

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 71-227

September 24, 1971

AMENDMENTS TO REGULATION Y  
(Determinations Regarding Control And A Change  
In Procedures On Applications)

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

The Board of Governors of the Federal Reserve System has amended § 222.2 of Regulation Y, effective September 21, 1971, to establish certain presumptions to be used by the Board in making findings regarding control of a bank or other company for purposes of determining whether a company is a bank holding company within the meaning of § 2 of the Bank Holding Company Act and whether a bank holding company has nonbanking interests in violation of the general prohibition in § 4 of the Act.

To avoid unnecessary repetition of statutory provisions in the regulation, the Board also announced the deletion from the regulation of paragraphs (c) and (d) of § 222.3, also effective September 21, 1971.

In a separate action, the Board also amended § 222.3(b) of Regulation Y by correcting the second sentence of this paragraph to indicate that an application for the Board's approval of the formation of a company that controls only one bank shall be deemed to be approved 45 days after the company has been informed by its Reserve Bank that its application has been accepted with certain exceptions.

Enclosed is a copy of the amendments.

Yours very truly,

P. E. Coldwell

President

Enclosure

CURRENT VERSION OF REGULATION Y

1. The pamphlet, as amended, effective 3-15-68.
2. Amendments to section 222.4(a), (b) and (c), effective 6-15-71.
3. Amendment to section 222.4(d), effective 6-30-71.
4. Amendment adding section 222.4(e), effective 7-1-71.
5. Amendment adding section 222.4(a)(8), effective 7-1-71.
6. Amendment adding section 222.4(a)(9), effective 9-1-71.
7. Amendments to section 222.4(b)(3), effective 9-1-71.
8. The enclosed amendments to sections 222.2, and 222.3(b), effective 9-21-71.

# BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

## BANK HOLDING COMPANIES

### AMENDMENTS TO REGULATION Y

Effective September 21, 1971, section 222.2 of Regulation Y  
is amended to read as follows:

#### **Section 222.2 — Determinations Regarding Control**

*(a) Conclusive presumptions of control.*—Conclusive presumptions that a company controls a bank or other company are established by section 2(a)(2)(A) and (B) and by section 2(g)(1) and (2) of the Act. In addition, the Board has determined that, whenever the transferability of 25 per cent or more of any class of voting securities of a company is conditioned in any manner, whether pursuant to an agreement, by-law, article of incorporation, or otherwise, upon the transfer of 25 per cent or more of any class of voting securities of another company, the holders of the securities affected by the condition (that is, those who hold both the securities whose transferability is so conditioned and the securities whose transfer can be required to satisfy the condition) constitute, in their capacity as such, a “company” for the purposes of the Act unless one of the issuers of such securities is a subsidiary of the other and is so identified in an order of the Board or in a registration statement or report accepted by the Board under the Act.

*(b) Rebuttable presumptions of control.*—A rebuttable presumption that a company controls a bank or other company is established by section 2(g)(3) of the Act. In addition, the Board has established, for use in proceedings instituted in accordance with the procedures of paragraph (c) below, the following rebuttable presumptions:

(1) A company that owns, controls, or has power to vote more than 5 per cent of any class of voting securities of a bank or other company (except where such securities are held in a fiduciary capacity and the company does not have sole discretionary authority to exercise the voting rights) presumably controls that bank or other company if (i) one or more of the company’s directors, trustees, or partners, or officers or employees with policymaking functions serves in any of these capacities with the bank or other company, and (ii) no other person owns, controls, or has power to vote as much as 5 per cent of any class of voting securities of that bank or other company.

(2) A company that owns, controls, or has power to vote more than 5 per cent of any class of voting securities of a bank or other company (except where such securities are held in a fiduciary capacity and the company does not have sole discretionary authority to exercise the voting rights) presumably controls that bank or other company if additional voting securities are owned, controlled, or held with power to vote by individuals (or members of their immediate families as defined in § 206.2(k) of this chapter (Regulation F) ) who are directors, officers, trustees, or partners of the company (or own, directly or indirectly, 25 per cent or more of any class of voting securities of the company) and, together with the company's securities, aggregate 25 per cent or more of any class of voting securities of that bank or other company.

(3) A company that enters into any agreement or understanding with a bank or other company (other than an investment advisory agreement), such as a management contract, pursuant to which the company or any of its subsidiaries exercises significant influence with respect to the general management or overall operations of the bank or other company presumably controls such bank or other company.

(4) A company that enters into any agreement or understanding under which the rights of a holder of voting securities of a bank or other company are restricted in any manner presumably controls the shares involved, unless the agreement or understanding (i) is a mutual agreement among shareholders granting to each other a right of first refusal with respect to their shares, or (ii) is incident to a *bona fide* loan transaction, or (iii) relates to restrictions on transferability and continues only for such time as may reasonably be necessary to obtain approval from a Federal bank supervisory authority with respect to acquisition by the company of such securities.

(5) A company that owns directly or indirectly securities that are immediately convertible at the option of the holder or owner thereof into voting securities presumably owns or controls the voting securities.

(c) **Procedures for determining control.**—(1) In any case in which a presumption established by paragraph (b) applies, or in any other case where it appears to the Board that a company exercises a controlling influence over the management or policies of a bank or other company, and the company has not complied with the provisions of the Act, the Board may inform the company that a preliminary determination of control has been made on the basis of the facts summarized in the communication. Such company shall within 30 days (or such longer period of time as may be permitted by the Board) (i) indicate to the Board its willingness to terminate the control relationship and to furnish promptly its specific plan to do so; or (ii) state that it will promptly seek Board approval to retain the control relationship, or, if the control relationship has existed continuously since prior to December 31, 1970 (in a manner not covered by § 2(a)(2)(A) or (B)), that it will register as a bank holding company or, if already a holding company, report

the bank or other company as a subsidiary, or otherwise comply with the applicable provisions of the Act; or (iii) set forth such facts and circumstances as may support its contention that there is not a control relationship.

(2) A company may request a hearing to contest the Board's preliminary determination of control. In the event a hearing is held, any applicable presumptions established by paragraph (b) shall be considered in the usual manner in accordance with the rules of evidence, and the Board will by order, on the basis of the record of the hearing, decide the issues involved and direct such action as may be necessary or appropriate in the circumstances. In the event no hearing is held, but the preliminary determination of control is contested, the Board will decide the matter on the basis of the evidence available to it, relying on the presumptions established in paragraph (b), and will by order direct such action as may be necessary or appropriate in the circumstances.

Effective September 1, 1971, section 222.3(b) of Regulation Y  
is amended to read as follows:

**Section 222.3 — Acquisiton of Bank Shares or Assets**

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*(b) Action on applications.*—Applications under this section are processed in accordance with the procedures specified in the Act and in § 262.3 of the Board's Rules of Procedure (Part 262 of this Chapter). Any application for the Board's approval of the formation of a company that controls only one bank shall be deemed to be approved 45 days after the company has been informed by its Reserve Bank that said application has been accepted, unless the company has been informed by its Reserve Bank that said application has been accepted, unless the company is notified to the contrary within that time or is granted approval at an earlier date.

(The second sentence of the above paragraph was amended to read as set out above on September 14, 1971.)

Effective September 21, 1971, paragraphs (c) and (d) of  
section 222.3 of Regulation Y are deleted.