FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 78-18
February 17, 1978

REGULATION Y--BANK HOLDING COMPANIES

Nonbanking Activities of Bank Holding Companies

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

The Board of Governors of the Federal Reserve System has announced its decision not to amend Regulation Y regarding the permissibility of bank holding companies to underwrite and deal in Federal Government and municipal securities, and has lifted the suspension of processing applications to engage in this activity.

A proposal to add this activity to its Regulation Y was issued by the Board on April 2, 1974. Action on the rulemaking proposal was deferred on October 19, 1976, when the Board announced it was suspending further considerations of applications to engage in the activity to allow time for the newly created Municipal Securities Rulemaking Board to take possible action in this field.

The Board emphasized in its order withdrawing the proposed amendment that applications to engage in underwriting and dealing in certain government and municipal securities will now be processed on a case-by-case basis and no further action to add the activity to its Regulation Y as one closely related to banking will be taken.

The Board's order as published in the FEDERAL REGISTER, February 8, 1978, is printed on the reverse of this circular. Questions concerning this material should be directed to the Holding Company Supervision Department of this Bank at Ext. 6182.

Sincerely yours,

Robert H. Boykin

First Vice President

Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank: 1-800-492-4403 (intrastate) and 1-800-527-4970 (interstate). For calls placed locally, please use 651 plus the extension referred to above.

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[6210-01]

FEDERAL RESERVE SYSTEM

[12 CFR Part 225]

[Reg. Y; Docket No. R-0001]

BANKHOLDING COMPANIES

Nonbanking Activities; Withdrawal of Proposed Rule Making

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: In April 1974 the Board of Governors proposed to add to its list of permissible activities for bank holding companies underwriting and dealing in certain, Government-issued securities. The Board has considered the proposed amendment and has determined to proceed on a case-by-case basis rather than to adopt the proposed regulation. By considering each individual application to engage in the activity, the Board will be able to scrutinize closely the public benefits of the activity with respect to each individual applicant.

EFFECTIVE DATE: January 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Julius L. Loeser, Senior Attorney, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3236.

By notice of proposed rulemaking published in the FEDERAL REGISTER on April 10, 1974 (39 FR 13,007 (1974)), the Board of Governors proposed, in connection with an application filed by United Bancorp, Roseburg, Oreg., pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), to add to the list of activities that it has determined to be closely related to banking or managing or controlling banks (§ 225.4(a) of Regulation Y) the following:

> Underwriting and dealing in such obligations of the United States, general obligations of any State and of any political subdivision thereof, and other obligations that State member banks of the Federal Reserve System may from time to time be authorized to underwrite and deal in.

By Order of October 19, 1976, the Board deferred action on the proposed activity "for 12 months unless before that time actions by the Municipal Securities Rulemaking Board—created by Congress in 1975 to regulate the municipal securities field—make reconsideration appropriate in the Board's judgment." (41 FR 47,083 (1976).) At the same time, consideration of the United Bancorp application was similarly suspended, and an application by A. F. Stepp, Inc., Kansas City, Mo., to become a bank holding company was granted with the understanding that Board approval would be necessary for Stepp to retain ownership of a subsidiary engaged in the described nonbanking activity for more than the two-year period provided in section 4(a)(2) of the Act.

In order for the Board to approve an activity as permissible for a bank holding company under section 4(c)(8) of the Bank Holding Company Act, the Board must find that the activity satisfies two distinct tests. The activity must be determined (1) to be "closely related to banking or managing or controlling banks;" and (2) to be a proper incident thereto. The second test involves a weighing of public benefits that may be expected to flow from a bank holding company engaging in the activity against the possible adverse effects.

In its October 19, 1976 Order, the Board stated that it had concluded that the activity was "closely related" to banking. That decision was based upon the record before it and upon relevant Court decisions to the effect that an activity generally engaged in by banks directly is considered "closely related" to banking.[1]

With respect to whether the proposed activity would "be a proper incident thereto," the Board stated that it would not at that time attempt to weigh the public benefits that might be expected to flow from a bank holding company engaging in the activity against any possible adverse effects. The Board noted that the Municipal Securities Rulemaking Board ("MSRB") had been formed in 1975, while the Board was considering the proposed activity, to promulgate, inter alia, rules concerning sales of securities by municipal securities dealers to their affiliates, and in October 1976, the Board was uncertain whether actions of the MSRB might substantially alter then-current practices and operations in the industry. Without knowing what actions the MSRB might take, the Board was unable to balance properly the public benefits and any adverse effects of bank holding company performance of municipal and government securities underwriting and dealing. Accordingly, the Board suspended consideration of the activity and of the two pending applications.

It now appears that the MSRB will limit its near-term actions to disclosure standards, and to a large extent the uncertainty with regard to MSRB actions has been removed. The Board finds that the reasons the Board expressly relied upon in 1976 to suspend consideration of the proposed regulation and of the pending applications are no longer valid. Consequently, the Board hereby terminates its suspension of its consideration of the proposed regulation to engage in the proposed activity and of the pending applications.

The Board has considered whether to permit bank holding companies to engage in the proposed activity by regulation by adding the activity to the list of permissible activities found in the Board's Regulation Y, or whether to proceed by order, that is, on a case-by-case basis. On the basis of the information before it, the Board has determined to proceed on a case-by-case basis. By considering each individual application to engage in the activity, the Board will be able to closely scrutinize the public benefits of the activity with respect to each individual applicant bank holding company. Moreover, future actons of the MSRB may impact upon the activity, and the Board believes that the lingering uncertainty weighs against adding the activity to the permissible list in Regulation Y.

For these reasons, the Board believes that it would not be prudent to add this activity to those listed in the Board's Regulation Y at this time, but rather will proceed in this area by order considering individual applications on a case-by-case basis. The Board therefore concludes that consideration of such an amendment to Regulation Y should be, and hereby is, terminated.

By order of the Board of Governors, effective.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-3416 Filed 2-7-78; 8:45 am]

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[1] National Courier Association v. Board of Governors of the Federal Reserve System, 516 F. 2d 1229 (D.C. Cir. 1975); and Alabama Association of Insurance Agents v. Board of Governors of the Federal Reserve System, 533 F. 2d 224 (5th Cir. 1976).