

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 75-25
February 7, 1975

PROPOSED AMENDMENT TO REGULATION Y
Nonbanking Asset Acquisitions

**TO ALL BANKS, BANK HOLDING COMPANIES,
AND OTHERS CONCERNED IN THE ELEVENTH
FEDERAL RESERVE DISTRICT:**

The Board of Governors of the Federal Reserve System has announced a proposed amendment to Regulation Y concerning the circumstances under which a bank holding company may acquire assets of another company without prior Board approval. The proposed amendment would require prior Board approval for any acquisition of all or substantially all of the assets of a company, or a subsidiary, division, department, or office of a company.

Any comments concerning the proposed amendment should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than March 19, 1975.

A copy of the proposed amendment is attached.

Sincerely yours,

T. W. Plant

First Vice President

Attachment

FEDERAL RESERVE SYSTEM

[12 CFR Part 225]

[Reg. Y]

BANK HOLDING COMPANIES

Nonbanking Activities

Pursuant to its authority under §§ 4(c)(8) and 5(b) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and 1844(b)), the Board proposes to amend § 225.4(c) of its Regulation Y to clarify the circumstances under which a bank holding company engaged in nonbank activities, directly or indirectly through a subsidiary, may acquire assets of another company without first obtaining Board approval pursuant to § 4(c)(8) of the Act.

On September 13, 1974, the Board issued an interpretation of Regulation Y regarding situations in which an acquisition of assets of a going concern by a bank holding company or its § 4(c)(8) nonbank subsidiary might require prior Board approval. The interpretation noted that, in determining whether Board approval is required in connection with an acquisition of assets, it is necessary to determine (a) whether the acquisition is made in the ordinary course of business^{1/} or (b) whether it constitutes the acquisition, in whole or in part, of a going concern.^{2/} Among the examples illustrating transactions

^{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.

where prior Board approval would generally be required was a transaction involving the "acquisition of all or substantially all of the assets of a company, or a subsidiary, division, department or office thereof."

Section 225.4(c)(3) of Regulation Y provides, in effect, that acquisitions of assets in the ordinary course of business do not require prior Board approval. It has come to the Board's attention that there may exist certain circumstances under which the above-mentioned portion of the Board's interpretation could be viewed as conflicting with § 225.4(c)(3) of Regulation Y, i.e., those instances in which the acquisition of all or substantially all of the assets of a company, or a subsidiary, division, department or office thereof is made in the ordinary course of business. In order to avoid any ambiguity, the Board proposes to formalize the relevant portion of the interpretation by an appropriate amendment to Regulation Y.

Under the present provisions of the regulation (12 CFR 225.4(c)(3)), a bank holding company may acquire assets "in the ordinary course of business" without prior Board approval. The proposed amendment would prohibit, without prior Board approval, the acquisition of all or substantially all of the assets of a company, or a subsidiary, division, department or office thereof, even if such acquisition were made in the ordinary course of business.

The proposed amended subsection (3) of § 225.4(c) of Regulation Y would read as follows:

§ 225.4--Nonbanking activities ***

(c) Tie-ins, alterations, relocations, consolidations. ***

(3) except for acquisitions made in the ordinary course of business of less than substantially all of the assets of a company, or a subsidiary, division, department or office thereof,^{1/} no merger or acquisition of assets 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 5 per cent of the voting shares of such company or its successor.

To aid in the consideration of this matter by the Board, interested persons are invited to submit relevant data, views, comments, or argument. Any requests for a hearing on this matter should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing. The Board also hereby solicits suggestions and comments on the establishment of standards for determining when an acquisition of assets would constitute "substantially all" of the assets of a company, or a subsidiary, division, department or office thereof.

^{1/} An acquisition of assets, the effect of which would be to eliminate the seller as a viable competitor in any geographic market, in the line of business to which the assets pertain, would be viewed by the Board for the purposes of this subsection as being an acquisition of "substantially all" of the assets.

Any views or requests for hearing should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551, to be received not later than March 19, 1975.

By order of the Board of Governors, January 29, 1975.

(Signed) Theodore E. Allison

Theodore E. Allison
Secretary of the Board

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