitly eligible by Federal statute for investment by a national bank and (2) acquire or retain all (but, except for directors' qualifying shares, not less than all) of the shares of a company that engages solely in activities in which the parent bank may engage, at locations at which the bank may engage in the activity, and subject to the same limitations as if the bank were engaged in the activity directly.

INTERPRETATION OF REGULATION Y

SECTION 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 § 4.

(d) Permissible leasing activities are limited to transactions where the lease is the functional equivalent of an extension of credit to the lessee. 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 disqualifiy 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.

5/20/71

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