American Revolution Bicentennial

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 76-44
March 25, 1976

INTERPRETATION OF REGULATION Y

Escrow Arrangement Involving Bank Stock
Resulting in a Violation of the Bank Holding Company Act

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 issued an interpretation of Regulation Y--Bank Holding Companies--finding that the manner in which a company structured an escrow agreement involving bank stock resulted in a violation of the Bank Holding Company Act. The interpretation is printed on the reverse of this page.

If you have any questions regarding this interpretation, please contact Richard H. Peeples of our Regulations Department at (214) 651-6169.

Additional copies of the interpretation of Regulation Y will be furnished upon request to the Secretary's Office of this Bank.

Sincerely yours,

T. W. Plant

First Vice President

BANK HOLDING COMPANIES

INTERPRETATION OF REGULATION Y

SECTION 225.134 — ESCROW ARRANGEMENTS INVOLVING BANK STOCK RESULTING IN A VIOLATION OF THE BANK HOLDING COMPANY ACT.

In connection with a recent application to become a bank holding company, the Board considered a situation in which shares of a bank were acquired and then placed in escrow by the applicant prior to the Board's approval of the application. The facts indicated that the applicant company had incurred debt for the purpose of acquiring bank shares and immediately after the purchase the shares were transferred to an unaffiliated escrow agent with instructions to retain possession of the shares pending Board action on the company's application to become a bank holding company. The escrow agreement provided that, if the application were approved by the Board, the escrow agent was to return the shares to the applicant company; and, if the application were denied, the escrow agent was to deliver the shares to the applicant company's shareholders upon their assumption of debt originally incurred by the applicant in the acquisition of the bank shares. In addition, the escrow agreement provided that, while the shares were held in escrow, the applicant could not exercise voting or any other ownership rights with respect to those shares.

On the basis of the above facts, the Board concluded that the company had violated the prior approval provisions of section 3 of the Bank Holding Company Act ("Act") at the time that it made the initial acquisition of bank shares and that, for purposes of the Act, the company continued to control those shares in violation of the Act. In view of these findings, individuals and bank holding companies should not enter into escrow arrangements of the type described herein, or any similar arrangement, without securing the prior approval of the Board, since such action could constitute a violation of the Act.

While the above represents the Board's conclusion with respect to the particular escrow arrangement involved in the proposal presented, the Board does not believe that the use of an escrow arrangement would always result in a violation of the Act. For example, it appears that a transaction whereby bank shares are placed in escrow pending Board action on an application would not involve a violation of the Act so long as title to such shares remains with the seller during the pendency of the application; there are no other indicia that the applicant controls the shares held in escrow; and, in the event of a Board denial of the application, the escrow agreement provides that the shares would be returned to the seller.