

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 71-284
November 29, 1971

AMENDMENTS AND PROPOSED AMENDMENT TO REGULATION Y (Foreign Business Activities and Bank Holding Companies Engaging in Armored Car or Courier Services)

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

The Board of Governors of the Federal Reserve System announced effective December 1, 1971, an amendment to Regulation Y that will implement Section 4(c)(9) of the Bank Holding Company Act which relates to the acquisition by foreign bank holding companies that conduct most of their business in other countries of companies that do some business in the United States. In addition to the specific activities permitted, the amendment also permits foreign bank holding companies to apply to the Board for special exemptions.

In order to clarify some of the questions that arose during consideration of the above amendment, the Board issued an interpretation, a copy of which is enclosed.

For technical reasons, the Board has redesignated Regulation Y as Part 225 of the Code of Federal Regulations, rather than Part 222. In addition the Board has amended Section 225.5 to include information previously located in other sections of Regulation Y.

In a separate action, the Board proposed an amendment to Section 222.4(a) of Regulation Y which would add a new subparagraph (11) to that section which would permit holding companies to engage in armored car or courier services. A hearing to discuss this proposal will be held on December 10, 1971, in the Board Room of the Federal Reserve Building in Washington, D. C. Persons interested in participating in the hearings by presenting material orally should contact the Regulations Department for pertinent information. Otherwise, comments on this proposal should be submitted to the Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551, to be received not later than December 31, 1971.

For your information, the Board is currently in the process of printing Regulation Y in its entirety and it should be available for distribution in the near future.

Also, enclosed are copies of the amendments and the proposed amendment.

Yours very truly,

P. E. Coldwell

President

Enclosures

REGULATION Y AMENDMENTS

EFFECTIVE DECEMBER 1, 1971

§ 225.4 Nonbanking activities.

(g) Foreign bank holding companies.

(1) As used in this paragraph: (i) "Revenues" means gross income and "consolidated" means consolidated in accordance with generally accepted accounting principles in the United States consistently applied; (ii) "foreign country" means any foreign nation or colony, dependency, or possession thereof; and (iii) "foreign bank holding company" means a bank holding company, organized under the laws of a foreign country, more than half of whose consolidated assets are located, or consolidated revenues derived, outside the United States.

(2) A foreign bank holding company may:

(i) Engage in direct activities of any kind outside the United States;

(ii) Engage in direct activities in the United States that are incidental to its activities outside the United States;

(iii) Own or control voting shares of any company that is not engaged, directly or indirectly, in any activities in the United States except as shall be incidental to the international or foreign business of such company;

(iv) With the consent of the Board, own or control voting shares of any company principally engaged in the United States in financing or facilitating transactions in international or foreign commerce;

(v) Own or control voting shares of any company, organized under the laws of a foreign country, that is engaged, directly or indirectly, in any activities in the United States if (a) such company is not a subsidiary of such bank holding company, (b) more than half of such company's consolidated assets and revenues are located and derived outside the United States, and (c) such company does not engage, directly or indirectly, in the business of underwriting, selling, or distributing securities in the United States; and

(vi) Own or control voting shares of any company in a fiduciary capacity under circumstances which would entitle such shareholding to an exemption under section 4(c)(4) of the Act if the shares were held or acquired by a bank.

Nothing in this subparagraph shall authorize a foreign bank holding company to own or control more than 5 percent of any class of voting shares of any other bank holding company or company accepting deposits or similar credit balances in the United States, except in a fiduciary capacity or with prior approval of the Board.

(3) A foreign bank holding company that is of the opinion that other activities or investments may, in particular circumstances, meet the conditions for an

exemption under section 4(c)(9) of the Act may apply to the Board for such a determination by submitting to the Reserve bank of the district in which its banking operations in the United States are principally conducted a letter setting forth the basis for that opinion.

(4) A foreign bank holding company shall inform the Board, through such Reserve bank within 30 days after the close of each quarter, of all shares of companies engaged, directly or indirectly, in activities in the United States that were acquired during such quarter under the authority of this paragraph. Such information shall (unless previously furnished) include a brief description of the nature and scope of each such company's business in the United States. Information required need be given only insofar as it is known or reasonably available to a foreign bank holding company. If any required information is unknown and not reasonably available to the bank holding company, either because the obtaining thereof would involve unreasonable effort or expense or because it rests peculiarly within the knowledge of a company that is not controlled by the bank holding company, the information need not be provided, but the bank holding company shall (i) give such information on the subject as it possesses or can acquire without unreasonable effort or expense together with the sources thereof, and (ii) include a statement either showing that unreasonable effort or expense would be involved or indicating that the company whose shares were acquired is not controlled by the bank holding company and stating the result of a request made to such company for information. No such request need be made, however, to any foreign government, or an agency or instrumentality thereof, if, in the opinion of the bank holding company, such request would be harmful to existing relationships.

(5) If, in the Board's judgment, a company is a substantial competitor in any line of commerce in the United States, an exemption under this paragraph with respect to ownership or control of such company's voting shares may not be predicated on the unavailability of information to establish whether or not such company's activities in the United States are consistent with such an exemption. In the absence of available information, it will be presumed that such a company's activities do not justify an exemption under this paragraph for the holding of its shares by a foreign bank holding company. A company will be deemed to be a substantial competitor in any line of commerce in the United States if its products or services are nationally advertised or distributed in this country or if they are widely advertised or distributed in a regional market in which a banking subsidiary, branch or agency of the foreign bank holding company is located. If unable to obtain sufficient information to establish whether or not an exemption is available, a foreign bank holding company should seek prior approval of the Board before investing in any company that might be a substantial competitor in any line of commerce in the United States.

[FR Doc. 71-16660 Filed 11-15-71; 8:48 am]

§ 225.5 Administration.

(a) *Effective date of registration.* The date of registration of a bank holding company shall be the date on which its registration statement is filed with the Federal Reserve bank.

(b) *Reports and examinations.* Each bank holding company shall furnish to the Board in a form prescribed by the Board a report of the company's operations for the fiscal year in which it becomes a bank holding company, and for each fiscal year thereafter until it ceases to be a bank holding company. Each such annual report shall be filed with the Federal Reserve bank. Each bank holding company shall furnish to the Board additional information at such times as the Board may require. The Board may examine any bank holding company or any of its subsidiaries and the cost of any such examination shall be assessed against and paid by such bank holding company. As far as possible the Board will use reports of examinations made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority.

[FR Doc. 71-16537 Filed 11-11-71; 8:47 am]

INTERPRETATION OF REGULATION Y

§ 225.124 Foreign bank holding companies.

(a) Effective December 1, 1971, the Board of Governors has added a new § 225.4(g) to Regulation Y implementing its authority under section 4(c)(9) of the Bank Holding Company Act. The Board's views on some questions that have arisen in connection with the meaning of terms used in § 225.4(g) are set forth in paragraphs (b) through (g) of this section.

(b) The term "activities" refers to non-banking activities and does not include the banking activities that foreign banks conduct in the United States through branches or agencies licensed under the banking laws of any State of the United States or the District of Columbia.

(c) A company (including a bank holding company) will not be deemed to be engaged in "activities" in the United States merely because it exports (or imports) products to (or from) the United States, or furnishes services or finances goods or services in the United States, from locations outside the United States. A company is engaged in "activities" in the United States if it owns, leases, maintains, operates, or controls any of the following types of facilities in the United States:

- (1) A factory,
- (2) A wholesale distributor or purchasing agency,
- (3) A distribution center,
- (4) A retail sales or service outlet,
- (5) A network of franchised dealers,
- (6) A financing agency, or
- (7) Similar facility for the manufacture, distribution, purchasing, furnishing, or financing of goods or services locally in the United States.

A company will not be considered to be engaged in "activities" in the United States if its products are sold to independent importers, or are distributed through independent warehouses, that are not controlled or franchised by it.

(d) In the Board's opinion, section 4 (a)(1) of the Bank Holding Company Act applies to ownership or control of shares of stock as an investment and does not apply to ownership or control of shares of stock in the capacity of an underwriter or dealer in securities. Underwriting or dealing in shares of stock are nonbanking activities prohibited to bank holding companies by section 4(a)(2) of the Act, unless otherwise exempted. Under § 225.4(g) of Regulation Y, foreign bank holding companies are exempt from the prohibitions of section 4 of the Act with respect to their activities outside the United States; thus foreign bank holding companies may underwrite or deal in shares of stock (including shares of United States issuers) to be distributed outside the United States, provided that shares so acquired are disposed of within a reasonable time.

(e) A foreign bank holding company does not "indirectly" own voting shares by reason of the ownership or control of such voting shares by any company in which it has a noncontrolling interest. A foreign bank holding company may, however, "indirectly" control such voting shares if its noncontrolling interest in such company is accompanied by other arrangements that, in the Board's judgment, result in control of such shares by the bank holding company. The Board has made one exception to this general approach. A foreign bank holding company will be considered to indirectly own or control voting shares of a bank if that bank holding company acquires more than 5 percent of any class of voting shares of another bank holding company. A bank holding company may make such an acquisition only with prior approval of the Board.

(f) A company is "indirectly" engaged in activities in the United States if any of its subsidiaries (whether or not incorporated under the laws of this country) is engaged in such activities. A company is not "indirectly" engaged in activities in the United States by reason of a noncontrolling interest in a company engaged in such activities.

(g) Under the foregoing rules, a foreign bank holding company may have a noncontrolling interest in a foreign company that has a U.S. subsidiary (but is not engaged in the securities business in the United States) if more than half of the foreign company's consolidated assets and revenues are located and derived outside the United States. For the purpose of such determination, the assets and revenues of the United States subsidiary would be counted among the consolidated assets and revenues of the foreign company to the extent required or permitted by generally accepted accounting principles in the United States. The foreign bank holding company would not, however, be permitted to "indirectly" control voting shares of the said U.S. subsidiary, as might be the case if there are other arrangements accompanying its noncontrolling interest in the foreign

parent company that, in the Board's judgment, result in control of such shares by the bank holding company.

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REGULATION Y PROPOSED AMENDMENT

Interests in Nonbanking Activities

The Board of Governors proposes to permit bank holding companies, subject to established regulatory procedures, to engage in providing armored car and courier services, following a determination by the Board that such activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto" within the meaning of section 4(c)(8) of the Bank Holding Company Act.

The Board understands that armored car service involves the use of armed personnel, specially designed armored vehicles, and elaborate security measures. The service is intended primarily for the transportation of items of great value whose misplacement or theft would result in great economic loss. Major items requiring such precautions are cash and other instruments that may be negotiated without additional endorsement—that is, bearer-type negotiable instruments.

The Board understands that courier (or messenger) service involves the transportation of important items having critical time schedules. The items involved are generally not bearer-type negotiable instruments and, accordingly, require only the ordinary security measures accorded any confidential business papers. Among the most common documents and related items carried by messenger services are checks, drafts, money orders, travelers checks, commercial papers, written instruments, and data processing material.

To implement the Board's proposal, § 222.4(a) of Regulation Y would be amended by adding subparagraph (11), to read as follows:

§ 222.4 Nonbanking activities.

(a) *Activities closely related to banking or managing or controlling banks.*
* * * 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:

* * * * *
(11) Performing or carrying on armored car or courier services.
* * * * *

A hearing on this matter will be conducted by available members of the Board in the Board Room of its building at 20th Street and Constitution Avenue, Washington, D.C., on Friday, December 10, 1971, beginning at 10 a.m. Interested persons are invited to participate, but they need not participate by presenting material orally at the hearing to have their views considered.

Among the issues that will be explored at the hearing are the questions of the extent to which and by what measure a bank holding company should be limited in the armored car or courier service it performs for persons other than itself its subsidiaries, correspondents of its subsidiary banks, or other financial institutions.

All views expressed in written comments on the proposal that are received before December 31, 1971, will be given consideration. 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.

Persons interested in participating in the hearing by presenting material orally should inform the Secretary of the Board in writing not later than November 29, 1971. Each person admitted as a party to the proceeding will be given up to 30 minutes to present his views.

[FR Doc.71-16775 Filed 11-16-71;8:52 am]