

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 74-244
October 2, 1974

INTERPRETATION OF REGULATION Y
(The Acquisition of Assets of a Going Concern)

To All Banks, Bank Holding Companies, and Others
Concerned in the Eleventh Federal Reserve District:

The Board of Governors of the Federal Reserve System issued on September 13, 1974, an interpretation of Regulation Y regarding situations in which the acquisition of assets of a going concern by a bank holding company or its Section 4(c)(8) nonbank subsidiary might require prior Board approval.

The interpretation is printed on the reverse of this circular.

Yours very truly,

P. E. Coldwell,

President

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

BANK HOLDING COMPANIES

INTERPRETATION OF REGULATION Y

Section 225.132. Acquisition of assets.—From time to time questions have arisen as to whether and under what circumstances a bank holding company engaged in nonbank activities, directly or indirectly through a subsidiary, pursuant to § 4(c)(8) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1843(c)(8)), may acquire the assets and hire employees of another company, without first obtaining Board approval pursuant to § 4(c)(8) and the Board's Regulation Y (12 CFR 225.4(b)).

In determining whether Board approval is required in connection with the acquisition of assets, it is necessary to determine (a) whether the acquisition is made in the ordinary course of business¹ or (b) whether it constitutes the acquisition, in whole or in part, of a going concern.²

The following examples illustrate transactions where prior Board approval will generally be required:

1. The transaction involves the acquisition of all or substantially all of the assets of a company, or a subsidiary, division, department or office thereof.

2. The transaction involves the acquisition of less than "substantially all" of the assets of a

company, or a subsidiary, division, department or office thereof, the operations of which are being terminated or substantially discontinued by the seller, but such asset acquisition is significant in relation to the size of the same line of nonbank activity of the holding company (e.g., consumer finance, mortgage banking, data processing). For purposes of this interpretation, an acquisition would generally be presumed to be significant if the book value of the nonbank assets being acquired exceeds 20 per cent of the book value of the nonbank assets of the holding company or nonbank subsidiary comprising the same line of activity.

3. The transaction involves the acquisition of assets for resale and the sale of such assets is not a normal business activity of the acquiring holding company.

4. The transaction involves the acquisition of the assets of a company, or a subsidiary, division, department or office thereof, and a major purpose of the transaction is to hire some of the seller's principal employees who are expert, skilled and experienced in the business of the company being acquired.

In some cases it may be difficult, due to the wide variety of circumstances involving possible acquisition of assets, to determine whether such acquisitions require prior Board approval. Bank holding companies are encouraged to contact their local Reserve Bank for guidance where doubt exists as to whether such an acquisition is in the ordinary course of business or an acquisition, in whole or in part, of a going concern.

¹ Section 225.4(c)(3) of the Board's Regulation Y (12 CFR 225.4(c)(3)) generally prohibits a bank holding company or its subsidiary engaged in activities pursuant to authority of § 4(c)(8) of the Act from being a party to any merger "or acquisition of assets other than in the ordinary course of business" without prior Board approval.

² In accordance with the provisions of § 4(c)(8) of the Act and § 225.4(b) of Regulation Y, the acquisition of a going concern requires prior Board approval.