

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 83-74  
June 10, 1983

REGULATION Y

BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

(Proposed Revision)

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 issued for public comment a complete revision of its Regulation Y, Bank Holding Companies and Change in Bank Control. In addition to simplifying the regulation and adding several new permissible nonbanking activities, the proposed revision would reduce the number of required applications for nonbanking activities, simplify the procedures for filing such applications, and expedite the processing of all applications.

A copy of the Board's press release and notice as published in the Federal Register are attached. Any views or comments concerning the proposal should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C., 20551, no later than July 18, 1983. All materials submitted should refer to Docket No. R-0470.

Questions regarding the contents of this circular should be directed to David W. Dixon of the Holding Company Supervision Department, Extension 6182.

Additional copies of this circular will be furnished upon request to the Public Affairs Department, Extension 6289.

Sincerely yours,



William H. Wallace  
First Vice President

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Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank:  
1-800-442-7140 (intrastate) and 1-800-527-9200 (interstate). For calls placed locally, please use 651 plus the extension referred to above.

# FEDERAL RESERVE press release



For immediate release

May 19, 1983

The Federal Reserve Board today proposed for public comment a complete overhaul and updating of the Board's Regulation Y--concerning bank holding companies and change in bank control.

The Board requested comment by July 18, 1983.

The revision of Regulation Y is designed to reduce regulatory burden by reducing the number of required applications for nonbanking activities, simplifying procedures for filing such applications, and expediting the processing of all applications.

In addition, the proposed revision of Regulation Y would reorganize, simplify and clarify the regulation, add several activities to those generally permissible for bank holding companies, incorporate Board rulings including its recently restated definition of "bank" for purposes of bank holding company regulation, and make a number of technical changes. The proposed revision is part of the Board's regulatory improvement program under which all Federal Reserve regulations are being reviewed, simplified and modernized to reduce the burden of regulation and make Board regulations more easily understood.

The Bank Holding Company Act requires prior Board approval for a bank holding company to acquire shares of a bank, and regulates the nonbanking activities of bank holding companies and of foreign banking organizations that control U.S. banks or have U.S. offices. The Change in Bank Control Act requires persons and certain companies to give notice to the Board prior to acquiring shares representing control of a bank holding company or state member bank.

The major changes proposed in the revision to ease regulatory burden and to clarify and simplify the regulation include:

--modification or elimination of the current requirement that a bank holding company file an application for each de novo office for a nonbanking activity;

--expedited procedures (reduced to 15 days) for small acquisitions involving permissible nonbanking activities;

--elimination of applications for small acquisitions involving the assets of a consumer finance or mortgage banking office;

--elimination of certain applications involving acquisitions of bank shares in a fiduciary capacity;

--expedited publication of notice of proposed new nonbanking activities;

--imposition of deadlines in the regulation to expedite processing of applications;

--incorporation of significant Board interpretations including definitions of terms; and

--clarification of those types of transactions that do and those that do not require prior Board approval under the Act.

The proposed elimination or modification for approval of nonbank offices would reduce by about 75 percent the number of applications for nobank acquisitions that must be filed with the Board.

The Board's proposals are estimated to reduce the processing time for bank holding company applications as follows:

Estimated Reduction in Processing Time

	<u>Number of Applications in 1982</u>	<u>Total Processing Days in 1982</u>	<u>Estimated Applications With this Proposal</u>	<u>Total Estimated Processing Days</u>	<u>Reduction in Processing Days</u>	<u>Percent Reduction?</u>
4(c)(8) <u>De Novos</u>	662	31,776	166 <sup>1/</sup>	5,478	26,300	83 %
Delegated Applications	1932	86,513	1932	57,803	28,710	33 %
Board-Action	161	15,375	161	10,546	4,829	31 %
All Cases	2755	133,664	2755	73,827	59,839	45 %

1/ It is estimated that 25 percent of the de novo notices that are presently filed will result in applications that will be processed in 30 days.

2/ The reduction assumes that the System will attain the same proficiency in meeting its proposed processing goals that it achieved in 1982 with its current processing goals.

For applications processed under delegated authority, the proposed regulation requires the Reserve Bank to act on an application within 30 days of acceptance. In 1982, 93 percent of all applications to the Board were approved under delegated authority. Thus, it is expected that the overwhelming majority of applications would be acted upon within 30 days under the proposed revision.

For applications processed for Board action, the proposed regulation requires the Board to act on an application within 60 days of acceptance by the Reserve Bank.

In addition to expedited processing schedules, application forms are being revised to eliminate items and information available to the Board.

from other sources. It is estimated that these measures will reduce the number of pages required in application forms by 40 to 60 percent.

The revision of Regulation Y proposes to add to the list of permissible nonbanking activities several activities that the Board previously determined by order to be closely related to banking in particular cases, including commercial real estate equity financing, underwriting and dealing in government obligations, futures commission merchant, foreign exchange advisory and transaction services, and issuing money orders. In addition, the Board is seeking suggestions from commenters for additional activities that should be added to the list of nonbanking activities that are permissible for bank holding company entry.

Nonbanking activities already on the list of activities permissible for bank holding companies remain unchanged.

The proposed revised Regulation Y would incorporate the Board's interpretation in a recent bank holding company case<sup>1</sup> that demand deposits include NOW and other transaction accounts and the Board's interpretation in another case<sup>2</sup> that commercial loans include the purchase of commercial paper, certificates of deposit and other money market instruments.

The proposed regulation also replaces the notice requirement for stock redemptions by a bank holding company with a general prohibition against redemptions unless the bank holding company meets the Board's capital guidelines or the redemption is minimal.

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<sup>1</sup> First Bancorporation, 68 Federal Reserve Bulletin 253 (1982).

<sup>2</sup> Letter, dated December 10, 1982, 1 Federal Reserve Regulatory Service, 4-363.2.

The Board's notice detailing its proposed revision of Regulation Y may be obtained from the Federal Reserve Banks.

Comment is invited on the proposed regulatory changes as well as on other aspects of the proposed revisions of Regulation Y. The Board is also interested in receiving suggestions for any further simplification of Regulation Y and any further suggestions for easing regulatory burden.

**FEDERAL RESERVE SYSTEM****12 CFR Part 225****[Docket No. R-0470]****Bank Holding Companies and Change in Bank Control; Proposed Revision of Regulation Y****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** As part of its program to improve and simplify its regulations, the Board is proposing a revision of Regulation Y, its regulation implementing the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) and the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)). The Bank Holding Company Act requires prior Board approval for a company to become a bank holding company or for a bank holding company to acquire more than five percent of the shares of a bank or a bank holding company. The Act also regulates the nonbanking activities of bank holding companies and of foreign banking organizations that control U.S. banks or have U.S. offices. The Change in Bank Control Act requires generally that persons and certain companies give notice to the Board prior to acquiring shares representing control of a bank holding company or state member bank.

The proposed revision will reduce the number of required applications for nonbanking activities, simplify the procedures for filing such applications, and expedite the processing of all applications. With respect to required applications or notices, the regulation clarifies and describes the transactions that are covered and those that are exempt, and the factors considered by the Board in acting on the application or notice. In addition, the Board is adopting a new internal procedure for the processing of applications that will result in a shorter period, 30 to 60 days instead of 90 days, for the processing of most bank and nonbank applications. The internal changes are being made independently of the proposed revision of Regulation Y and will be adopted as soon as they can be implemented.

**DATE:** All comments should be received by the Board by July 18, 1983.

**ADDRESS:** All comments, which should refer to Docket No. R-0470, should be mailed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223 20th and Constitution Avenue, NW., Washington, D.C., between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected

in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

**FOR FURTHER INFORMATION CONTACT:**

J. Virgil Mattingly, Associate General Counsel, Legal Division (202/452-3430); Bronwen Mason Chaifetz, Senior Counsel, Legal Division (202/452-3564); Carl V. Howard, Senior Counsel, Legal Division (202/452-3786); David Kulig, Senior Counsel, Regulatory Improvement Project (202/452-2347); Lily T. Pilgrim, Attorney, Regulatory Improvement Project (202/452-2421); Don E. Kline, Associate Director, Division of Banking Supervision and Regulation (202/452-3421); or Sidney M. Sussan, Assistant Director, Division of Banking Supervision and Regulation (202/452-2638).

**SUPPLEMENTARY INFORMATION:** The Bank Holding Company Act of 1956, as amended ("BHC Act"), governs the acquisition of control of banks by companies and regulates the nonbanking activities of bank holding companies or covered foreign banking organizations. It was enacted to prevent the undue concentration of banking resources and to separate banking and commerce. Section 5(b) of the BHC Act (12 U.S.C. 1844(b)) authorizes the Board to adopt regulations to effectuate the purposes of the BHC Act and to prevent evasion of its provisions. The Change in Bank Control Act of 1978 ("Bank Control Act") imposes a 60-day prior notice requirement on persons seeking to acquire control of a bank holding company or an insured state-chartered bank that is a member of the Federal Reserve System ("state member bank").

**I. BACKGROUND AND SUMMARY**

In January 1979, the Board established a Regulatory Improvement Project and adopted procedures to improve the quality of its regulations. The Board's program calls for a thorough, periodic review of each of its existing regulations (Statement of Policy Regarding Expanded Rulemaking Procedures, 44 FR 3957 (1979)). The proposed revision of Regulation Y was conducted under this program and pursuant to the Financial Regulation Simplification Act of 1980 (12 U.S.C. 3521). In accordance with the Board's policy statement and the Simplification Act, the review focused on easing regulatory burden and clarifying and simplifying the regulation consistent with the terms and purposes of the BHC Act. In an effort to improve overall understanding of the regulation, the proposal specifies those transactions that do and those that do not require prior Board approval under the Act.

The Board carefully reviewed the procedures for handling applications, particularly those for nonbanking activities. As reflected in the revised

regulation, the Board proposes reducing the number of required applications for nonbanking activities and simplifying the procedures for filing such applications. Over the past several years, the Board has consistently achieved its goal to complete the processing of 90 percent of all applications it receives within 90 days of acceptance of the applications. In addition, the Board had delegated to the Reserve Banks authority to act on more than 90 percent of BHC Act applications, a procedure which has shortened the time for decision on most applications to 45 days. In connection with its review of procedures for handling BHC Act applications, the Board is considering a new internal processing schedule.

The new schedule, which is embodied in the proposed revision, reduces the time for processing most bank and nonbank applications from 45 days to 30 days for applications acted on under delegated authority, and from 90 to 60 days for applications acted on by the Board. A 10-day deadline is also established for Reserve Banks to review applications submitted for processing to determine if they are complete. Based on past experience, it is anticipated that 90 percent or more of all applications will be acted upon under delegated authority, and thus be decided within 30 days.

The Board has also reviewed its application forms to simplify them by eliminating duplicative information and information already available to the Board. The Board estimates that these measures will reduce by between 40 to 60 percent the number of pages required in the current application forms.

The Board requests comments on all aspects of its proposed revision of Regulation Y, including definitions of terms. The Board will consider any additional areas for simplification and deregulation of Regulation Y that are suggested by commenters.

The Board, however, is not proposing for reexamination whether activities already on the list of permissible nonbanking activities in Regulation Y are closely related to banking. Those activities have been subject to rulemaking and extensive debate over the years. The Board does, however, propose to add to the list of permissible activities several activities that the Board has previously determined by order to be closely related to banking. In addition, commenters are invited to suggest other activities that should be considered for addition to the list of permissible nonbanking activities.

The changes proposed to ease regulatory burden and to clarify and simplify the regulation include:

(1) Elimination or modification of the requirement that a bank holding company obtain the Board's prior approval to open a new office to engage in a nonbanking activity in a state where the bank holding company has previously obtained the Board's approval to engage in the particular nonbanking activity (§ 225.25(a)(2));

(2) Expedited procedures (lasting 15 days) for relatively small acquisitions involving permissible nonbanking activities (§ 225.25(e));

(3) Expedited publication of notices of proposed new nonbanking activities (§ 225.25(c)(2));

(4) Elimination of applications for small acquisitions involving the assets of a consumer finance or mortgage banking office (§ 225.22(c)(8));

(5) Elimination of certain applications involving acquisitions of bank shares in a fiduciary capacity (§ 225.12(a));

(6) Incorporation into the regulation of deadlines for processing of applications and expediting of the application process (§§ 225.14 and 225.25);

(7) Incorporation of significant Board interpretations and statements of policy concerning regulatory and supervisory matters; and

(8) Specification of those types of transactions that do and those that do not require prior Board approval under the Act.

The proposed modification of the current requirement of Regulation Y for the approval of each new office of a nonbank subsidiary would reduce by about 75 percent the number of current nonbank applications filed with the Board under section 4(c)(8) of the BHC Act.

Another area that has been revised involves the purchase or redemption by a bank holding company of its own securities (§ 225.4(b)). The Board proposes to substitute for the current notice provision standards governing redemptions based upon the Board's capital adequacy guidelines.

With respect to the format of the proposed revision, the Board has incorporated all the important statutory provisions as they have been interpreted by the Board. Moreover, the material has been reorganized into self-contained subparts and stated as simply as possible. These structural changes should improve understanding of the regulation, facilitate compliance, and promote suggestions for further substantive improvements.

The Board certifies that none of the proposed changes will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601).

The commentary that follows includes several Board rulings that are not included in the body of the proposed revision of the regulation. In taking final action on the revision, the Board expects to preserve these rulings in a convenient format as a permanent source of guidance to the regulation.

## II. SUBPART A—GENERAL PROVISIONS

### *Section 225.1—Authority, Purpose, and Scope*

This section of the proposed regulation identifies the Board's statutory authority for issuing the regulation, states the primary purposes of the regulation, and describes the scope of each of the five subparts. Subpart A contains definitions, administrative provisions, and a section on corporate practices of bank holding companies; Subpart B sets forth the requirements for the acquisition of bank and bank holding company securities and assets; Subpart C describes the limitations and requirements regarding nonbanking activities and acquisitions; Subpart D contains the rules for control and divestiture proceedings; and Subpart E sets forth the provisions implementing the Bank Control Act. The four operational subparts are comprehensive in that each subpart identifies the transactions that are covered and those that are exempt, and each subpart sets forth the applicable procedures regarding applications, notices, and hearings.

*Current regulation:* 12 CFR 225.1(a).

### *Section 225.2—Definitions*

This section contains the definitions of terms used in the proposed regulation, and differs from the current regulation, which merely incorporates by reference the statutory definitions. Some of the definitions in the proposed revision mirror those in the BHC Act; others incorporate various Board interpretations.

*Statutory reference:* 12 U.S.C. 1841.

*Current regulation:* 12 CFR 225.1(b).

### *Section 225.2(a) “Bank”*

“Bank” is defined as any institution that accepts demand deposits and engages in the business of making commercial loans. This definition reflects the statutory definition in section 2(c) of the BHC Act and incorporates Board interpretations of the terms “demand deposits” and “commercial lending” for the purpose of determining whether an institution is a bank. The statutory exclusions from the definition of bank are also set forth in the regulation.

**1. Demand deposits.** “Demand deposits” are defined to include any deposit with transactional capability that is paid on demand as a matter of practice, and include accounts accessible by check, draft, or negotiable order of withdrawal (NOW). (First Bancorporation (Beehive Financial Corporation), 68 *Federal Reserve Bulletin* 253 (1982).)

**2. Commercial loans.** The definition proposed reflects the Board's position that all loans are “commercial” loans except those made to individuals for personal, household, family, or charitable purposes. In order to prevent evasion of the BHC Act, the definition proposes to identify a variety of instruments that may serve as substitutes for commercial loans. (*Cf.*, Board Ruling of December 10, 1982, 1 *Federal Reserve Regulatory Service* (“F.R.R.S.”) 4-363.2.)

*Statutory reference:* 12 U.S.C. 1841(c).

### *Section 225.2(b) “Bank holding company”*

The definition of “bank holding company” reflects the statutory definition. The six exemptions from the definition contained in section 2(a)(5) of the BHC Act are also included and have been consolidated into four exemptions. The proposed revision also incorporates the provisions of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), which applies certain provisions of the BHC Act to foreign banks (and their parent companies) operating branches, agencies and commercial lending companies in the United States.

*Statutory reference:* 12 U.S.C. 1841(a); 12 U.S.C. 3106.

### *Section 225.2(c) “Company”*

The definition of “company” in the proposed regulation includes the statutory definition and the exclusions contained in section 2(b) of the BHC Act.

In accordance with a long-standing Board interpretation, the term “company” generally does not include buy-sell agreements, or voting trusts of 25 years or less duration, so long as the agreement or trust pertains solely to the securities of one bank and the parties involved in the agreement or trust do not engage jointly in any other banking or nonbanking activities. (Board Ruling of May 4, 1972, 1 F.R.R.S. 4-185.5.)

The Board has also taken the position that individuals and/or companies acting together must be joined under a formal agreement or structure in order to be an “association.” (Board Ruling of September 13, 1977, 1 F.R.R.S. 4-420,

*aff'd sub. nom., Central Bank v. Board of Governors, No. 77-1937 (D.C. Cir. (Feb. 1, 1979).)*

*Statutory reference:* 12 U.S.C. 1841(b).

**Section 225.2(d) "Control" of a bank or company**

The proposed definition of "control" of a bank or company incorporates the statutory definition from section 2 of the BHC Act, i.e., control based on share ownership, election of directors or trustees, or controlling influence determinations by the Board. With respect to controlling influence determinations, the proposed regulation conforms the provisions of sections 2(a)(2)(C) and 2(d)(3) of the BHC Act by establishing that the Board may find control and a parent-subsidiary relationship where the Board determines that a company has the power to exercise a controlling influence over another company.

For purposes of § 225.2(d)(1) of the proposed regulation, "acting through one or more other persons" includes an arrangement under which a person acts as an agent or is indemnified by the company in purchasing or holding voting securities on behalf of the company. (Board letter, dated June 23, 1982, to Security Corp., Duncan, Oklahoma.) The Board has also taken the position that the ability to control the ultimate disposition of voting securities and to secure the economic benefits from the disposition indicates control of the securities. (Board Ruling of March 18, 1982, 1 F.R.R.S. 4-461.)

The definition of control in the proposed regulation incorporates the conclusive presumption of control now contained in § 225.2(a) of the current regulation, which relates to the transfer of 25 percent or more of the shares of a company being conditioned in any manner upon the transfer of 25 percent or more of the shares of another company. For example, if the voting shares of two companies are "stapled together" so that the transfer of one would automatically result in the transfer of the other, the presumption would apply. For purposes of this provision, the holders of securities of both companies constitute a company for the purposes of the BHC Act.

As provided in section 2(g) of the BHC Act, the proposed definition of control specifies that a company is deemed to control securities held by its subsidiaries, or held in a fiduciary capacity for its benefit or the benefit of shareholders or employees of the company or its subsidiaries. The Board has also interpreted this provision to include assets held in these capacities. For example, this provision would

attribute control of securities or assets to a company if a profit sharing or pension plan for the benefit of the company's employees holds the securities.

Apart from the proposed regulation, the Board in its policy statement of July 8, 1982, outlined situations where nonvoting equity investments by a bank holding company in another company or a bank might give the bank holding company control of the other company or bank. (Statement of Policy on Nonvoting Equity Investments by Bank Holding Companies, 68 Federal Reserve Bulletin 413 (1982).)

*Statutory reference:* 12 U.S.C. 1841(a)(2), (d); 12 U.S.C. 1841(g) (1), (2).

**Section 225.2(e) "Management official"**

The definition of management official is an abbreviated form for referring to a person who is an officer, director, partner, or trustee of a company or an employee of the company with policy-making functions. Directors include honorary and advisory directors. This definition, which codifies a Board interpretation of section 2(g)(3) of the BHC Act, is relevant in control and divestiture proceedings under Subpart D of the proposed regulation. (12 CFR 225.139.)

*Statutory reference:* 12 U.S.C. 1841(a)(2)(C) and 1841(g)(3).

*Current regulation:* 12 CFR 225.2(b) (1) and (2).

**Section 225.2(f) "Outstanding shares"**

This definition clarifies that the term "outstanding shares" refers only to shares that are issued and that have voting rights. For example, under this provision, outstanding shares would not include treasury shares held by a company where the company is precluded by law from voting its own shares that are held in its treasury.

*Statutory reference:* 12 U.S.C. 1843(c) (6), (7).

**Section 225.2(g) "Person"**

The definition of "person" reflects the definition of person contained in the Bank Control Act.

*Statutory reference:* 12 U.S.C. 1817(j) (8), (A).

**Section 225.2(h) "Principle shareholder"**

This definition reflects the current usage found in § 225.2(b) of Regulation Y concerning the rebuttable presumptions of control. It is relevant to determinations of control under Subpart D of the proposed regulation.

*Current regulation:* 12 CFR 225.2(b)(2).

**Section 225.2(i) "Subsidiary"**

The definition of "subsidiary" reflects the statutory definition in section 2(d) of the BHC Act, and refers to indirect as well as direct subsidiaries. For example, company C is a subsidiary of B which, in turn, is a subsidiary of A. Under the definition, C is deemed to be a subsidiary of A.

*Statutory reference:* 12 U.S.C. 1841(d).

**Section 225.2(j) "Voting securities"**

This definition clarifies the meaning of the term "voting shares" used in sections 2, 3 and 4 of the BHC Act. In the proposed regulation "voting securities" are defined to mean shares of common and preferred stock, partnership interests, and other similar interests, if the holders are entitled (under statute, charter, or in any manner) to vote for or select directors, trustees, or partners, or to vote on significant matters.

Under this definition, the acquisition by a bank holding company of "nonvoting stock" of another company would be limited to securities that do not normally carry the right to elect or appoint any directors, or to vote on significant matters. For example, the right to vote on or to veto payment of dividends, mergers, acquisitions by, or dissolution of the company would be regarded as the right to vote on significant corporate matters. In addition, the contingent right of the holders of a security to elect or appoint a director to the board of a company under specified conditions, such as failure to pay a dividend, would cause the security to be regarded as a voting security at the time the right to vote arises.

Even though securities may be voting securities for the purposes of this provision, it does not follow that they will be treated as equity for purposes of financial analysis. Whether voting securities are treated as debt or equity will depend upon their particular characteristics, e.g., their term, right to dividends, and priority in creditor claims.

*Statutory reference:* 12 U.S.C. 1841(a)(2)(A)(3); 12 U.S.C. 1842(a); 12 U.S.C. 1843 (a)(1) and (c) (6), (7).

**Section 225.3—Administration**

**Section 225.3(a) Delegation of authority**

This provision indicates that certain actions of the Board may be taken by individuals or Reserve Banks delegated to act for the Board. For example, officials of the Board staff and individual Reserve Banks are authorized to act on applications, notices, and

requests under certain conditions as well as to take certain administrative actions in the processing of applications or notices under this regulation. The functions delegated to particular Reserve Banks and Board officials, as well as the conditions under which the delegation of authority may be exercised, are detailed in the Board's Rules Regarding Delegation of Authority (12 CFR Part 265). Any person aggrieved by a decision under delegated authority may appeal the decision to the Board. In addition, the Rules provide that an action taken by a Reserve Bank under delegated authority may be reviewed by the Board, if within 10 days after the action, a member of the Board requests such review (12 CFR 265.3).

#### *Section 225.3(b) Appropriate Federal Reserve Bank*

This section specifies the Reserve Bank with which individuals and companies are to file reports, applications, and notices under the regulation.

*Current regulation:* 12 CFR 225.1(c)

#### **Section 225.4—Corporate Practices**

##### *Section 225.4(a) Bank holding company policy and operations*

This section codifies the policy of the Board that a bank holding company should serve as a source of strength for its bank subsidiaries, and conduct its bank and nonbank operations in accordance with sound banking policy and practice. Under this provision, bank holding companies should observe the statements of policy issued by the Board from time to time concerning supervisory and other matters. The provision is derived from section 3(c) of the BHC Act, which requires the Board to consider the financial and managerial resources and future prospects of the company and banks concerned; from section 5(b) of the BHC Act, which authorizes the Board to issue regulations; and from the Board's authority under the Financial Institutions Supervisory Act to issue cease and desist orders to prevent unsafe or unsound banking practices (12 U.S.C. 1818(b)(1) and (3)).

This provision also describes the provision in section 5(e) of the BHC Act that the Board may order divestiture of a nonbank activity or subsidiary if it determines that the activity or subsidiary constitutes a serious risk to the financial safety, soundness or stability of a bank holding company bank and is inconsistent with sound banking principles or the purposes of the BHC Act.

*Statutory reference:* 12 U.S.C. 1842(c), 1844(b), 1844(e), 1818(b).

##### *Section 225.4(b) Purchase or redemption by a bank holding company of its own securities*

As reflected in the preceding provision of the proposed regulation, a bank holding company should serve as a source of strength to its bank subsidiaries. Each application for a bank holding company formation or bank acquisition that has been approved by the Board has been approved on this basis, and the bank holding company has a continuing obligation to serve as a source of strength to its subsidiary banks.

The current regulation requires 45 days notice to the Board for a redemption of its securities if the redemption exceeds 10 percent of the net worth of the bank holding company. This provision was adopted in 1976 before the Board issued its Policy Statement on Capital Adequacy (1 F.R.R.S. 3-1506), which reflects the Board's judgment as to the minimum adequate capital levels for banks and bank holding companies or various sizes. To update the regulation, the Board proposes to amend the provisions of Regulation Y regarding redemptions to prohibit a bank holding company from purchasing or redeeming its equity securities, unless, after giving effect to the redemption or acquisition, the bank holding company complies with the minimum standards in the Board's Policy Statement on Capital Adequacy. The references to capital contained in the proposed regulation should be calculated in accordance with the definitions of capital in the Board's policy statement.

The proposed regulation would also permit a redemption where the guidelines are not met only if the redemption is *de minimis* or with the Board's prior approval. Approval would only be granted in unusual circumstances, since the Board does not believe that it is appropriate for a bank holding company that does not meet the Board's capital adequacy guidelines to make redemptions of securities that detract from the bank holding company's ability to serve as a source of strength to its subsidiary banks.

As with the capital adequacy standards, the standards for permissible acquisitions of equity securities are keyed to the size of the organization, and the result of the proposed redemption of securities on capital ratios. Since the Board has not published capital guidelines for large multi-national banking organizations, those organizations would be required,

for the purpose of the redemption provision, to meet the standards applicable to organizations with assets of \$1 billion or more. Use of these standards does not indicate that the Board has determined that these standards should be applied to large multinational banking organizations for other capital adequacy purposes.

With respect to the smallest organizations (under \$150 million), the capital ratios, after giving effect to the proposed redemption of securities, are those of either each of the subsidiary bank(s), or the consolidated organization. This difference recognizes that most smaller organizations exist primarily for financing the acquisition of the subsidiary bank and are highly leveraged. The use of consolidated ratios by these organizations in most instances would not allow them to make redemptions of equity securities. In order to compensate for the use of the more liberal bank-only capital ratios for smaller organizations, the proposed regulation imposes an additional test for permissible redemptions that, giving effect to the proposed redemption, the debt-to-equity ratio of the parent is not more than 30 percent. This additional test will limit the ability of highly-leveraged organizations to redeem securities where the redemptions may adversely affect their financial strength.

*Statutory reference:* 12 U.S.C. 1844(b), 1818(b)(3).

*Current regulation:* 12 CFR 225.6.

##### *Section 225.4(c) Deposit insurance*

This provision reflects the statutory requirement in section 3(e) of the BHC Act that a bank must obtain Federal Deposit Insurance before it becomes a bank holding company or a subsidiary of a bank holding company.

*Statutory reference:* 12 U.S.C. 1842(e).

##### *Section 225.4(d) "Tie-in" arrangements*

This provision, which is contained in the current regulation, imposes on bank holding companies and nonbanking subsidiaries conducting activities pursuant to section 4(c)(8) of the BHC Act the prohibition against "tie-in" arrangements contained in section 106(b) of the BHC Act Amendments of 1970. For example, a nonbank subsidiary that is engaged in lending may not fix or vary the interest rate on its loans on the condition that the borrower obtain additional credit, property, or services from the parent holding company or from another subsidiary of the bank holding company. On the other hand, consistent with this regulation, a nonbank lending subsidiary may vary the interest rate on its loan to a

customer based on the volume of borrowing by the customer from the subsidiary.

*Statutory reference:* 12 U.S.C. 1972(1).  
*Current regulation:* 12 CFR 225.4(c)(1).

**Section 225.4(e) Acting as transfer agent, municipal securities dealer, or clearing agent**

This provision replaces the detailed provisions in the current regulation concerning securities activities of a bank holding company or a nonbanking subsidiary that is a "bank" as defined in section 3(a)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(6)). Under the Board's Regulation H (12 CFR 208.8(f)-(j)), a member bank acting as a transfer agent, municipal securities dealer, or clearing agent, or as a participant in a clearing agency, must comply with requirements that are identical to those now contained in Regulation Y. In order to avoid this duplication, the proposed regulation refers to the relevant provisions of Regulation H, and provides that a bank holding company or covered nonbanking subsidiary must comply with the requirements of Regulation H as if it were a state member bank. If the bank holding company is itself a bank, it would be subject instead to the regulations of its primary banking supervisor. Subsidiaries of bank holding companies that are national banks, insured state nonmember banks, or nonbanking subsidiaries not subject to this paragraph are subject to comparable rules of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission, respectively.

*Current regulation:* 12 CFR 225.5 (c)-(f).

**Section 225.5—Registration, Reports, and Inspections**

A bank holding company should consult with the appropriate Reserve Bank as to the manner, form, and content of the information it must furnish to comply with this section. At the time of approval of an application to become a bank holding company, the company is advised by letter of the information that must be filed to satisfy the registration requirement. Thereafter, the company is furnished the appropriate forms for filing annual and other required reports.

Bank holding companies and their subsidiaries are subject to examination and inspection by the appropriate Reserve Bank pursuant to instructions from the Board.

*Statutory reference:* 12 U.S.C. 1844.

*Current regulation:* 12 CFR 225.5 (a), (b).

**Section 225.6—Penalties for Violations**

This section has been added to the proposed regulation to refer the reader to those provisions of the BHC Act, the Bank Control Act, and the Financial Institutions Supervisory Act, that subject individuals and companies to civil and criminal penalties and other administrative sanctions for violations.

*Statutory reference:* The statutory references are set forth in the proposed regulation.

**III. SUBPART B—ACQUISITION OF BANK SECURITIES OR ASSETS**

**Section 225.11—Transactions Requiring Board Approval**

This section of the proposed regulation, which is based on section 3(a) of the BHC Act, sets out the following transactions for which prior Board approval is required: (a) formation of a bank holding company; (b) acquisition of a subsidiary bank; (c) acquisition by a bank holding company of control of more than 5 percent of the voting securities of a bank or a bank holding company; (d) acquisition of bank assets; (e) merger or consolidation of bank holding companies; and (f) any other acquisition that the Board determines in a particular case requires prior approval under the BHC Act.

Generally, the acquisition by a bank or bank holding company of its own voting securities or those of its parent bank holding company would not require the Board's approval under this section of the proposed regulation. Such an acquisition may, however, be prohibited under § 225.4(b) of Subpart A because it reduces the capital below the minimum standards for capital adequacy established by the Board.

*Statutory reference:* 12 U.S.C. 1842(a).

**Section 225.11(c) Acquisition of control of bank securities or bank holding company securities**

Under this section, a bank holding company must apply for the Board's prior approval to acquire voting securities of a bank or bank holding company if, after the acquisition, it would hold more than 5 percent of any class of voting securities of the bank or bank holding company. This section differs from the literal terms of section 3(a)(3) of the BHC Act, which refers only to acquisition of voting shares of a bank. However, the Board has determined that section 3 also applies to the acquisition by a bank holding company of shares of another bank holding company. (State

*Street Boston Corporation, 67 Federal Reserve Bulletin 362 (1981).)*

Questions have arisen with respect to the need for an application under section 3(a) of the BHC Act in the case of a stock dividend or split, and the need for an application by a shareholder whose interest in a bank or company increases through a redemption by a bank or company of its own securities. Under paragraph (c) of this section of the proposed regulation, the receipt of securities from a stock dividend or split is not considered an acquisition requiring the Board's prior approval as long as the dividend or split does not alter the holding company's proportional share of any class of voting securities. This reflects the position contained in an existing Board interpretation. (12 CFR 223.103.)

A redemption of securities by a bank or bank holding company that increases the proportional interest of a holder of such securities usually will be regarded as an "acquisition" of bank securities by the holder and will require the holder to file an application for prior Board approval, even though the holder receives no additional shares. For example, an application would be required under paragraph (a) of this section if the redemption results in the holder becoming a bank holding company because its proportional interest has increased to 25 percent or more of any class of voting securities of a bank or bank holding company.

**Section 225.11(d) Acquisition of bank assets**

Under section 3(a)(4) of the BHC Act and under this provision, the acquisition by a bank holding company or a nonbank subsidiary of all or substantially all of the assets of a bank requires the Board's prior approval. This requirement does not apply where the acquisition of bank assets is made by a subsidiary bank of a bank holding company. For the treatment of mergers involving subsidiary banks of a bank holding company, see § 225.12(d) of the proposed regulation and the commentary to that section below.

**Section 225.11(e) Merger of bank holding companies**

Under section 3(a)(5) of the BHC Act and under this provision, a merger or consolidation of two or more bank holding companies requires prior Board approval. An exception to this requirement is a consolidation or merger in connection with a corporate reorganization. For example, in a tiered corporate structure where a bank holding company has a subsidiary that

is also a bank holding company, the subsidiary may be merged into the parent without filing an application. However, the addition of a new bank holding company to a tiered bank holding company system normally would require prior approval under § 225.11 of the proposed regulation.

#### *Section 225.11(f) Other acquisitions*

Under this provision, the Board may determine that certain other acquisitions of securities of an institution require the Board's prior approval under section 3 of the BHC Act. The Board would not make a determination that a particular acquisition requires its approval before giving the acquiring company notice. The Board may exercise its authority under this provision whether or not a notice or application with respect to the proposed acquisition has been filed under any other provision of law. This provision is proposed pursuant to the Board's authority under section 5(b) of the BHC Act of the BHC Act adopt regulations to carry out the purposes of the Act and to prevent evasions, and it codifies 12 U.S.C. 1817(j)(16), which provides that a transaction subject to the Board's approval under section 3 of the BHC Act is not subject to the Bank Control Act.

#### **Section 225.12—Transactions Not Requiring Board Approval**

This section specifies transactions for which prior Board approval is not required under section 3(a) of the BHC Act.

*Statutory reference:* 12 U.S.C. 1842(a).

#### *225.12(a) Acquisition of securities in fiduciary capacity*

This paragraph provides that Board approval is not required for the acquisition by a company (including a bank) of voting securities of a bank or bank holding company in good faith in a fiduciary capacity, unless (1) the company has sole discretionary authority to vote the securities and will retain that authority for more than two years, or (2) the acquisition is for the benefit of the company, its shareholders, employees, or subsidiaries. The second clause is based upon the statutory presumption in sections 2(g) (1) and (2) of the BHC Act.

Within 90 days of receiving voting securities of a bank or bank holding company in a fiduciary capacity with sole discretionary voting authority, a bank holding company is required under section 3(a) of the BHC Act to file an application to retain the shares. The current regulation provides that such an application (in the form of a letter) is automatically approved within 45 days

if it is accompanied by an unconditional undertaking to dispose of the shares or the voting authority within two years. Since the BHC Act gives the applicant a 2 year grace period to retain the shares even if the application is denied, the Board believes this application procedure is of little value. Therefore, under the proposed regulation, no application is required unless the company proposes to retain the shares with sole discretionary voting authority beyond the two-year grace period. If an application is required under this provision, the application should be filed in time for Board action before the two-year grace period expires.

While the exception contained in section 3 of the BHC Act for the acquisition of bank or bank holding company securities in a fiduciary capacity is limited to such acquisitions made by a bank, the proposed regulation extends the exception for fiduciary acquisition of bank and bank holding company securities to those made by a nonbank company. This liberalization is being proposed in recognition of the fact that there are nonbank companies, including nonbank subsidiaries of bank holding companies, that are engaged in fiduciary activities and would receive securities in a fiduciary capacity.

The fiduciary exemption in the BHC Act does not exempt the acquisition of bank or bank holding company shares by a bank as fiduciary for a trust that is a "company" as defined in § 225.2(c) of Subpart A. Thus, an application must be filed by such a trust if it proposes to make an acquisition of bank or bank holding company securities covered under § 225.11 of the proposed regulation. In this situation, however, an application would not also be required from the fiduciary or its parent, if the fiduciary meets the requirements for the exemption described in § 225.12(a) of the proposed regulation.

The BHC Act also does not exempt a transaction where the fiduciary receives shares from a selling company that is deemed to continue to control the shares after the divestiture under section 2(g)(3) of the BHC Act. This statutory provision is implemented in Subpart D of the proposed regulation.

*Statutory reference:* 12 U.S.C. 1842(a)(A)(i).

*Current regulation:* 12 CFR 225.3(c).

#### *Section 225(b) Acquisition of securities in satisfaction of debts previously contracted*

This provision exempts from the prior approval requirement the acquisition by a company (including a bank) of voting securities of a bank or bank holding

company in the regular course of securing or collecting a debt previously contracted in good faith, so long as the company divests the securities within two years of acquisition. Under section 3(a) of the BHC Act, the Board may grant up to three one-year extensions of the two-year divestiture period.

For example, a bank subsidiary of a bank holding company that has made a loan collateralized by more than 5 percent of the voting securities of a bank may acquire those securities without the Board's approval in the event of a default by the borrower. The bank and its holding company would be required to file an application under this subpart for Board approval to retain those shares beyond the permissible time period.

While the statutory exception is limited to acquisitions made by banks, the proposed regulation extends the exception to any company that acquires bank securities in good faith in satisfaction of a debt previously contracted. This liberalization is being proposed in recognition of the fact that there are nonbank companies, including nonbank subsidiaries of bank holding companies, that make bank stock loans.

*Statutory reference:* 12 U.S.C. 1842(a)(A)(ii).

#### *Section 225.12(c) Acquisition of securities by bank holding company with majority control*

A bank holding company that lawfully controls a majority of the outstanding voting securities of a bank or bank holding company may acquire, without the Board's approval, any number of additional voting securities of the bank or bank holding company.

*Statutory reference:* 12 U.S.C. 1842(a)(B).

#### *Section 225.12(d) Transactions subject to Bank Merger Act*

It has been the Board's practice not to require an application under section 3(a) of the BHC Act for a merger, consolidation, or purchase of assets transaction involving a nonsubsidiary bank and an operating subsidiary bank of a bank holding company, or two or more subsidiary banks of a bank holding company if the transaction is subject to the approval of a federal supervisory agency under the Bank Merger Act (12 U.S.C. 1828) and the resulting bank is a subsidiary of the bank holding company. However, an application under the BHC Act would be required for a merger or consolidation involving the acquisition of shares of a nonsubsidiary bank, if the acquisition of shares and the merger or

consolidation do not occur simultaneously.

Section 3(a)(4) of the BHC Act provides that prior Board approval is not required for the acquisition of bank assets by a *bank subsidiary* of a bank holding company. Based upon its practice in administering the statute, the Board has treated merger and consolidation transactions in the same manner as asset acquisitions so long as they were subject to approval under the Bank Merger Act, which contains standards that are identical to those in section 3 of the BHC Act.

The proposed regulation does not provide an exemption from prior approval where a merger is between a nonsubsidiary bank and a nonoperating ("phantom") bank formed by a bank holding company for the purpose of acquiring all the outstanding shares of the nonsubsidiary bank. This type of transaction is more appropriately viewed as a bank acquisition subject to the provisions of sections 3(a)(1), 3(a)(2), or (3)(a)(3) of the BHC Act and § 225.11 of the proposed regulation.

*Statutory reference:* 12 U.S.C. 1842(a)(4).

#### Section 225.12(e) Holding securities in escrow

This provision incorporates a Board interpretation that an application for prior approval is not required for the acquisition of securities of a bank or bank holding company in escrow, where the title to the securities and the voting rights remain with the seller and the seller has not received payment for the securities.

*Current regulations:* 12 CFR 225.134.

#### Section 225.13—Factors Considered in Deciding Applications Under Subpart B

##### Section 225.13(a) Prohibited anticompetitive transactions

Paragraph (a) of this section incorporates the statutory prohibition in section 3(c) of the BHC Act that the Board may not approve a transaction that results in a monopoly. Similarly, the BHC Act bars the Board from approving a transaction that would result in a violation of the antitrust laws (section 2 of the Sherman Act and section 7 of the Clayton Act), unless the Board finds that the anticompetitive effects are clearly outweighed by convenience and needs considerations. For example, in the case of a failing bank, the Board may find that the continuation of the bank as a viable institution providing financial services to the community clearly outweighs the anticompetitive effects resulting from its acquisition by the particular bank holding company.

*Statutory reference:* 12 U.S.C. 1842(c)(1) and (2).

##### Section 225.13(b) Other factors considered

This paragraph, which is based on section 3(c) of the BHC Act, outlines the factors considered by the Board in acting on all applications for acquisitions of banks and bank holding companies under this subpart. The factors include financial and managerial resources and the convenience and needs of the communities to be served. The Board assesses these factors with respect to the applicant, the bank to be acquired, and all banks affiliated with the applicant by common management or shareholders. In assessing the impact of a transaction on community convenience and needs, the Board considers the effects of the proposal on existing and potential competition and on the concentration of banking resources.

In significant cases, the Board's order reflects the Board's consideration of these factors in the particular case. The more significant orders, including all denials, are reprinted in full in the "Legal Developments" section of the *Federal Reserve Bulletin*, typically in the following month's issue.

In addition to its orders, the Board from time to time issues general policy and information statements concerning bank holding company operations. (See, e.g., *Capital Adequacy Guidelines*, December 17, 1981, 1 F.R.R.S. 3-1506; *Policy Statement for Assessing Financial Factors in the Formation of Small One-Bank Holding Companies pursuant to the Bank Holding Company Act*, March 28, 1980, 1 F.R.R.S. 4-855; *Community Reinvestment Act Information Statement*, Jan. 3, 1980, 3 F.R.R.S. 6-1309; *Policy Statement Regarding Notice of Applications; Timeliness of Comments; and Guidelines for Public Meetings*, 12 CFR 262.25; see also proposed *Policy Statement for Assessing Competitive Factors Under the Bank Merger Act and the Bank Holding Company Act*, 47 FR 9017 (Docket No. R-0386, March 3, 1982). For other policy statements and directives, see *Miscellaneous Supervisory Material*, 1 F.R.R.S. 4-800, *et seq.*)

*Statutory reference:* 12 U.S.C. 1842(c).

##### Section 225.13(c) Interstate transactions

Paragraph (c) reflects the statutory prohibition in section (d) of the BHC Act ("Douglas Amendment"), which provides generally that the Board may not approve an application that will result in a bank holding company

acquiring an interest in banks in two or more states. The provision makes clear that the prohibition applies to applications for the formation of a multi-state bank holding company, as well as a bank or bank holding company acquisition by an existing bank holding company. It would not, however, apply to the formation of a bank holding company to acquire an existing interstate bank holding company.

Paragraph (C)(2) contains the two exceptions in section 3(d) of the BHC Act to the BHC Act's general prohibition against multi-state bank holding companies. The first exception is for an acquisition by an out-of-state bank holding company where the statute laws of the state in which the bank to be acquired is located specifically allow such an acquisition. The second exception is for the acquisition of a failing bank by an out-of-state bank holding company, and it is included to reflect the amendment to section 3(d) of the BHC Act by section 116 of the Garn-St Germain Depository Institutions Act of 1982 ("Garn-St Germain") (Pub. L. 97-320, 96 Stat. 1477).

*Statutory reference:* 12 U.S.C. 1842(d).

#### Section 225.14—Procedures for Applications, Notices, and Hearings

##### Section 225.14(a)–(d) Applications, notices, and action on applications

The proposed regulation sets forth the procedures for applications, notices, and hearings with respect to applications for the Board's prior approval of acquisitions of bank securities and assets.<sup>1</sup> In accordance with § 262.3 of the Board's Rules of Procedure, an applicant seeking Board approval under this subpart is required to file an application, on a form prescribed by the Board, with the appropriate Reserve Bank. An applicant is also required to arrange for notices in a newspaper of general circulation inviting comment on the application for 30 days in accordance with the requirements of the Board's Rules of Procedure (12 CFR 262.3(b)).

In an effort to expedite the processing of applications, the proposed regulation establishes time constraints for accepting an application for processing or notifying the applicant that the application is incomplete and seeking additional information. Upon receipt of an application for processing, the Reserve Bank is required to give notice to and request the comments of the

<sup>1</sup> For a narrative description of the processing of applications, see the pamphlet *Processing Bank Holding Company and Merger Applications*, Federal Reserve System Information Series.

primary banking supervisor of the bank to be acquired. Notice of the application will also be sent to the **Federal Register** at that time for publication. The **Federal Register** notice will provide a comment period of no more than 30 days. The publication of the **Federal Register** notice upon receipt by the Reserve Bank of an application rather than awaiting formal acceptance of the application will reduce the processing time for many applications.

The proposed regulation provides that the application will be approved within 30 days after acceptance by the Reserve Bank, unless the applicant is notified that it has been referred to the Board for decision because the application does not meet the Board's criteria for delegated action. During 1982, 93 percent of all applications submitted to the System were approved under delegated authority. Thus, under the proposed regulation it is expected that the vast majority of applications will be acted upon within 30 days of their acceptance by the Reserve Bank. The Reserve Bank is authorized to extend this 30 day period for 15 days when the additional time is needed to resolve a protest or other substantive matter.

In the case of applications referred to the Board, the proposed regulation provides that the Board must act on an application within 60 days of its acceptance by the Reserve Bank. This period may be extended for additional time if the Board advises the applicant of the duration of the extension and the reasons for it. In no event may the Board extend the period for action beyond the 91-day period provided in paragraph (f) of this section discussed below. As discussed earlier, the Board has established an internal processing schedule of 60 days for cases to be acted upon by the Board and expects that the great majority of such cases will be acted upon with the 60 day period.

The proposed regulation omits a provision in the current regulation that provides for the automatic approval of certain one-bank holding company formations at the end of a 45-day period. In practice, the Federal Reserve System issues orders in the case of every application submitted under section 3 of the BHC Act, and thus the automatic approval procedure has not generally been followed. The omission of this provision should not have any impact on the processing time for routine one-bank holding company formations, however, since, as described above, the majority of such applications will be approved within 30 days of acceptance by the appropriate Reserve Bank, pursuant to delegated authority.

*Statutory reference:* 12 U.S.C. 1842(b).

*Current regulation:* 12 CFR 225.3.

#### *Section 225.14(e) Hearings*

The proposed regulation reflects the requirements in section 3(b) of the BHC Act that the Board shall order a hearing if it receives a timely written recommendation of disapproval of the application from the primary banking supervisor.

In administering the BHC Act, the Board has in particular instances found hearings or other proceedings useful in developing a complete record in connection with the processing of an application. Accordingly, under the proposed regulation, the Board has the discretion to order any proceeding that it deems appropriate to facilitate action on an application.

*Statutory reference:* 12 U.S.C. 1842(b).

*Current regulation:* 12 CFR 225.3(d).

#### *Section 225.14(f) Approval through failure to act*

In judicial decisions involving the 91-day provision in sections 3(a) and 4(c)(8) of the BHC Act, courts have indicated that adoption by the Board of a regulation regarding the calculation of the 91-day period would be desirable. Accordingly, the proposed regulation incorporates judicial constructions of the 91-day rule in the BHC Act, and provides that an application shall be deemed approved if the Board fails to act within 91 days after the date that the record on the application is complete. In conformance with established rules for computation of time periods, such as the Federal Rules of Civil Procedure, the first complete day of the 91-day period is the day following completion of the record. Under this method of computation, the date the record is completed is day zero and the Board must act within 91 days thereafter. The proposed regulation also specifies that Board action includes issuance of an order stating that the Board has approved or denied the application, reflecting the votes of the Board members, and indicating that a statement of the reasons for the action will follow.

The proposed provision specifies that the record on an application will not be considered complete before: (1) the date the Board receives an application accepted for processing by a Reserve Bank; (2) the last day of the formal comment period specified in any notice required under the regulation; (3) the date of the receipt of the last relevant, noncumulative information needed for the Board's decision on the application from a source outside the Federal Reserve System; or (4) the completion of any hearing required on the application.

Information from a source outside the Federal Reserve System includes any information submitted by the applicant in response to a request by the Board during the proceeding as well as information from a government agency or potential competitor. In addition, if the Board has requested information that the Board believes is necessary for its decision, the record is not complete until the Board receives that information. Similarly, if the Board is awaiting the results of an examination of any bank involved in the application, the record would not be complete until the Board receives the examination report. (See *Tri-State Bancorporation, Inc. v. Board of Governors*, 524 F. 2d 562 (7th Cir. 1975); *North Lawndale Economic Development Corp. v. Board of Governors*, 553 F. 2d 23 (7th Cir. 1977); *Central Wisconsin Bankshares, Inc. v. Board of Governors*, 583 F. 2d 294 (7th Cir. 1978); *Republic of Texas Corp. v. Board of Governors*, 649 F. 2d 1026 (5th Cir. 1981).)

An applicant or other interested person may contact Board staff for informal advice on the calculation of the 91-day period for a particular application. In response to such requests, Board staff will inform the applicant of the last date provided in any notice for comment on the application and the last date that any relevant information concerning the application has been received from outside the Federal Reserve System. It should be understood that dates provided by the staff in response to informal requests are subject to change if additional information is subsequently submitted to the Board.

*Statutory reference:* 12 U.S.C. 1842(b).

#### *Section 225.14(g) Exceptions to notice and hearing requirements*

This provision, which is derived from section 3(b) of the BHC Act, authorizes the Board to modify or dispense with the notice and hearing requirements in the case of a probable bank failure or other emergency situation. The procedures authorized under this provision normally will be utilized in close consultation with the appropriate financial regulatory agencies. Generally, an emergency situation is one that is less serious than a probable bank failure, and the Board has considerable discretion to determine that an emergency exists under particular circumstances.

*Statutory reference:* 12 U.S.C. 1843(b).

#### *Section 225.14(h) Waiting period*

Under section 11(b) of the BHC Act, transactions for which an application has been approved under section 3 of

the Act, either as a result of Board approval or the 91-day rule, may not be consummated until the thirtieth day after approval of the application. Emergency and failing bank acquisitions are generally exempt from the 30-day waiting period. The purpose of the waiting period is to afford the United States Department of Justice an opportunity to review the proposal and determine whether it conforms to the antitrust laws. If the Department does not challenge the merger during this period, the merger is thereafter immune from challenge under section 7 of the Clayton Act.

The Board requests comment on the feasibility of an amendment to Regulation Y that will allow this waiting period to be reduced with the concurrence of the Department of Justice where the proposal does not present any anticompetitive effects. For example, one-bank holding company formations generally do not present anticompetitive effects and are not the type of proposals for which the 30-day waiting period was designed.

*Statutory reference:* 12 U.S.C. 1849(b).

#### IV. SUBPART C—NONBANKING ACTIVITIES AND ACQUISITIONS OF BANK HOLDING COMPANIES

Section 4 of the BHC Act embodies one of the primary purposes of the BHC Act, the separation of banking and commerce, by limiting the nonbanking activities in which a bank holding company and its subsidiaries may engage and by prohibiting the acquisition of shares in nonbanking entities unless such acquisitions are specifically permitted under one of the exemptions to the section. This subpart of the proposed regulation implements section 4 and applies to any bank holding company as defined in Subpart A (including certain foreign banking organizations).

The subpart sets forth the limitations on nonbanking activities and describes the major exemptions from the nonbanking prohibitions contained in the BHC Act. The statutory exemption in section 4(a)(2) of the BHC Act relating to retention of real estate holdings acquired prior to 1970, and the limited exemption in section 4(c)(10) for a bank that is a bank holding company have not been included in the regulation because of their limited applicability. Also, the provisions of section 4(c)(12) of the BHC Act, which pertain to the expansion of nonbanking activities that were required to be divested by 1980, are not included.

The statutory exemptions in sections 4(c)(9) and (13) of the BHC Act are implemented in various provisions of Regulation K ("International Banking

Operations," 12 CFR Part 211). Section 4(c)(9) concerns shares held or activities conducted by a company organized under the laws of a foreign country. Section 4(c)(13) relates to the exemption for shares or activities of a company that does no business in the United States except as an incident to its international activities.

Section 4(c)(14) of the BHC Act, which was added in 1982 by the Bank Export Services Act (Title II of Pub. L. 97-290), involves an exemption for acquisition by a bank holding company of an investment in an export trading company. The Board's proposed amendment to Regulation K implementing this exemption was issued for comment on January 14, 1983 (48 FR 3775, Docket No. R-0445).

##### Section 225.21—Permissible Nonbanking Activities and Acquisitions; Exempt Bank Holding Companies

###### Section 225.21(a) Permissible nonbanking activities and acquisitions

This paragraph reflects the prohibition of section 4(a) of the BHC Act that a bank holding company and its subsidiaries may not engage in any activity other than those of banking or managing or controlling banks or activities otherwise deemed permissible under the BHC Act, and may not acquire voting securities of a company engaged in impermissible activities.

Since the statutory definition of company in section 2(b) of the BHC Act includes the term "partnership," the prohibition against engaging in a nonbanking activity also applies to a bank holding company or subsidiary becoming a partner in a partnership (or acquiring voting securities in a partnership) that is engaged in nonbanking activities. (See *Central Colorado Co. & C.C.B., Inc.*, 66 Federal Reserve Bulletin 655 (1980).) Similarly, the prohibition applies to acquiring an interest in a joint venture (either in corporate or partnership form), where the joint venture is engaged in a nonbanking activity.

Under § 225.4(c)(3) of the current regulation and a current Board interpretation, the prohibition against nonbanking acquisitions also includes acquisitions of assets of a going concern (12 CFR 225.132). Specifically, under these provisions, assets acquired other than in the ordinary course of business or that constitute the acquisition in whole or in part of a going concern, including a subsidiary, division, department or office, are subject to the prohibitions and prior approval requirements of section 4 of the BHC Act. (As discussed below, the Board is

providing exemptions in §§ 225.22(c) (7) and (8) from prior approval requirements for assets acquired in the ordinary course of business and for certain assets acquired by consumer finance and residential mortgage banking companies.)

*Statutory reference:* 12 U.S.C. 1843(a) (1), (2).

*Current regulation:* 12 CFR 225.4(c)(3).

###### Section 225.21(b) Exempt bank holding companies

This paragraph specifies the types of companies that are exempt from the prohibitions against nonbanking activities of section 4 of the BHC Act and the proposed regulation. Included among them are certain labor, agricultural, and horticultural organizations; family-owned companies; and companies granted hardship exemptions by the Board under section 4(d) of the BHC Act.

*Statutory reference:* 12 U.S.C. 1843(c) (i) and (ii), and (d).

###### Section 225.22—Exempt Nonbanking Activities and Acquisitions

This section sets out the exemptions from the nonbanking prohibitions contained in section 4(a) of the BHC Act. The exemptions are derived, for the most part, from those set forth in section 4(c) of the BHC Act, as well as interpretations that have been issued by the Board. A bank holding company may engage in an activity or acquire shares of a nonbanking company without prior Board approval, if the activity or acquisition falls within one of the following exemptions.

*Statutory reference:* 12 U.S.C. 1843(c).

###### Section 225.22(a) Servicing activities

Under sections 4(a)(2) and 4(c)(1) of the BHC Act, a bank holding company may provide services for its banking and nonbanking subsidiaries either directly or indirectly through a subsidiary. This section of the proposed regulation clarifies the scope of the servicing activities that may be performed for a bank holding company and its subsidiaries. Generally, a bank holding company may provide only services related to the internal operations of the bank holding company or its subsidiaries. Examples of the activities are set forth in the proposed regulation. The servicing exemption is not intended, however, to be used by a bank holding company as a guise for providing nonbank services to outside parties or otherwise engaging in nonbanking activities. Thus, as a general matter, a bank holding company or its subsidiaries may not rely on the

servicing exemption to act as principal or agent in soliciting business or providing services to parties other than the bank holding company or its subsidiaries. This provision differs from several Board interpretations issued before the 1970 amendments to the Act. These interpretations will be modified or deleted if this provision is adopted. (See e.g. 12 CFR 225.104, 225.109, 225.118, and 225.122.)

*Statutory reference:* 12 U.S.C. 1843(a)(2) and (c)(1).

#### *Section 225.22(b) Safe deposit business*

As reflected in section 4(c)(1)(B) of the BHC Act, the proposed regulation allows a bank holding company to engage in or to acquire shares of a company that conducts a safe deposit business.

*Statutory reference:* 12 U.S.C. 1843(c)(1)(B).

#### *Section 225.22(c) Nonbanking acquisitions not requiring prior Board approval*

**1. DPC (debts previously contracted) acquisitions.** Section 4(c)(2) of the BHC Act provides that a bank holding company or subsidiary may acquire nonbank shares in satisfaction of a debt previously contracted and hold such shares for a two-year period, with the possibility of three additional one-year extensions being granted by the Board. This provision codifies the exemption and expands it to include interests in real or personal property. Under a current Board interpretation, the Board may approve an additional five-year period for a total of ten years for the divestiture of real estate acquired DPC (12 C.F.R. 225.140).

*Statutory reference:* 12 U.S.C. 1843(c)(2).

**2. Securities or assets required to be divested by subsidiary.** Section 4(c)(3) of the BHC Act permits certain acquisitions to be made by a bank holding company from its subsidiaries. The regulation allows for a temporary holding for up to two years of nonbanking shares that a subsidiary of the holding company has been required to divest by a federal or state examining authority.

*Statutory reference:* 12 U.S.C. 1843(c)(3).

**3. Fiduciary investments.** Bank holding companies and their subsidiaries are permitted under section 4(c)(4) of the BHC Act to acquire and hold nonbanking securities and activities in a fiduciary capacity so long as they are not held for the benefit of the bank holding company, its subsidiaries, or its employees. Under the BHC Act, this provision does not permit a bank

holding company subsidiary to acquire nonbank securities and activities as fiduciary for a trust that is a "company" (as defined in section 2(b) of the BHC Act). The legislative history of this provision suggests this limitation is intended to apply only where the trust is also a bank holding company. Thus, if the trust itself is not a bank holding company, the exemption is available to the bank holding company subsidiary that acts as fiduciary. (Of course, if the trust is a bank holding company, it is subject to the same limitations of this subpart with respect to its nonbank securities and activities that apply to any other bank holding company.)

While the exception for the acquisition of nonbank shares and assets in a fiduciary capacity contained in section 4(c)(4) of the BHC Act is limited to such acquisitions made by a subsidiary bank, the proposed regulation extends the exception for fiduciary acquisition of nonbank shares and assets to those made by a nonbank company. This interpretation is being proposed in recognition of the fact that there are nonbank companies, including nonbank subsidiaries of bank holding companies, that hold securities and assets in a fiduciary capacity.

*Statutory reference:* 12 U.S.C. 1843(c)(4).

**4. Securities eligible for investment by a national bank.** This exemption derives from section 4(c)(5) of the BHC Act and permits a bank holding company to acquire directly or through a nonbank subsidiary securities of the kinds and amounts that are explicitly eligible by federal statute for investment by a national bank. Such investments, the authorization for which is contained in 12 U.S.C. 24, Par. Seventh, include securities issued by Federal Home Loan Banks, the Federal National Mortgage Association, and the Government National Mortgage Association, and stock issued by a safe-deposit company or agricultural credit corporation. (See discussion below of § 225.22(d) concerning investments that may be made by subsidiary banks of a bank holding company.)

The limitation to "explicitly eligible" investments was adopted by the Board in 1971 to prevent section 4(c)(5) of the BHC Act from being used to circumvent the requirements of section 4(c)(8). For example, a bank holding company may not acquire a consumer finance company without prior Board approval on the ground that a national bank is permitted by agency rule to own such a company. For the same reason, the Board believes that section 4(c)(5) should not be interpreted to exempt investments in bank service

corporations under the Bank Service Corporation Act amendments in section 709 of the Garn-St Germain Act since these amendments, while greatly expanding the permissible services of such corporations, evidence an intent to limit the activities to those permissible under section 4(c)(8) of the BHC Act. The proposed regulation specifically excludes investments in bank service corporations.

*Statutory reference:* 12 U.S.C. 1843(c)(5), 24.

*Current regulation:* 12 CFR 225.4(e).

**5. Securities totalling 5 percent or less of a company.** This provision, which is derived from section 4(c)(6) of the BHC Act, permits passive investments by a bank holding company or subsidiary so long as the investment in a company or property does not amount to more than five percent of any class of voting securities of the company or more than a five percent interest in the property. The regulation codifies the Board's position, as reflected in a published interpretation, that section 4(c)(6) may only be used for passive investments and is not authority for a bank holding company to engage in entrepreneurial activity through the company or property in which the investment is made (12 CFR 225.137).

*Statutory reference:* 12 U.S.C. 1843(c)(6).

**6. Securities of investment company.** Under section 4(c)(7) of the BHC Act, a bank holding company may invest in an investment company that limits its activities to investing in securities that do not amount to more than five percent of any class of voting securities of any company.

*Statutory reference:* 12 U.S.C. 1843(c)(7).

**7. Assets acquired in the ordinary course of business.** Prior approval of the Board is not required for the acquisition of certain assets in the ordinary course of business, subject to the Board's interpretation of "ordinary course of business" in 12 CFR 225.132. Acquisitions exempt under this provision may not represent all or substantially all the assets of a subsidiary, division, department, or office or the employees of the selling company. This proposal, together with the next paragraph, represents a modification of the proposal that was issued several years ago (Docket No. R-0005) and supersedes that rulemaking proceeding.

**8. Asset acquisitions by consumer finance or mortgage company.** This provision establishes an exemption from section 4 of the BHC Act for a consumer finance or mortgage company to acquire

assets of an office(s) engaged in making consumer loans, provided the acquisition amounts to no more than 10 percent of the assets of the acquiring consumer finance or mortgage company or \$10 million, whichever is less. For purposes of this exemption, a consumer loan is any loan the proceeds of which are used for personal, family or household purposes.

The Board is proposing this exemption to promote competitive equity between holding company affiliates and independent companies in the consumer finance and mortgage banking industries. These independent companies buy and sell offices frequently and generally need not await regulatory approval. The Board believes that the BHC Act should not be interpreted to limit unduly the normal business operations of a nonbank affiliate of a bank holding company, as long as the exemption is not used to eliminate a competitor.

The proposed regulation indicates that the Board may withdraw the authority to make acquisitions under this exemption by notifying the bank holding company. It is contemplated that the Board would withdraw this authority only in unusual circumstances, for example, where the financial condition of the bank holding company or its subsidiaries does not warrant further expansion.

#### *Section 225.22(d) Acquisition of securities by subsidiary banks*

This provision restates § 225.4(e) of the current Regulation Y concerning acquisitions by subsidiary banks of a bank holding company. Under the present and proposed language, a national bank or its subsidiary may acquire or retain shares in accordance with the rules and regulations of the Comptroller of the Currency.

In addition, for purposes of federal law, a state-chartered bank or its subsidiary may:

- (i) acquire or retain shares if such shares are of the kinds and amounts explicitly eligible by federal statute for investment by a national bank; and
- (ii) acquire or retain all of the shares (except directors' qualifying shares) of a company that engages solely in activities in which the parent bank may engage, at locations at which the bank may engage in the activity, and subject to the same limitations as if the bank were engaging in the activity directly.

*Statutory reference:* 12 U.S.C. 1843(c)(5).

#### *Section 225.22(e) Activities and securities of new bank holding companies*

This provision incorporates section 4(a)(2) of the BHC Act, which permits a company becoming a bank holding company a period of two years to bring its nonbanking activities and investments into conformity with section 4. The two-year period may be extended by the Board for three additional one-year periods.

A bank holding company may not further extend the divestiture period by forming a new bank holding company and transferring its bank and nonconforming activities to the new company to evade the requirements of the Act. Thus, consistent with section 2(a)(6) of the BHC Act, a successor to a bank holding company, as defined in section 2(e) of the BHC Act, would have to conform to any divestiture period to which the predecessor bank holding company was subject.

*Statutory reference:* 12 U.S.C. 1841 (a)(6) and (e); 1843(a)(2).

#### *Section 225.22(f) Grandfathered activities and securities*

This provision incorporates the exemptions contained in sections 4(a)(2) and 4(c)(11) of the BHC Act, which provide certain grandfather privileges to a "company covered in 1970" (i.e., a company that became a bank holding company as a result of the 1970 Amendments to the BHC Act and would have been a bank holding company on June 30, 1968 if those amendments had been in effect then). Generally, such a company may continue to hold those interests and to engage in those activities that it held or engaged in on June 30, 1968, and may expand such activities, including by the formation of a new company to engage in such activities. Subsidiaries or activities acquired after June 30, 1968, pursuant to a binding written contract entered into prior to June 30, 1968, are similarly grandfathered. As provided in section 4(a)(2) of the BHC Act, the Board may find, after notice to the bank holding company, that divestiture of grandfathered activities is necessary to ensure safe and sound operations or to avoid certain anticompetitive effects.

*Statutory reference:* 12 U.S.C. 1843 (a)(2) and (c)(11).

#### *Section 225.22(g) Securities or activities exempt under Regulation K*

This provision exempts securities acquired or activities engaged in by a bank holding company under the authority of the Board's Regulation K,

"International Banking Operations" (12 CFR Part 211).

*Statutory reference:* 12 U.S.C. 1843(c)(9) and (13); 12 U.S.C. 3106.

#### **Section 225.23—Nonbanking Activities Requiring Board Approval**

The principal authority for bank holding companies to engage in nonbanking activities is set forth in section 4(c)(8) of the BHC Act, which was revised and expanded by the 1970 Amendments to the Act. That section provides generally that a bank holding company may seek Board approval to engage in, or acquire shares of a company engaged in, activities that the Board has determined, after notice and opportunity for hearing, "to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The statute provides that the Board may make this determination by order or by regulation. In the exercise of its rulemaking authority, the Board has to date determined that 14 activities are "closely related to banking."

Except for insurance agency activities discussed below, the proposed regulation incorporates the description of the activities contained in the current regulation, with only minor, nonsubstantive changes intended to restate the description in simpler language. Some descriptions of activities have not been simplified where they were the result of extensive regulatory proceedings and were upheld in their present form following judicial review. The revised list has been reduced to 13 activities by combining the making and servicing of loans. No comment is requested on the question of the appropriateness of the Board's determination that the listed activities are closely related to banking since such comment was received and considered in earlier proceedings.

In addition, the Board is proposing to add to the list five nonbanking activities that the Board has previously determined by order to be closely related to banking and therefore permissible for particular bank holding companies. The Board invites comment on whether they should be added to the list or modified in any respect, so that they would be permissible for bank holding companies generally. These activities are: issuing money orders with a face value of \$1,000 or less; arranging commercial real estate equity financing; underwriting and dealing in certain federal, state, and municipal securities; acting as a futures commission merchant for certain financial assets; and offering certain foreign exchange services and

advice. In a separate proceeding, the Board has also proposed to amend the regulation to include providing certain securities brokerage services that were approved by order (48 FR 7746, Docket No. R-0455, Feb. 22, 1983). As indicated above, the Board also invites regulatory proposals for additional nonbanking activities.

For ease of reference, the descriptions of permissible data processing activities and courier activities include providing such services for the internal operations of the bank holding company and its subsidiaries. Such activities, if engaged in solely for the internal operations of the bank holding company, would be permissible on the basis of section 4(a)(2) or 4(c)(1)(C) of the BHC Act. The Board will consider deleting these provisions, which are also contained in the current regulation, if commenters consider their retention in the regulation misleading.

Set forth below in summary form is a list of the 13 current activities and the 5 additional proposed activities, together with citations to the current regulation and the *Federal Reserve Bulletin* containing the regulatory action of the Board, and judicial decisions relating to the Board's determinations. For the five proposed activities, a citation is given to the case where the activity was approved for a particular bank holding company.

(1) *Making and servicing loans.* 12 CFR 225.4(a)(1) and (3); 57 *Federal Reserve Bulletin* 512 (1971).

(2) *Industrial banking.* 12 CFR 225.4(a)(2); 57 *Federal Reserve Bulletin* 512, 513 (1971).

(3) *Trust company functions.* 12 CFR 225.4(a)(4); 57 *Federal Reserve Bulletin* 512, 513 (1971); 60 *Federal Reserve Bulletin* 446 and 504 (1974). An organization under this paragraph would usually be chartered by state or federal authorities to engage in trust activities and would be subject to regulation and examination by its chartering authority. The trust activities intended to be permitted under this section are traditional activities carried on by trust companies generally.

(4) *Investment or financial advice.* 12 CFR 225.4(a)(5); 57 *Federal Reserve Bulletin* 512, 513 (1971); 58 *Federal Reserve Bulletin* 149 and 571 (1972); *Board of Governors v. Investment Company Institute*, 450 U.S. 46 (1981).

As reflected in a footnote to the current regulation, investment advising is to be contrasted with "management consulting" which the Board views as including, but not limited to, the provision of analysis or advice as to a firm's (i) purchasing operations, such as inventory control, sources of supply, and

cost minimization subject to constraints; (ii) production operations, such as quality control, work measurement, product methods, scheduling shifts, time and motion studies, and safety standards; (iii) marketing operations, such as market testing, advertising programs, market development, packaging, and brand development; (iv) planning operations, such as demand and cost projections, plant location, program planning, corporate acquisitions and mergers, and determination of long-term and short-term goals; (v) personnel operations, such as recruitment, training, incentive programs, employee compensation, and management-personnel relations; (vi) internal operations, such as taxes, corporate organization, budgeting systems, budget control, data processing systems evaluation, and efficiency evaluation; or (vii) research operations, such as product development, basic research, and product design and innovation. The Board has determined that general management consulting—as opposed to management consulting to depository institutions—is not an activity that is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

(5) *Leasing.* 12 CFR 225.4(a)(6) (i) and (ii); 57 *Federal Reserve Bulletin* 512, 513 (1971); 60 *Federal Reserve Bulletin* 284, 285-86 (1974); 62 *Federal Reserve Bulletin* 944 (1976). The proposed regulation combines the provisions of the current regulation concerning personal and real property leasing, since those provisions are nearly identical.

(6) *Community development.* 12 CFR 225.4(a)(7); 12 CFR 225.127; 57 *Federal Reserve Bulletin* 512, 513 (1971). While this provision is not intended to allow for projects designed essentially for commercial gain, the Board believes bank holding companies should have flexibility in making investments or charitable contributions that result in or are designed for community improvement, and the receipt of modest profits would not be inconsistent with the nature of this activity.

(7) *Data processing.* 12 CFR 225.4(a)(8); 57 *Federal Reserve Bulletin* 512, 513 (1971); 68 *Federal Reserve Bulletin* 552 (1982).

(8) *Insurance sales.* 12 CFR 225.4(a)(9); 57 *Federal Reserve Bulletin* 674, 674-75 (1971); 65 *Federal Reserve Bulletin* 924 (1979); 67 *Federal Reserve Bulletin* 629 (1981). In its interpretation concerning this activity, the Board describes types of insurance that are regarded as directly related to an extension of credit. (12 CFR 225.128.) Several of these activities have been limited or prohibited by the amendments to

section 4(c)(8) of the BHC Act made by Title VI of Garn-St Germain. The Board is reviewing the issues raised by the amendment in Garn-St Germain and will amend Regulation Y to reflect the resolution of these issues. In the interim, the Board will consider applications from companies to engage in insurance activities that the company believes are permissible under the provisions of Garn-St Germain.

(9) *Insurance underwriting.* 12 CFR 225.4(a)(10); 59 *Federal Reserve Bulletin* 19, 20 (1973). As stated in the current and proposed regulation, to assure that engaging in the underwriting of credit life and credit accident and health insurance can reasonably be expected to be in the public interest, the Board will only approve applications in which an applicant demonstrates that approval will benefit the consumer or result in other public benefits. Normally such a showing would be made by a projected reduction in rates or increase in policy benefits due to bank holding company performance of this service. As reflected in a current interpretation, the Board also expects that once an application has been approved on this basis, a bank holding company will provide these benefits on a continuing basis by adjusting its rates and services in relation to adjustments in the *prima facie* rates provided by state law (12 CFR 225.135).

(10) *Courier services.* 12 CFR 225.4(a)(11); 59 *Federal Reserve Bulletin* 892 (1973); *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229 (D.C. Cir. 1975). The Board's interpretation at 12 CFR 225.129 provides additional conditions on bank holding company performance of this activity. All applications for this activity must be acted on by the Board rather than the Reserve Banks, until the Board gains experience with these applications.

(11) *Management consulting for depository institutions.* 12 CFR 225.4(a)(12); 60 *Federal Reserve Bulletin* 223 and 446 (1974); 68 *Federal Reserve Bulletin* 237, 237-38 (1982). The Board's interpretation at 12 CFR 225.131 specifically describes permissible management consulting activities and provides an exemption from the prohibition against holding shares of a client bank where the shares are acquired in satisfaction of a debt previously contracted or held in a fiduciary capacity without sole voting authority.

(12) *Money orders, savings bonds, and travelers checks.* 12 CFR 225.4(a)(13); 65 *Federal Reserve Bulletin* 249, 250 (1979); 67 *Federal Reserve Bulletin* 912 (1981). The proposed revision regarding this

activity includes the issuance of money orders having a face value of \$1,000 or less. That additional activity was approved by the Board by order for a particular bank holding company (63 *Federal Reserve Bulletin* 416 (1977)).

(13) *Real estate appraising.* 12 CFR 225.4(a)(14); 66 *Federal Reserve Bulletin* 975 (1980).

(14) *Commercial real estate equity financing.* 68 *Federal Reserve Bulletin* 647 (1982).

(15) *Underwriting and dealing in government obligations.* 64 *Federal Reserve Bulletin* 222, 223 (1978); 65 *Federal Reserve Bulletin* 363 (1979); 68 *Federal Reserve Bulletin* 249 (1982)

(16) *Foreign-exchange advisory and transactional services.* 69 *Federal Reserve Bulletin* 221 (1983).

(17) *Futures commission merchant.* 63 *Federal Reserve Bulletin* 951 (1977); 68 *Federal Reserve Bulletin* 514 (1982).

Under the proposal, a bank holding company may engage in FCM activities pursuant to this provision on major domestic exchanges and such foreign commodities or financial futures exchanges as the Board has considered in previous applications. The Board will consider applications to engage in FCM activities on other foreign exchanges on a case-by-case basis. If this proposal is approved, all applications to undertake this activity would be acted on by the Board, not the Reserve Banks, until the Board gains more experience in this area.

*Statutory reference:* 12 U.S.C. 1843(c)(8).

#### Section 225.24—Factors Considered in Deciding Applications Under Subpart C

*Section 225.24(a) Criteria for activities previously determined to be closely related to banking*

This provision incorporates the statutory test in section 4(c)(8) of the BHC Act, which requires the Board to weigh the public benefits that are likely to be derived by a particular bank holding company engaging in a specific nonbanking activity against the possible adverse effects in order to determine whether the proposal should be approved. The enumeration of benefits and adverse effects in the regulation, as in the statute, is meant to be illustrative and not exhaustive and, therefore, the Board is not precluded from considering other factors in deciding an application.

Section 4(c)(8) of the BHC Act allows the Board to differentiate between activities commenced *de novo* and those commenced through the acquisition of a going concern. Accordingly, the proposed regulation reflects the general finding of the Board that performance of

an activity by a bank holding company on a *de novo* basis is likely to yield public benefits.

*Statutory reference:* 12 U.S.C. 1843(c)(8).

#### Section 225.24(b) Criteria for other nonbanking activities

Section 4(c)(8) of the BHC Act provides a two-step test for determining the permissibility of nonbanking activities for bank holding companies. First, the Board must determine that the activity is closely related to banking. Second, having made that finding, the Board must determine whether the activity is "a proper incident" to banking by weighing the benefits of a particular bank holding company engaging in a specific nonbanking activity against the possible adverse effects. (*Board of Governors v. Investment Company Institute*, 450 U.S. 46 (1981); *National Courier Ass'n. v. Board of Governors*, 516 F.2d 1229 (D.C. Cir. 1975).)

Under the provisions of the BHC Act, the Board has broad discretion in determining whether an activity is closely related to banking. In making this determination, the Board has found the following guidelines established by the court to be useful:

(1) banks generally have provided the proposed services;

(2) banks generally provide services that are operationally or functionally so similar to the proposed service as to equip them particularly well to provide the proposed service; and

(3) banks generally provide services that are so integrally related to the proposed service as to require their provision in a specialized form. (*National Courier Ass'n. v. Board of Governors*, F.2d 1229 (D.C. Cir. 1975).)

In addition, the Board considers other factors in deciding what activities are closely related to banking. (*Alabama Association of Insurance Agents v. Board of Governors*, 533 F.2d 224, 241 (5th Cir. 1976), cert. denied, 435 U.S. 904 (1978); *Board of Governors v. Investment Company Institute*, 450 U.S. 46, 55 (1981).)

*Statutory reference:* 12 U.S.C. 1843(c)(8).

#### Section 225.24(c) Financial and managerial criteria

In addition to the factors specified in § 225.24(a) of the regulation, derived from section 4(c)(8) of the BHC Act, the Board's evaluation of an application to engage in any nonbanking activity includes a review of the financial and managerial resources of the bank holding company, its subsidiaries and the company to be acquired, and the

effect of the transaction on their resources. For example, a proposal that may detract from the financial condition of the applicant bank holding company would be weighed as an adverse factor in the Board's overall evaluation of the application.

*Statutory reference:* 12 U.S.C. 1843(c)(8).

#### Section 225.25—Procedures for Applications, Notices, and Hearings

The proposed regulation sets out the procedures for filing applications for Board approval to engage in nonbanking activities. As discussed below, where a bank holding company has received Board approval to engage in an activity in a particular state, subsequent expansion of that activity by opening additional offices or expanding its business in that state (other than by acquiring companies) will generally not require additional applications. In addition, expedited procedures for certain small acquisitions of going concerns engaged in permissible nonbanking activities are being proposed in order to reduce the regulatory burden on bank holding companies.

*Statutory reference:* 12 U.S.C. 1843(c)(8); 1844(b).

*Current regulation:* 12 CFR 225.4(b).

#### 225.25(a)(1) Filing application

An application for board approval to engage in an activity that the Board has determined to be closely related to banking must be filed with the appropriate Reserve Bank.<sup>2</sup> In filing an application, the bank holding company should specify the activities in which it proposes to engage. For example, a bank holding company seeking to engage in mortgage lending activities should so specify, rather than referring to the general category of making, acquiring, or servicing loans under § 25.23(b)(1).

As indicated in § 225.23(a)(2), the Board will entertain applications to engage in other nonbanking activities that a bank holding company believes to be closely related to banking as to be a proper incident thereto. Any bank holding company may also request the Board to consider an activity previously rejected as impermissible, if the bank holding company can demonstrate that circumstances have changed since the Board's determination. In either case,

<sup>2</sup> In most cases, an application to engage in a permissible nonbanking activity will be acted upon by a Reserve Bank pursuant to delegated authority from the Board. The Board has decided, however, that applications involving courier activities or joint ventures should be acted upon by the Board, rather than the Reserve Bank.

the bank holding company must file its application in accordance with this section, provide reasons for its belief that the activity is closely related to banking or to managing or controlling banks within the meaning of section 4(c)(8) of the BHC Act, and describe the public benefits likely to result from the bank holding company engaging in the activity.

*Statutory reference:* 12 U.S.C. 1843(c)(8).

#### Section 225.25(a)(2) Geographic scope of nonbanking activities

Under the current regulation, an application is required to open each new office or to expand the service area of a previously approved nonbanking activity. The requirement for individual office approvals was imposed by the Board in 1971 in implementing the new nonbanking authority given bank holding companies under the 1970 Amendments to the BHC Act. However, the Board does not believe that the BHC Act requires an application for such *de novo* expansion. Section 4 of the BHC Act requires only that the Board's prior approval be obtained by a bank holding company to engage in a nonbank activity or to acquire shares of a company engaged in nonbank activities.

Based on its experience in administering this provision, the Board has found that, where the bank holding company and its subsidiaries are in satisfactory financial condition, the establishment of *de novo* offices has had insignificant adverse effects, particularly on competition and the concentration of resources. Hence, such applications have been uniformly approved. In light of this experience and in order to reduce the burden on bank holding companies, the Board believes it is appropriate to modify significantly the present application procedures by eliminating the requirement for individual applications for *de novo* expansion in a previously approved activity. The Board notes that section 4(c)(8) of the BHC Act provides that, in acting on applications under that section, the Board may distinguish between activities established *de novo* and the acquisition of a going concern.

Under the procedures proposed in this provision, a bank holding company will specify in its initial application for approval the state or states in which the bank holding company intends to engage in a nonbanking activity or to acquire a going concern engaged in a nonbanking activity. If the application is approved, the bank holding company may open new offices or form new subsidiaries to engage in the activity in any state(s) specified in the application

without any additional Board approval. This authority is limited to engaging in the particular activity specified by the bank holding company in its application to enter a state. For example, a bank holding company that applied to engage in consumer finance in a particular state may not open offices or expand into mortgage banking without Board approval even though consumer finance and mortgage banking are both within the authority of lending in § 225.23(b)(1).

*De novo* expansion will continue to be monitored by the Board in connection with its ongoing supervision and regulation of the bank holding company. The regulation also authorizes the Board to require an application for permission to open a new office. This authority is expected to be exercised rarely, however, principally where the company is experiencing financial difficulty.

The bank holding company must engage in the activity or acquire the company engaged in the activity in each state(s) specified in the application within a period of two years from the Board's approval. For any state specified in the application where it fails to engage in the activity within two years, the holding company's authority to expand in that state would lapse and a new 4(c)(8) application to engage in the activity in that state must be filed in accordance with the procedures of this subpart. In administering this provision the Board will regard a bank holding company as having engaged in an activity in a particular state if, for example, it acquires a going concern, opens offices, or solicits customers in the state.

With respect to companies that have received approval in the past to engage in an activity in a particular state at specific offices or on some other limited basis under the Board's current Regulation Y, and wish to expand *de novo* within the state under the Board's proposed regulation, the Board proposes to permit the filing of a letter request for approval instead of the application normally required. (The letter should contain the date the company received approval to engage in the activity in a state and the extent of its authority.) Notice of these requests would be published in the *Federal Register*, and the requests would be acted upon after the close of the comment period. Such a procedure is being proposed as a matter of fairness to potential competitors who may not have commented on the company's earlier application due to the limited scope of the earlier proposal. (In such a case, of course, the company's earlier limited authorization to engage in

the activity would not be subject to challenge.)

If, however, the holding company has received the Board's approval to engage in a given activity throughout a state, no further approval would be required to open additional offices within that state, nor would the holding company be required to file the type of letter referred to in the previous paragraph. To avoid any misunderstandings in this situation, the company should confer with its Reserve Bank about its existing authority before expanding on the basis of this section of the regulation.

As a further effort to reduce the regulatory burden, the Board is considering whether to eliminate the requirement for state-by-state approval for *de novo* expansion of permissible nonbanking activities. Under this alternative approach, a bank holding company would be permitted, without further application to the Board, to open new offices anywhere in the country that are engaged in nonbanking activities for which the bank holding company has previously received Board approval. Comments are specifically invited on this alternative, and the Board may adopt it as part of its final action on this proposed revision of Regulation Y.

*Statutory reference:* 12 U.S.C. 1843(c)(8); 1844(b).

*Current regulation:* 12 CFR 225.4 (b)(1), (c)(2).

#### Section 225.25(b)-(d) Applications and notices

These provisions are similar to the procedures for applications for bank acquisitions in § 225.14(a)-(d) of Subpart B of the proposed regulation discussed above. They establish time limits for accepting nonbanking applications for processing, require prompt publication of notice in the *Federal Register* inviting public comment on such applications, and provide for a prompt decision on applications, generally within 30 days of acceptance of an application regarding an activity on the Regulation Y list of permissible activities.

Under current practice, no time period is specified for publishing notice of a proposal to engage in a new nonbanking activity not on the list of those already found permissible by the Board. The decision whether to publish notice of the proposal for comment is currently made by the Board at a formal Board meeting. As a result, processing of such proposals has at times been delayed. In order to expedite the processing of these proposals, under the proposed regulation the Board will send notice of a proposed new activity to the *Federal*

Register within 10 business days after receipt of the application from the Reserve Bank, unless there is no legal basis for publication of the activity. The notice will invite comment generally for a period of 30 days.

This 10-day period for sending notice to the **Federal Register** would not apply to a proposal involving a nonbanking activity that the Board has previously determined not to be closely related to banking. A decision whether to publish such a notice would be made only after the Board determines whether circumstances have changed to warrant reconsideration of the activity.

The Board requests comment on whether this proposal to publish routinely notice of proposed new nonbank activities will impose undue burdens on the public in commenting on an activity about which the Board has made no preliminary judgment. In this connection, the Board will consider as an alternative a provision that would authorize the extension of this 10-day period for publication for an additional 30 days in order to allow for full Board consideration of whether to publish notice of a proposed new activity. In the event the Board decides not to publish the proposal, the Board will notify the applicant of the reasons for the decision.

The proposed revision omits a provision in the current regulation that provides for automatic approval, at the end of a 45-day period, of applications to engage *de novo* in activities on the list of those permissible for bank holding companies. In practice, the Federal Reserve System issues letters of approval for every application to engage in permissible *de novo* nonbanking activities under section 4 of the BHC Act, and thus, the automatic approval procedure has not generally been followed. The omission of this provision should not have any adverse impact on applicants, however, since the Board proposes to reduce substantially the number of required applications for *de novo* activities by exempting from application requirements expansion in a state where nonbank operations have been approved for a bank holding company. Moreover, the remaining applications for *de novo* entry into a state will ordinarily be approved within 30 days of acceptance by the Reserve Bank.

*Statutory reference:* 12 U.S.C. 1843(c)(8).  
*Current regulation:* 12 CFR 225.4(a).

#### Section 225.25(e) Simplified procedures for small acquisitions

In response to requests that the Board reinstitute the simplified procedures in

12 CFR 225.4(b)(3) (which were suspended in 1971) and to establish expedited consideration for small acquisitions that raise no significant issues, the Board is proposing in this section to adopt a simplified notice procedure for small acquisitions involving permissible nonbanking activities described in § 225.23. Under the proposal, a bank holding company may apply to acquire certain voting securities or assets of a company engaged in activities permissible under § 225.23 by filing with the Reserve Bank a brief description of the proposed transaction and a notice of the proposed acquisition that appeared in a newspaper of general circulation in the area(s) to be served as a result of the acquisition.

The description of the proposed transaction should include information responsible to items 1, 4 (a, c, d), 5 and 6 of Exhibit B and item 3 of Exhibit C in the Board's F.R. Y-4 application form. The newspaper notice must provide not less than 10 days for public comment. This procedure applies only to an acquisition where the book value of the assets acquired or the gross consideration paid for the securities or assets is \$10 million or less and the bank holding company has previously received approval to engage in the activity in the relevant state. Within five business days after the close of the comment period the Reserve Bank will notify the bank holding company that the proposed acquisition has been approved pursuant to delegated authority or that the application has been referred to the Board if action is not appropriate under delegated authority.

The new notice procedure being proposed represents a significant reduction in the time and expense associated with making small acquisitions involving permissible activities. It eliminates the need for a regular application and reduces the time a bank holding company must wait before making an acquisition, i.e., from a maximum of 90 days to usually 15 days after the date the newspaper notice is published. It should also be noted that the proposed notice procedure may be used for acquisitions involving any of the nonbanking activities in § 225.23 that the Board has determined to be closely related to banking, whereas the suspended simplified procedures were generally only available for the acquisition of small finance companies and certain insurance agency activities.

The Board's experience in administering the BHC Act suggests that the type of acquisitions that would be

permitted under the new notice procedure would not result in adverse effects and would be in the public interest. In those instances where an acquisition might result in adverse effects, or where substantive adverse comments raising a material issue are filed in response to the newspaper notice, the Reserve Bank may extend the period for approval of refer the application to the Board for consideration.

*Statutory reference:* 12 U.S.C. 1843(c)(8); 1844(b).  
*Current regulations:* 12 CFR 225.4(b)(3).

#### Section 225.25(f) Hearing

Section 4(c)(8) of the BHC Act requires the Board to provide notice and opportunity for hearing in connection with an application by a bank holding company to engage in an activity that is or may be closely related to banking. Various courts have held that the Board is required to hold a hearing only where material issues of fact are in dispute (*Independent Ins. Agents of America, Inc. v. Board of Governors*, 646 F.2d 868 (4th Cir. 1981); *Independent Inc. Agents of America, Inc. v. Board of Governors*, 658 F.2d 571 (8th Cir. 1981)).

*Statutory reference:* 12 U.S.C. 1843(c)(8).

#### Section 225.25(g) Approval through failure to act

Under section 4(c) of the BHC Act, an application under section 4(c)(8) of the BHC Act that the Board fails to act on within 91 calendar days of submission of the complete record to the Board is deemed approved. This statutory provision is identical to that provided in section 3 of the BHC Act with respect to bank acquisitions, and the regulatory provision in this subpart incorporates by reference that proposed in § 225.14(f) of Subpart B for banking acquisitions.

*Statutory reference:* 12 U.S.C. 1843(c).

#### Section 225(h) Emergency thrift institution acquisitions

This provision implements the Board's authority under section 118 of Garn-St Germain to dispense with the notice and hearing requirements of section 4(c)(8) of the BHC Act if the Board finds that an emergency exists involving a thrift institution.

*Statutory reference:* 12 U.S.C. 1843(c)(8).

**V. SUBPART D—CONTROL AND DIVESTITURE PROCEEDINGS****Section 225.31—Control Proceedings****Section 225.31(a) Preliminary determination of control**

Under sections 2(a)(2)(C) and 2(d)(3) of the BHC Act, the Board may determine, after notice and opportunity for hearing, that a company exercises or has the power to exercise a controlling influence over the management and policies of a bank or other company, even though the company may not otherwise have control under § 225.2(d) of Subpart A of the proposed regulation. Section 225.2 (b) and (c) of the current regulation describe circumstances and procedures under which control determinations may be made. While these provisions have been reorganized and simplified in the proposed regulation, the basic approach of the current provisions has not been altered. Where facts and circumstances are present or information is received to indicate that a company exercises a controlling influence over the management or policies of a bank or another company, the Reserve Bank will review the relationship to determine if it would be appropriate for the Board to issue a preliminary determination of control.

While it is anticipated that most situations involving possible control relationships will be handled informally, where discussion does not resolve the issue, the Board may institute a formal proceeding by issuing a preliminary determination of control under the procedures described in this section. In those situations where a preliminary determination of control is issued, the company will be given notice of the facts and the circumstances upon which the determination is based and provided an opportunity to contest the presumption.

*Statutory reference:* 12 U.S.C. 1841 (a)(2)(C) and (d)(3).

*Current regulation:* 12 CFR 225.2(c).

**Section 225.31(b) Response to preliminary determination of control**

Upon receipt of the notice, the company would have 30 days to respond. The company may agree to the determination and submit for the Board's approval a specific plan for prompt termination of the control relationship, or alternatively, file an application for Board approval to retain the control relationship under Subpart B of the regulation in the case of a bank or a bank holding company, or Subpart C in the case of a nonbanking concern. If the company contests the ruling, it is

required to submit its response to the preliminary determination of control along with any request for a hearing.

*Statutory reference:* 12 U.S.C. 1841 (a)(2)(C) and (d)(3) and 1844(b).

*Current regulation:* 12 CFR 225.2(c). **Section 225.31(c) Hearing and final determination**

If there are material issues of fact in dispute, or if it is otherwise appropriate, the Board may order a hearing or other proceeding for the purpose of taking testimony and receiving evidence on the issue of whether a company exercises or has the power to exercise a controlling influence over a bank or other company. There is no statutory requirement that the Board hold a hearing with respect to a determination that a company controls voting securities of a bank or company. The Board may, however, order a hearing if appropriate in such a situation. After reviewing the evidence on the preliminary determination of control, including any record of a hearing, the Board will issue an order directing the company to take appropriate action.

*Statutory reference:* 12 U.S.C. 1841 (a)(2)(C) and (d)(3).

*Current regulation:* 12 CFR 225.2(c).

**Section 225.31(d) Rebuttable presumptions of control**

In 1971, the Board adopted five rebuttable presumptions of control for use in control proceedings. Two of these presumptions relate to control of voting securities; three relate to the existence of a controlling influence over the management or policies of a bank or other company. Where voting securities are deemed to be controlled by a company under this provision, they would be aggregated with any securities of the other company held by the company in other capacities (see § 225.2(d)(2) of the proposed regulation) to determine whether divestiture or an application is required. The proposed regulation simplifies the language of these presumptions without altering their substance. As discussed above, the conclusive presumption of control contained in § 225.2(a) of the current regulation relating to "stapled shares" arrangements is incorporated into the definition of "control" in the proposed regulation. It is contemplated that most situations involving these presumptions of control (or any other situation where the facts suggest control) will be resolved through informal discussion with the Reserve Bank.

*Statutory reference:* 12 U.S.C. 1841 (a)(2)(C) and (d)(3).

*Current regulation:* 12 CFR 225.2(b).

**Section 225.32—Divestiture Proceedings****Section 225.32(a) Ineffective divestitures**

Divestitures are at times required by the Board under the BHC Act and include divestitures of DPC assets, liquidating assets, and impermissible nonbanking interests and activities. Section 2(g)(3) of the BHC Act provides generally that a company divesting shares to any other company that is indebted to the transferring company or has one or more management officials in common with the transferring company is deemed to continue to own or control the divested shares unless the Board determines, after opportunity for hearing, that the transferring company is not capable of controlling the company or individual that receives the divested shares. The provisions of this section of the proposed regulation set forth the basic requirements of the statute, the procedures for requesting a determination of noncontrol, and a description of the standards applied in reviewing the effectiveness of divestitures. There are no significant changes from current procedures.

In a previous interpretation, the Board (1) exempted certain routine business or personal credit from the definition of indebtedness, (2) provided that references to transferor and transferee in the statute included parents and subsidiaries of each, and (3) indicated that the presumption of continued control extends to property as well as shares (12 CFR 225.139). This interpretation is codified in the proposed regulation, and may be rescinded if the proposed provisions are adopted by the Board.

*Statutory reference:* 12 U.S.C. 1841(g)(3).

**Section 225.32 (b) and (c) Request for divestiture determination; hearing**

Any company that is deemed to control an acquiring person as a result of the presumptions set forth in this regulation may request a determination that the divestiture is effective notwithstanding the presumption. The company should submit a letter to the Board describing the transaction and setting forth the reasons why the company believes it does not control the acquiring person. Any request for a hearing should also be included in the letter. Under the proposal, if the Board finds there are material facts in dispute, the Board may order a hearing or other proceeding.

*Statutory reference:* 12 U.S.C. 1841(g)(3).

**Section 225.32(d) Standards for making divestiture determination**

The proposed regulation sets out the factors that are generally considered in determining whether or not the divesting company controls the acquiring person. The first factor concerns the nature and extent of the indebtedness, and whether, as a result of the indebtedness, the divesting company would be capable of controlling the acquiring person. The second factor considered involves an assessment of the role of any interlocking officials in both the divesting company and the acquiring person. For example, if the interlocking official is an outside director who has no other relationship with the companies involved, it is more likely that a favorable determination would be issued.

*Statutory reference:* 12 U.S.C. 1841(g)(3); 1844(b).

**Section 225.32(e) Final determination**

After reviewing a company's request for a determination under this section, the Board will issue an order, which may be in the form of a letter, setting forth its determination as to the effectiveness of the divestiture.

*Statutory reference:* 12 U.S.C. 1841(g)(3); 1844(b).

**Section 225.32(f) Review of Other Divestitures**

This provision allows the Board to review a divestiture when a presumption of control under the statute or this regulation is not present. While it is not anticipated that this provision will be used frequently, the Board is, consistent with its authority to prevent evasions of the BHC Act, preserving its right to examine all divestitures.

*Statutory reference:* 12 U.S.C. 1844(b).

**VI. SUBPART E—CHANGE IN BANK CONTROL**

**Section 225.41—Control Transactions Requiring Prior Notice**

This section, which effectuates the Change in Bank Control Act (12 U.S.C. 1817(j)), is based for the most part on the existing provisions of section 225.7 of Regulation Y. (See also *Policy Statement on Change in Bank Control Act of 1978*, 1 F.R.R.S. 4-801.) The proposed section specifies those transactions involving the acquisition of voting securities of a state member bank or bank holding company for which 60 days' written notice must be given to the Board. Unless exempt under the Change in Bank Control Act or this subpart, any person or persons acting in concert must file prior notice with the Board if, after a proposed transaction, the acquiring

person(s) will control or hold the power to vote 25 percent or more of any class of voting securities of a state member bank or bank holding company. Such voting power is defined as control under the Change in Bank Control Act. For the purposes of this section, a redemption of securities by a bank or bank holding company that increases any person's holdings to 25 percent or more of any class of voting securities, it triggers the rebuttable presumption described below, is an "acquisition" and requires the filing of a notice by that person.

The term "acting in concert" is not defined in the statute or the regulation. However, the Board regards this term as including two or more persons (which may also include a corporation or other entity) who have joined together informally through parallel action or intention for the purpose of acquiring voting securities of a bank or bank holding company. For example, a group of persons who have identified themselves as a group for purposes of the securities laws would constitute persons "acting in concert" for purposes of this section. Such an informal arrangement should be distinguished, however, from a formal agreement or contract among persons to purchase bank or bank holding company securities. A formal agreement among persons could result in the group being treated as a "company" within the meaning of section 2(c) of the BHC Act, and a purchase of bank securities by the group could be subject to Subpart B of the regulation instead of Subpart E.

In addition to control through the acquisition of 25 percent or more of a class of voting securities of a bank or bank holding company, the Board proposes to retain the presumption that the acquisition of between 10 percent and 25 percent of voting securities of a bank or bank holding company will also result in control, and thus requires prior notice, if either of two circumstances applies: (1) the institution being acquired has securities registered under the Securities Exchange Act of 1934 (12 U.S.C. 78l); or (2) after the transaction, no other person owns a greater percentage of that class of voting securities than the acquiring person. An acquiring person has the opportunity to rebut this presumption, but the Board's experience indicates that situations where the presumption has been rebutted successfully have been infrequent.

*Statutory reference:* 12 U.S.C. 1817(j)(1), (13).

*Current regulation:* 12 CFR 225.7(a).

**Section 225.42—Transactions Not Requiring Prior Notice**

The Bank Control Act specifically exempts from its coverage transactions that are otherwise subject to section 3 of the BHC Act or section 18 of the Federal Deposit Insurance Act (i.e., Bank Merger Act). In addition, the proposed regulation provides that certain other transactions do not require notice. These exemptions are essentially the same as in § 225.7(c) of the current regulation, except for a clarification of the exemption relating to proxy solicitation to indicate that the solicitation can be for a regular or special meeting of shareholders and the addition of an exemption for a stock dividend or split. As indicated in the current regulation, the exemption for the acquisition of voting securities of a foreign bank holding company does not extend to reports and information required under paragraphs 9, 10, and 12 of the Bank Control Act.

*Statutory reference:* 12 U.S.C. 1817(j)(13), (16).

*Current regulation:* 12 CFR 225.7(c).

**Section 225.43—Procedures for Filing, Processing, and Acting on Notices**

**Section 225.43 (a) and (b) Filing notices; advice to bank supervisory agencies**

This section sets forth the procedures for processing notices. Normally, notices are reviewed and acted upon by the appropriate Reserve Bank under delegated authority.

A notice required under this subpart must be filed with the appropriate Federal Reserve Bank at least 60 days prior to the contemplated consummation of a transaction. Information contained in the notice should conform to the notice form provided by the Reserve Bank and be responsive to every item specified in paragraph 6 of the Bank Control Act (12 U.S.C. section 1817(j)(6)). The Reserve Bank may waive any information requirement contained in the notice form, as well as require additional information as it deems appropriate. Once accepted, a copy of the notice is forwarded to the appropriate state bank supervisory agency if it relates to a state member bank; a copy of the notice is also forwarded to the Comptroller of the Currency and the Federal Deposit Insurance Corporation. In the case of a probable failure of a bank or bank holding company, the Board may modify the notice requirements of this section.

*Statutory reference:* 12 U.S.C. 1817(j)(1), (2), (6), and (11).

*Current regulation:* 12 CFR 225.7(b).

**Section 225.43(c) Time period for Board action**

A proposed transaction may be consummated 60 days after submission of an informationally complete notice to the Reserve Bank, unless the Board notifies the acquiring person of its disapproval of the proposed acquisition or of extension of the 60-day period for an additional 30 days. A proposed acquisition may be consummated before the expiration of the 60-day period if the Board notifies the acquiring party of its intention not to disapprove the acquisition.

The Board may return a notice at any time if it finds that the acquiring person has not furnished all the required information or has submitted material information that is substantially inaccurate. However, in unusual circumstances, rather than returning the notice as being incomplete, the Board may extend the time period further in order to permit an acquiring person to furnish the required information necessary to complete the processing.

*Statutory reference:* 12 U.S.C. 1817(j)(1).

**Section 225.43(d) Investigation of notices**

In investigating a Change in Bank Control notice, the Board may solicit or receive information or views from any source. The submission of information or presentation of views by any person other than the acquiring person, however, does not thereby afford that person status as a party to the proceeding or any standing or right to participate in the Board's decision on the notice.

**Section 225.43(e) Disapproval and hearing**

If the Board disapproves an acquisition, it must notify the acquiring person of its decision in writing and the reasons for its decision. The person will have 10 calendar days after receipt of the Board's disapproval decision to request a hearing. Any such hearing must be conducted in accordance with the Board's Rules of Practice for Formal Hearings and, at the conclusion of the hearing, the Board will issue an order either approving or disapproving the proposed acquisition on the basis of the record of the hearing.

*Statutory reference:* 12 U.S.C. 1817(j)(3) and (4).

**Section 225.43(f) Factors considered in acting on notices**

Paragraph 7 of the Change in Bank Control Act (12 U.S.C. 1817(j)(7)) describes the factors to be considered

by the Board in disapproving a proposed acquisition. In assessing such factors, the proposed regulation provides that the Board will consider the information submitted in the notice, the views and recommendations of any supervisory agency, and any other information that is relevant to the statutory factors.

*Statutory reference:* 12 U.S.C. 1817(j)(7).

**List of Subjects in 12 CFR Part 225**

Banks; banking; Federal Reserve System; Holding companies; Reporting and recordkeeping requirements; Securities.

For the reasons set out in the preamble, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)); section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and section 7(j)(13) of the Federal Deposit Insurance Act, as amended by the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)(13)), it is proposed to revise 12 CFR Part 225 as follows:

**PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL****Subpart A—General Provisions**

Sec.

- 225.1 Authority, purpose, and scope.
- 225.2 Definitions.
- 225.3 Administration.
- 225.4 Corporate practices.
- 225.5 Registration, reports, and inspections.
- 225.6 Penalties for violations.

**Subpart B—Acquisition of Bank Securities or Assets**

- 225.11 Transactions requiring Board approval.
- 225.12 Transactions not requiring Board approval.
- 225.13 Factors considered in deciding applications under Subpart B.
- 225.14 Procedures for applications, notices, and hearings.

**Subpart C—Nonbanking Activities and Acquisitions of Bank Holding Companies**

- 225.21 Permissible nonbanking activities and acquisitions; exempt bank holding companies.
- 225.22 Exempt nonbanking activities and acquisitions.
- 225.23 Nonbanking activities requiring Board approval.
- 225.24 Factors considered in deciding applications under Subpart C.
- 225.25 Procedures for applications, notices, and hearings.

**Subpart D—Control and Divestiture Proceedings**

- 225.31 Control proceedings.
- 225.32 Divestiture proceedings.

**Subpart E—Change in Bank Control**

Sec.

- 225.41 Control transactions requiring prior notice.
- 225.42 Transactions not requiring prior notice.
- 225.43 Procedures for filing, processing, and acting on notices.

*Authority:* Section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)); section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and section 7(j)(13) of the Federal Deposit Insurance Act, as amended by the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)(13)).

**Subpart A—General Provisions****§ 225.1 Authority, purpose, and scope.**

(a) *Authority.* This Part (Regulation Y) is issued by the Board of Governors of the Federal Reserve System ("Board") under section 5(b) of the Banking Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)) ("BHC Act"), under section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), and under section 7(j)(13) of the Federal Deposit Insurance Act, as amended by the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)(13)) ("Banking Control Act"). The BHC Act is codified at 12 U.S.C. 1841, *et seq.*

(b) *Purpose.* The principal purposes of this Part are to regulate the acquisition of control of banks by companies and individuals, to define the nonbanking activities in which bank holding companies and foreign banking organizations with U.S. operations may engage, and to set forth the procedures for securing approval for such transactions and activities.

**(c) Scope.**

(1) Subpart A contains general provisions and definitions of terms used in this regulation.

(2) Subpart B governs acquisitions of bank or bank holding company securities and assets by bank holding companies or by any company that will become a bank holding company as a result of the acquisition.

(3) Subpart C defines the nonbanking activities in which bank holding companies and foreign banking organizations may engage directly or through a subsidiary. In addition, certain nonbanking activities conducted by foreign banking organizations and certain foreign activities conducted by bank holding companies are governed by the Board's Regulation K, (12 CFR Part 211 International Banking Operations).

(4) Subpart D specifies situations in which a company is presumed to exercise control over voting securities or a controlling influence over the

management or policies of a bank or other company, sets forth the procedures for making a control determination, and provides rules governing the effectiveness of divestitures by bank holding companies.

(5) Subpart E governs changes in bank control resulting from the acquisition by individuals or companies (other than bank holding companies) of voting securities of a bank holding company or state member bank of the Federal Reserve System.

#### **§ 225.2 Definitions.**

Except as modified in this section or unless the context otherwise requires, the terms used in this regulation have the same meanings as set forth in the relevant statutes.

(a)(1) "Bank" means any institution organized under the laws of the United States that accepts demand deposits and engages in the business of making commercial loans. For the purposes of this definition:

(i) "Demand deposits" means any deposit with transactional capability that as a matter of practice is payable on demand, and includes deposits accessible by check, draft, negotiable order of withdrawal, or other similar instrument;

(ii) "Commercial loans" means any loan other than a loan to an individual for personal, family, household, or charitable purposes, and includes the purchase of commercial paper, certificates of deposit, bankers' acceptances, and similar money market instruments, the extension of broker call loans, the sale of federal funds, and the deposit of interest-bearing funds; and

(iii) "United States" means the United States and include any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(2) "Bank" does not include:

(i) Any institution that does not do business in the United States except as an incident to its activities outside the United States;

(ii) Any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation or any institution chartered by the Federal Home Loan Bank Board; or

(iii) "Agreement" or "Edge" corporations operating under sections 25 or 25(a) of the Federal Reserve Act (12 U.S.C. 601-604(a); 611-631).

(b)(1) "Bank holding company" means any company (including a bank) that has direct or indirect control of a bank, unless such control results from the ownership or control of:

(i) Securities held in good faith in a fiduciary capacity (other than as provided in paragraph (d)(2) (ii) and (iii) of this section) without sole discretionary voting authority, or as otherwise exempted under section 2(a)(5)(A) of the BHC Act;

(ii) Securities or voting rights held only for a reasonable period of time for the purpose of underwriting securities or participating in a proxy solicitation, as provided in section 2(a)(5) (B) and (C) of the BHC Act;

(iii) Securities acquired in satisfaction of debts previously contracted in good faith, as provided in section 2(a)(5)(D) of the BHC Act, if the securities are divested within two years of acquisition unless the time is extended by the Board; or

(iv) Securities of certain institutions owned by a thrift institution or a trust company, as provided in sections 2(a)(5) (E) and (F) of the BHC Act.

(2) Except for the purposes of § 225.4(b) of this subpart and Subpart E of this regulation or as otherwise provided in this regulation, the term "bank holding company" includes a "foreign banking organization" as defined in § 211.23 of the Board's Regulation K (12 CFR 211.23). For the purposes of Subpart B, the term bank holding company does not include a foreign banking organization that does not own or control a bank in the United States.

(c) "Company" includes any bank, corporation, general or limited partnership, association or similar organization, business trust, or any other trust unless by its terms it must terminate either within 25 years or within 21 years and 10 months after the death of individuals living on the effective date of the trust. "Company" does not include any organization the majority of whose voting securities are owned by the United States or any state.

(d)(1) "Control" of a bank or company includes (except for the purposes of Subpart E):

(i) Owning, controlling, or having power to vote 25 percent or more of the outstanding shares of any class of voting securities of the bank or company, directly or indirectly or acting through one or more other persons;

(ii) Controlling in any manner the election of a majority of the directors or trustees (or individuals exercising similar functions) of the bank or company;

(iii) Exercising or having the power to exercise directly or indirectly a controlling influence over the management or policies of the bank or company, as determined by the Board after notice and opportunity for hearing

in accordance with § 225.31 of Subpart D of this regulation; or

(iv) Conditioning in any manner the transfer of 25 percent or more of any class of voting securities of a bank or company upon the transfer of 25 percent or more of any class of voting securities of another bank or company.

(2) As provided in section 2(g) of the BHC Act, a company shall be deemed to control securities or assets owned, controlled, or held directly or indirectly:

(i) By any subsidiary of the company;

(ii) In a fiduciary capacity (including by pension and profit-sharing trusts) for the benefit of the shareholders, members, or employees (or individuals serving in similar capacities) of the company or of any of its subsidiaries; or

(iii) In a fiduciary capacity for the benefit of the company or any of its subsidiaries.

(e) "Management official" means any officer, director (including honorary or advisory directors), partner, or trustee of a company or any employee of the company with policy-making functions.

(f) "Outstanding shares" means any securities with voting rights, but does not include securities owned by the United States or by a company wholly-owned by the United States.

(g) "Person" includes an individual, bank, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(h) "Principal shareholder" means a person that owns or controls directly or indirectly 25 percent or more of any class of voting securities of a company.

(i) "Subsidiary" means a bank or company that is controlled by another company or person, and unless otherwise indicated, refers to a direct or indirect subsidiary of a bank holding company. An "indirect subsidiary" of a bank holding company means a bank or company controlled by a subsidiary of the bank holding company.

(j) "Voting securities" means shares of common and preferred stock, general and limited partnership interests, and other similar interests, if the holders are entitled by statute, charter, or in any manner to vote for or select directors, trustees, or partners (or persons exercising similar functions), or to vote on other significant matters.

#### **§ 225.3 Administration.**

(a) *Delegation of authority.*

Designated Board members and officers and the Federal Reserve Banks are authorized by the Board to exercise various functions prescribed in this regulation and in the Board's Rules

Regarding Delegation of Authority (12 CFR Part 265) and the Board's Rules of Procedure (12 CFR Part 262).

(b) *Appropriate Federal Reserve Bank.* In administering this regulation, the appropriate Federal Reserve Bank is as follows:

(1) For a bank holding company (or a company applying to become a bank holding company): the Reserve Bank of the Federal Reserve district in which the company's banking operations are principally conducted, as measured by total domestic deposits in its subsidiary banks on the date it became (or will become) a bank holding company;

(2) For a foreign banking organization (as defined in 12 CFR 211.23) that has no banking subsidiaries and is not subject to paragraph (b)(1) of this section: the Reserve Bank of the Federal Reserve district in which the total assets of the organization's United States branches, agencies, and commercial lending companies are the largest as of the later of January 1, 1980, or the date it becomes a foreign banking organization;

(3) For an individual or company submitting a notice under Subpart E of this regulation: the Reserve Bank of the Federal Reserve district in which the banking operations of the bank holding company or state member bank to be acquired are principally conducted, as measured by total domestic deposits on the date the notice is filed.

#### **§ 225.4 Corporate practices.**

(a) *Bank holding company policy and operations.* (1) A bank holding company shall serve as a source of financial and managerial strength to its bank subsidiaries and shall conduct all of its operations in accordance with sound banking policy and practice.

(2) Whenever the Board believes an activity or control of a nonbank subsidiary constitutes a serious risk to the financial safety, soundness, or stability of a bank subsidiary of a bank holding company, and is inconsistent with sound banking principles or the purposes of the BHC Act, the Board may require the bank holding company to terminate the activity or to terminate control of the subsidiary, as provided in section 5(e) of the BHC Act.

(b) *Purchase or redemption by a bank holding company of its own securities.* A bank holding company may not purchase or redeem its equity securities, unless:

(1) The gross consideration paid for the securities, when added to the net consideration<sup>1</sup> paid for all similar

transactions during the preceding 12-month period, is not more than \$10 million or 1 percent of the bank holding company's net worth, whichever is less; or

(2) The bank holding company has:

(i) Consolidated assets of \$1 billion or more, and after the purchase or redemption, its consolidated primary capital-to-total assets ratio is at least 5 percent;

(ii) Consolidated assets of \$150 million to \$1 billion, and after the purchase or redemption, its consolidated primary capital-to-total assets ratio is at least 6 percent; or

(iii) Total banking assets of \$150 million or less, and after the purchase or redemption,

(A) The primary capital-to-total assets ratio of the bank holding company (consolidated) is at least 6 percent or

(B) The primary capital-to-total assets ratio of each subsidiary bank of the holding company is at least 6 percent and the debt-to-equity ratio of the parent bank holding company (nonconsolidated) is no more than 30 percent; or

(3) The bank holding company obtains the prior approval of the Board for the redemption or purchase on the basis of unusual circumstances.

(c) *Deposit insurance.* Every bank shall obtain Federal Deposit Insurance prior to becoming a bank holding company or a subsidiary of a bank holding company, and shall remain an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)).

(d) *"Tie-in" arrangements.* A bank holding company and any nonbanking subsidiary conducting an activity under § 225.23 of this regulation may not in any manner extend credit, lease or sell property of any kind, provide any service, or fix or vary the consideration for any of these transactions, if the provision of the credit, property, or service is subject to any condition that, if imposed by a bank, would constitute an unlawful tie-in arrangement under section 106 of the BHC Act Amendments of 1970 (12 U.S.C. 1971 and 1972(1)).

(e) *Acting as transfer agent, municipal securities dealer, or clearing agent.* A bank holding company or any nonbanking subsidiary that is a "bank," as defined in section 3(a)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(6)), and that is a transfer agent of securities, a municipal securities dealer, a clearing agency, or a

participant in a clearing agency (as those terms are defined in section 3(a) of the Securities Exchange Act (12 U.S.C. 78c(a))), shall be subject to § 208.8(f)-(j) of the Board's Regulation H (12 CFR 208.8(f)-(j)) as if it were a state member bank.

#### **§ 225.5 Registration, reports, and inspections.**

(a) *Registration of bank holding companies.* Each company shall register within 180 days after becoming a bank holding company by furnishing information in the manner and form prescribed by the Board.

(b) *Reports of bank holding companies.* Each bank holding company shall furnish in the manner and form prescribed by the Board an annual report of the company's operations for the fiscal year in which it becomes a bank holding company, and for each fiscal year thereafter during which it remains a bank holding company. Additional information and reports shall be furnished as the Board may require.

(c) *Examinations and inspections.* The Board may examine or inspect any bank holding company and each of its subsidiaries and prepare a report of their operations and activities. With respect to foreign banking organizations the Board may examine any branch or agency of a foreign bank in a State of the United States and may examine or inspect each of its United States subsidiaries and prepare reports of their operations and activities. The Board shall rely as far as possible on the reports of examination made by the primary federal or state supervisor of the bank subsidiaries of a bank holding company or of the foreign bank.

#### **§ 225.6 Penalties for violations.**

(a) *Criminal and civil penalties.* (1) Section 8 of the BHC Act provides certain civil and criminal penalties for a violation by any company or individual of the BHC Act or any regulation or order issued under it, or for making a false entry in any book, report, or statement of a bank holding company. Civil money penalty assessments for violations of the BHC Act shall be made in accordance with Subpart B of the Board's Rules of Practice for Hearing (12 CFR 263, Subpart B). For any willful violation of the Bank Control Act or any regulation or order issued under it, the Board may assess a civil penalty as provided in 12 U.S.C. 1817(i)(15).

(b) *Cease and desist proceedings.* For any violation of the BHC Act, the Bank Control Act, this regulation, or any order or notice issued thereunder, the Board may institute a cease and desist

<sup>1</sup> For the purposes of this section, "net consideration" is the gross consideration paid by the company for all of its equity securities

purchased or redeemed during the period minus the gross consideration received for all of its equity securities sold during the period other than as part of a new issue.

proceeding in accordance with the Financial Institutions Supervisory Act of 1966, as amended (12 U.S.C. 1818(b) (1) and (3)).

#### **Subpart B—Acquisition of Bank Securities or Assets**

##### **§ 225.11 Transactions requiring Board approval.**

The following transactions require an application for the Board's prior approval under section 3 of the BHC Act unless otherwise exempted under § 225.12 of this subpart:

(a) *Formation of bank holding company.* Any action that causes a company to become a bank holding company.

(b) *Acquisition of subsidiary bank.* Any action that causes a bank to be come a subsidiary of a bank holding company.

(c) *Acquisition of control of bank securities or bank holding company securities.* The acquisition by a bank holding company of control of any voting securities of a bank or bank holding company, if the acquisition results in the company's control of more than 5 percent of the outstanding shares of any class of voting securities of the bank of bank holding company. An acquisition includes the purchase of additional securities through the exercise of preemptive rights, but does not include securities received in a stock dividend or stock split that does not alter the bank holding company's proportional share of any class of voting security.

(d) *Acquisition of bank assets.* The acquisition by a bank holding company (that is not a bank) or by a nonbank subsidiary of all or substantially all of the assets of a bank.

(e) *Merger of bank holding companies.* The merger or consolidation of bank holding companies, including a merger through the purchase of assets and assumption of liabilities.

(f) *Other acquisitions.* Any other acquisition of control of a bank or bank holding company that the Board determines, after notice to the acquiring company, requires prior approval under section 3 of the BHC Act.

##### **§ 225.12 Transactions not requiring Board approval.**

The following transactions do not require the Board's approval under § 225.11 of this subpart:

(a) *Acquisition of securities in fiduciary capacity.* The acquisition by a bank or company, as provided by section 3(a) of the BHC Act, of control of voting securities or assets of a bank or

bank holding company in good faith in a fiduciary capacity, unless:

(1) The acquiring bank or company has sole discretionary authority to vote the securities and will retain such authority for more than two years; or

(2) The acquisition is for the benefit of the bank or company or its shareholders, employees, or subsidiaries.

(b) *Acquisition of securities in satisfaction of debts previously contracted.* The acquisition by a bank or company of voting securities or assets of a bank or bank holding company in the regular course of securing or collecting a debt previously contracted in good faith, as provided in section 3(a) of the BHC Act, if the bank or company divests the securities or assets within two years of acquisition. The Board may grant requests for up to three one-year extensions.

(c) *Acquisition of securities by bank holding company with majority control.* The acquisition by a company of additional voting securities of a bank or bank holding company where more than 50 percent of the outstanding voting securities of the bank or company is controlled by the acquiring company prior to the acquisition.

(d) *Transactions subject to Bank Merger Act.* The merger, consolidation, or purchase of assets involving a nonsubsidiary bank and a subsidiary bank of a bank holding company, or a similar transaction involving subsidiary banks of a bank holding company, if the transaction requires the prior approval of a Federal supervisory agency under the Bank Merger Act (12 U.S.C. 8128(c)). This exception does not include the merger of a nonsubsidiary bank and a nonoperating subsidiary bank formed by a company for the purpose of acquiring the nonsubsidiary bank.

(e) *Holding securities in escrow.* The holding of bank or bank holding company securities or assets in a good faith escrow arrangement for the benefit of an applicant pending the Board's action on the application for approval of the proposed acquisition, if title to the securities and the voting rights remain with the seller and payment for the securities has not been made to the seller.

##### **§ 225.13 Factors considered in deciding applications under Subpart B.**

(a) *Prohibited anticompetitive transactions.* As specified in Sections 3(c) (1) and (2) of the BHC Act, the Board may not approve any application under this subpart if the transaction would:

(i) Result in a monopoly or would further an effort to monopolize the

business of banking in any part of the United States; or

(ii) Substantially lessen competition, tend to create a monopoly, or in any other manner be in restraint of trade in any section of the country, unless the Board finds that the anticompetitive effects of the transaction are clearly outweighed by the probable effect of the transaction in meeting the convenience and needs of the community.

(b) *Other factors considered.* In deciding applications under this subpart, the Board's consideration shall include the following factors with respect to the applicant, its subsidiaries, any banks related to the applicant through common ownership or management, and the bank to be acquired:

(1) *Financial condition.* Their financial condition and future prospects, including whether current and projected capital positions and levels of indebtedness conform to the Board's standards.

(2) *Management.* The competence and character of the applicant's principals; the applicant's record of compliance with laws and regulations; and its record of fulfilling its commitments to, and any conditions imposed by, the Board in connection with prior applications.

(3) *Convenience and needs of the community and performance under Community Reinvestment Act.* The convenience and needs of the communities to be served, including:

(i) The impact of the proposed transaction on the number and availability of alternative sources of banking services, and on existing and potential competition and the concentration of banking resources; and

(ii) The record of performance under the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) and the Board's Community Reinvestment Regulation (12 CFR Part 228, Regulation BB).

(C)(1) *Interstate transactions.* The Board may not approve any transaction that would result in:

(i) The formation of a bank holding company that controls more than 5 percent of any class of voting securities of two or more banks located in different states; or

(ii) The acquisition by a bank holding company or any of its subsidiaries of any voting securities of, any interest in, or substantially all of the assets of, an additional bank located in a state other than the state in which the operations of the bank holding company's banking subsidiaries were principally conducted on July 1, 1966 (as measured by total deposits), or on the date on which the

company became a bank holding company, whichever is later.

(2) *Exceptions.* The prohibitions of this paragraph shall not apply if:

(i) The bank is located in a state that has by statute expressly authorized the acquisition of securities of, an interest in, or substantially all of the assets of, a bank within the state by an out-of-state bank holding company; or

(ii) The transaction involves the acquisition of a closed or failing bank that has been authorized under section 13(f) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)).

#### **§ 225.14 Procedures for applications, notices, and hearings.**

(a) *Filing application.* An application by a company for the Board's prior approval under this subpart shall be filed with the appropriate Reserve Bank on the designated form and shall comply with § 262.3 of the Rules of Procedure (12 CFR 262.3), which contains a requirement for publication by the applicant of newspaper notice of the application.

(b) *Notice.*

(1) *Notice to primary banking supervisor.* Upon receipt of an application under this subpart, the Reserve Bank shall give prompt notice and a copy of the application to the primary banking supervisor of the bank to be acquired. The primary supervisor shall have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.

(2) *Federal Register notice.* Upon receipt by the Reserve Bank of an application under this subpart, notice of the application shall be promptly sent to the *Federal Register* for publication. The *Federal Register* notice shall invite comment on the application for a period of no more than 30 days.

(c) *Accepting application for processing.* Within 10 calendar days after the Reserve Bank receives an application under this subpart, the Reserve Bank shall either accept the application for processing or advise applicant that the application is incomplete and requires additional information. In unusual circumstances, the Reserve Bank may extend this time period upon written notice to the applicant. Upon accepting an application, the Reserve Bank shall immediately send copies of the application to the Board.

(d) *Action on applications.*

(1) *Action under delegated authority.* An application shall be approved within 30 calendar days after it is accepted for processing under paragraph (c) of this section, unless the applicant is notified

that the application has been referred to the Board for decision because action is not appropriate under delegated authority. The 30-day period may be extended for 15 days by the Reserve Bank upon written notice to the applicant.

(2) *Board action.* In the case of applications referred to the Board for decision, the application shall be approved within 60 calendar days after it is accepted for processing under paragraph (c) of this section, unless the applicant is notified that the 60-day period will be extended for a specified period and is given the reasons for the extension. In no event may the extension exceed the 91-day period provided in paragraph (f) of this section.

(e) *Hearings.* As provided in section 3(b) of the BHC Act, the Board shall order a hearing if it receives from the primary supervisor of the bank to be acquired a written recommendation of disapproval of an application within the 30-day period specified in paragraph (b)(1) of this section. The Board may order a formal or informal hearing or other proceeding in connection with the processing of an application, as provided in § 262.3(i)(2) of the Rules of Procedure. Any request for hearing other than from the primary supervisor shall comply with § 262.3(e) of the Rules of Procedure (12 CFR 262.3(e)).

(f) *Approval through failure to act.*

(1) *Ninety-one day rule.* An application under this subpart shall be deemed approved if the Board fails to act on the application within 91 calendar days after the date of submission to the Board of the complete record on the application. For this purpose, Board action includes the issuance of an order stating that the Board has approved or denied the application, reflecting the votes of the members of the Board, and indicating that a statement of the reasons for the decision will follow promptly.

(2) *Complete record.* For the purpose of computing the 91-day period, the record shall be regarded as complete on the latest of:

(i) The date of receipt by the Board of an application that has been accepted for processing by the Reserve Bank under paragraph (c) of this section;

(ii) The last day provided in any notice for receipt of comments and hearings requests on the application;

(iii) The date of receipt by the Board of the last relevant material regarding the application that is needed for the Board's decision, if the material is received from a source outside of the Federal Reserve System and is not already in the record; or

(iv) The date of completion of any hearing or other proceeding ordered under paragraph (e) of this section.

(g) *Exceptions to notice and hearing requirements.*

(1) *Probable bank failure.* If the Board finds it must act immediately on an application in order to prevent the probable failure of a bank or bank holding company, the Board may modify or dispense with the notice and hearing requirements provided in this section.

(2) *Emergency.* If the Board finds that, although immediate action on an application is not necessary, an emergency exists requiring expeditious action, the Board may require the primary supervisor to submit its recommendation within 10 calendar days, and the Board may act on the application without a hearing, and may modify or dispense with the other notice and hearing requirements provided in this section.

(h) *Waiting period.* A transaction approved under this subpart shall not be consummated before the thirtieth day after the date of approval of the application, unless the Board has determined that the application involves a probable bank failure or an emergency situation under paragraph (g) of this section.

#### **Subpart C—Nonbanking Activities and Acquisitions of Bank Holding Companies**

##### **§ 225.21 Permissible nonbanking activities and acquisitions; exempt bank holding companies.**

(a) *Permissible nonbanking activities and acquisitions.* Except as provided in § 225.22 of this subpart, a bank holding company or a subsidiary may not engage in, or acquire or control voting securities or assets of a company engaged in, any activity other than:

(1) Banking or managing or controlling banks and other subsidiaries authorized under the BHC Act; and

(2) An activity determined to be closely related to banking as provided in § 225.23 of this subpart, provided the bank holding company has obtained the prior approval of the Board under § 225.25 of this subpart for that activity.

(b) *Exempt bank holding companies.* The following bank holding companies are exempt from the provisions of this subpart:

(1) *Family-owned companies.* Any company that is a "company covered in 1970," as defined in section 2(b) of the BHC Act, and that had more than 85 percent of its voting stock collectively owned on June 30, 1968, and

continuously thereafter, by members of the same family or their spouses.

(2) *Labor, agricultural, and horticultural organizations.* Any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code (26 U.S.C. 501).

(3) *Companies granted hardship exemption.* Any bank holding company that has controlled only one bank since before July 1, 1968, and that has been granted an exemption by the Board under section 4(d) of the BHC Act, subject to any conditions imposed by the Board.

#### **§ 225.22 Exempt nonbanking activities and acquisitions.**

(a) *Servicing activities.* A bank holding company may, without the Board's prior approval, furnish directly, or acquire all the shares of a subsidiary to furnish, services for the internal operations of the holding company and its subsidiaries. Such services include: (i) accounting; (ii) advertising; (iii) data processing; (iv) holding or operating property used primarily by a subsidiary in its operations or for its future use; (v) liquidating property acquired from a subsidiary; (vi) liquidating property acquired from any source either prior to May 9, 1958, or the date on which the company became a bank holding company, whichever is later; (vii) personnel services; and (viii) selling, purchasing, or underwriting insurance such as blanket bond insurance, group insurance for employees, and property and casualty insurance.

(b) *Safe deposit business.* A bank holding company may, without the Board's prior approval, conduct a safe deposit business, or acquire voting securities of a company that conducts such a business.

(c) *Nonbanking acquisitions not requiring prior Board approval.* A bank holding company or subsidiary may, without the Board's prior approval, acquire:

(1) *DPC acquisitions.* (i) Securities and real or personal property, by foreclosure or otherwise, in satisfaction of debts previously contracted ("DPC property") in good faith, if the DPC property is divested within two years of acquisition.

(ii) Upon request, this 2-year period may be extended for three additional one-year periods by the Board. In the case of real estate, an additional 5-year period may also be permitted by the Board for a total of 10 years.

(iii) Transfers of DPC property within the bank holding company system shall

not extend any period for divestiture of the property.

(2) *Securities or assets required to be divested by subsidiary.* Securities or assets required to be divested by a subsidiary at the request of an appropriate examining federal or state authority (except by the Board under the BHC Act or this regulation), if the bank holding company divests the securities or assets within two years from the date acquired from the subsidiary.

(3) *Fiduciary investments.* Securities or assets acquired by a company in good faith in a fiduciary capacity, if they are:

- (i) Held in the ordinary course of business; and
- (ii) Not acquired for the benefit of the company or its shareholders, employees, or subsidiaries.

(4) *Securities eligible for investment by a national bank.* Securities of the kinds and amounts explicitly eligible by federal statute (other than the Bank Service Corporation Act, 12 U.S.C. 1861 *et seq.*) for investment by a national bank, and securities acquired prior to June 30, 1971, in reliance on section 4(c)(5) of the BHC Act and interpretations of the Comptroller of the Currency under section 5136 of the Revised Statutes (12 U.S.C. 24(7)).

(5) *Securities totalling 5 percent or less of a company.* Securities or property that, in the aggregate, represent 5 percent or less of any class of outstanding voting securities of a company or a 5 percent interest or less in the property, provided the acquiring company holds the securities or property as a passive investment.

(6) *Securities of investment company.* Securities of an investment company that is solely engaged in investing in securities and that does not own or control more than 5 percent of any class of outstanding voting securities of any company.

(7) *Assets acquired in the ordinary course of business.* Assets of a company acquired in the ordinary course of business, subject to the limitations and provisions of 12 CFR 225.132, provided the assets relate to activities in which the acquiring company has previously received Board approval to engage under § 225.23 of this subpart in the areas to be served, and the assets do not represent all or substantially all of the assets of a company, or a subsidiary, division, department, or office of the company from which the assets are acquired.

(8) *Asset acquisitions by consumer finance or mortgage company.* Assets of an office(s) of a company that relate solely to making, acquiring, or servicing loans solely for personal, family, or household purposes, provided that:

(i) The acquiring company has previously received Board's approval to engage in consumer finance or residential mortgage banking activities under § 225.23(b)(1) of this subpart in the area to be served by the acquired office(s);

(ii) The assets sold from any company in any calendar year do not represent more than 10 percent of the assets of the acquiring consumer finance or mortgage company or more than \$10 million, whichever is less;

(iii) The assets acquired do not represent more than 50 percent of the assets of the selling company;

(iv) The acquiring company notifies the Reserve Bank of the acquisition within 30 days after the acquisition; and

(v) The Board has not previously notified the acquiring company that it may not acquire assets under this paragraph.

(d) *Acquisition of securities by subsidiary banks.*

(1) A national bank or its subsidiary may acquire or retain securities on the basis of section 4(c)(5) of the BHC Act in accordance with the regulations of the Comptroller of the Currency.

(2) A state-chartered bank or its subsidiary may, insofar as federal law is concerned, acquire or retain securities on the basis of section 4(c)(5) to the BHC Act: (i) of the kinds and amounts explicitly eligible by federal statute for investment by a national bank; or (ii) that represent all of the voting securities of a company (except director's qualifying shares) that engages solely in activities in which the parent bank may engage, at locations at which the bank may engage in the activity, and subject to the same limitations as if the bank were engaging in the activity directly.

(e) *Activities and securities of new bank holding companies.* A company that becomes a bank holding company with the Board's approval under § 225.11 of Subpart B of this regulation may, for a period of two years, engage in nonbanking activities and hold nonbanking securities that it engaged in or held on the date it became a bank holding company. The Board may grant requests for up to three one-year extensions.

(f) *Grandfathered activities and securities.* Unless the Board orders divestiture or termination under section 4(a)(2) of the BHC Act, a "company covered in 1970," as defined in section 2(b) of the BHC Act, may:

(1) Retain securities and engage in activities that it has lawfully held or engaged in continuously since June 30, 1968; and

(2) Acquire securities of a newly-formed company to engage in such activities.

(g) *Securities or activities exempt under Regulation K.* A bank holding company may acquire voting securities or assets and engage in activities authorized for that bank holding company under Regulation K (12 CFR Part 211).

#### **§ 225.23 Nonbanking activities requiring Board approval.**

(a) *Approval required to engage in nonbanking activities.* A bank holding company shall apply, in accordance with § 225.25 of this subpart, for the Board's prior approval to engage directly or indirectly, or to acquire or control voting securities or assets of a company engaged, in: (1) an activity specified in paragraph (b) of this section, including such incidental activities as are necessary to carry on the activities specified; and (2) in an activity not specified in paragraph (b) that the bank holding company believes is closely related to banking or to managing or controlling banks within the meaning of section 4(c)(8) of the BHC Act.

(b) *Activities determined to be closely related to banking.* The following activities are so closely related to banking or managing or controlling banks as to be a proper incident thereto:

(1) *Making and servicing loans.* Making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others, such as would be made, for example, by the following types of companies: (i) consumer finance; (ii) credit card; (iii) mortgage; (iv) commercial finance; and (v) factoring.

(2) *Industrial banking.* Operating an industrial bank, Morris Plan bank, or industrial loan company, as authorized under state law, so long as the institution is not a bank as defined in § 225.2(a) of Subpart A of this regulation.

(3) *Trust company functions.* Performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), in the manner authorized by federal or state law, so long as the institution does not make loans or investments or accept deposits other than:

(i) Deposits that are generated from trust funds not currently invested and that are properly secured to the extent required by law;

(ii) Deposits representing funds received for a special use in the capacity

of managing agent or custodian for an owner of, or investor in, real property, securities, or other personal property; or for such owner or investor as agent or custodian of funds held for investment or as escrow agent; or for an issuer of, or broker or dealer in securities, in a capacity such as a paying agent, dividend disbursing agent, or securities clearing agent; provided such deposits are not employed by or for the account of the customer in the manner of a general purpose checking account or interest-bearing account; or

(iii) Making call loans to securities dealers or purchasing money market instruments such as certificates of deposit, commercial paper, government or municipal securities, and bankers acceptances. (Such authorized loans and investments, however, may not be used as a method of channeling funds to nonbanking affiliates of the trust company.)

(4) *Investment or financial advice.* Acting as investment or financial adviser to the extent of:

(i) Serving as the advisory company for a mortgage or a real estate investment trust;

(ii) Serving as investment adviser (as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(20)), to an investment company registered under that act;

(iii) Providing portfolio investment advice<sup>2</sup> to any other person;

(iv) Furnishing general economic information and advice, general economic statistical forecasting services and industry studies;<sup>3</sup> and

(v) Providing financial advice to state and local governments, such as with respect to the issuance of their securities.

(5) *Leasing personal or real property.* Leasing personal or real property or acting as agent, broker, or adviser in leasing such property if:

(i) The lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;

(ii) The property to be leased is acquired specifically for the leasing transaction under consideration or was

<sup>2</sup>The term "portfolio investment" intended to refer generally to the investment of funds in a "security" as defined in section 2(1) of the Securities Act of 1933 (15 U.S.C. 77b) or in real property interests, except where the real property is to be used in the trade or business of the person being advised. In furnishing portfolio investment advice, bank holding companies and their subsidiaries shall observe the standards of care and conduct applicable to fiduciaries.

<sup>3</sup>This activity is to be contrasted with "management consulting." See the commentary for a discussion of impermissible management consulting activities.

acquired specifically for an earlier leasing transaction;

(iii) The lease is on a nonoperating basis;<sup>4</sup>

(iv) At the inception of the initial lease the effect of the transaction (and, with respect to governmental entities only, reasonably anticipated future transactions<sup>5</sup>) will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease,<sup>6</sup> from:

(A) Rentals;

(B) Estimated tax benefits (investment tax credit, net economic gain from tax deferral from accelerated depreciation, and other tax benefits with a substantially similar effect);

(C) The estimated residual value of the property at the expiration of the initial term of the lease, which in no case shall exceed 20 percent of the acquisition cost of the property to the lessor; and

(D) In the case of a lease of personal property of not more than seven years in duration, such additional amount, which shall not exceed 60 percent of the acquisition cost of the property, as may be provided by an unconditional guarantee by a lessee, independent third party, or manufacturer, which has been determined by the lessor to have the financial resources to meet such obligation, that will assure the lessor of

<sup>4</sup>For purposes of the leasing of automobiles, the requirement that the lease be on a nonoperating basis means that the bank holding company may not, directly or indirectly: (1) provide for the servicing, repair, or maintenance of the leased vehicle during the lease term; (2) purchase parts and accessories in bulk or for an individual vehicle after the lessee has taken delivery of the vehicle; (3) provided for the loan of an automobile during servicing of the leased vehicle; (4) purchase insurance for lessee; or (5) provide for the renewal of the vehicle's license merely as a service to the lessee where the lessee could renew the license without authorization from the lessor.

<sup>5</sup>The Board understands that some federal, state and local governmental entities may not enter into a lease for a period in excess of one year. Such an impediment does not prohibit a company authorized under § 225.23(a)(5) from entering into a lease with such governmental entities if the company reasonably anticipates that the governmental entities will renew the lease annually until such time as the company is fully compensated for its investment in the leased property plus its costs of financing the property. Further, a company authorized under § 225.23(a)(5) may also engage in so-called "bridge" lease financing of personal property, but not real property, where the lease is short term pending completion of long-term financing, by the same or another lender.

<sup>6</sup>The estimate by the lessor of the total cost of financing the property over the term of the lease should reflect, among other factors: the term of the lease, the modes of financing available to the lessor, the credit rating of the lessor and/or the lessee (if a factor in the financing), and prevailing rates in the money and capital markets.

recovery of its investment and cost of financing; provided, that in the aggregate the amount derived from estimated residual value under subparagraph C and any unconditional guarantee shall not exceed 60 percent of the acquisition cost of the property;

(v) The maximum lease term during which the lessor must recover the lessor's full investment on the property, plus the estimated total cost of financing the property, shall be 40 years; and

(vii) At the expiration of the lease (including any renewals or extensions with the same lessee), all interest in the property shall be either liquidated or released on a nonoperating basis as soon as practicable but in no event later than two years from the expiration of the lease; however, in no case shall the lessor retain any interest in the property beyond 50 years after its acquisition of the property.

(6) *Community development.* Investing in or making contributions to corporations or projects designed primarily to promote community welfare and to further the development of low income areas by providing housing, services, or jobs for residents.

(7) *Data processing.* (i) Providing data processing and data transmission services, data bases, or facilities (including data processing and data transmission hardware, software, documentation, and operating personnel) for the internal operations of the holding company or its subsidiaries;

(ii) Providing to others data processing and transmission services, facilities, data bases, or access to such services, facilities, or data bases by any technologically feasible means, where:

(A) Data to be processed or furnished are financial, banking, or economic, and the services are provided pursuant to a written agreement so describing and limiting the services;

(B) The facilities are designed, marketed, and operated for the processing and transmission of financial, banking, or economic data; and

(C) Hardware in connection therewith is offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering.

<sup>7</sup> In the event of a default on the lease agreement prior to the expiration of the lease term, the lessor shall either re-lease the property, subject to all the conditions of this subsection, or liquidate the property as soon as practicable but in no event later than two years from the date of default on the lease agreement.

(8) *Insurance sales.* Except as prohibited in Title VI of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320, 96 Stat. 1536), acting as insurance agent or broker in offices at which the holding company or its subsidiaries are otherwise engaged in business (or in an office adjacent thereto) with respect to the following types of insurance:

(i) Any insurance that (A) is directly related to an extension of credit by a bank or bank-related firm of the kind described in this regulation, or (B) is directly related to the provision of other financial services by a bank or such a bank-related firm; and

(ii) Any insurance sold by a bank holding company or a nonbanking subsidiary in a community that has a population not exceeding 5,000 (as shown by the last preceding decennial census), provided the principal place of banking business of the bank holding company is located in a community having a population not exceeding 5,000.

(9) *Insurance underwriting.* Acting as underwriter for credit life insurance and credit accident and health insurance that is directly related to an extension of credit by the bank holding company system.<sup>8</sup>

(10) *Courier services.* Providing courier services for:

(i) The internal operations of the bank holding company and its subsidiaries;

(ii) Checks, commercial papers, documents, and written instruments (excluding currency or bearer-type negotiable instruments) that are exchanged among banks and financial institutions; and

(iii) Audit and accounting media of a banking or financial nature and other business records and documents used in processing such media.<sup>9</sup>

(11) *Management consulting to depository institutions.* Providing, on an explicit fee basis without regard to any correspondent balances, management consulting advice to banks and other depository institutions<sup>10</sup>, if:

<sup>8</sup> To assure that engaging in the underwriting of credit life and credit accident and health insurance can reasonably be expected to be in the public interest, the Board will only approve applications in which an applicant demonstrates that approval will benefit the consumer or result in other public benefits. Normally such a showing would be made by a projected reduction in rates or increase in policy benefits due to bank holding company performance of this service.

<sup>9</sup> See also the Board's interpretation on courier activities (12 CFR 225.129), which sets forth conditions for bank holding company entry into the activity.

<sup>10</sup> In performing this activity, bank holding companies are not authorized to perform tasks or operations or provide services to client institutions either on a daily or continuing basis, except as shall be necessary to instruct the client institution on

(i) The services are not provided on a daily or continuing basis;

(ii) The bank holding company does not control any equity securities issued by the client;

(iii) No management official, as defined in 12 CFR 212.2, of the bank holding company or subsidiary serves as a management official of the client, unless granted an exception by the appropriate federal regulatory agency; and

(iv) Each potential client is notified of all depository institutions affiliated with the bank holding company and of all other clients located in the same market areas as the potential client.

(12) *Money orders, savings bonds, and travelers checks.* The issuance and sale at retail of money orders having a face value of not more than \$1,000; the sale of U.S. savings bonds; and the issuance and sale of travelers checks.

(13) *Real estate appraising.*

Performing appraisals of real estate.

(14) *Commercial real estate equity financing.* Acting as intermediary for the financing of commercial or industrial income-producing real estate by arranging the transfer of the title, control and risk of such a real estate project to one or more investors, if:

(i) The financing arranged exceeds \$1 million;

(ii) The bank holding company and its affiliate do not provide financing to the investors to acquire a real estate project for which the bank holding company arranges equity financing;

(iii) The bank holding company and its affiliates do not have an interest in or participate in managing, developing or syndicating a real estate project for which it arranges equity financing, and do not promote or sponsor the development or syndication of such property; and

(iv) The fee received for arranging equity financing for a real estate project is not based on profits to be derived from the project and is not larger than the fee that would be charged by an unaffiliated intermediary.

(15) *Underwriting and dealing in government obligations.* Underwriting and dealing in obligations of the United States, general obligations of various states and of political subdivisions thereof, and other obligations that state member banks of the Federal Reserve System may be authorized to deal in under 12 U.S.C. 24 and 355, including

how to perform such services for itself. See also the Board's interpretation regarding bank management consulting advice at 12 CFR 225.131. The provisions of this interpretation shall apply to the performance of management consulting services for nonbank depository institutions as well as commercial banks.

bankers acceptances and certificates of deposit.

(16) *Foreign exchange advisory and transactional services.* Providing, by any means, general information and statistical forecasting with respect to foreign exchange markets; advisory services designed to assist customers in monitoring, evaluating and managing their foreign exchange exposures; and transactional services with respect to foreign exchange by arranging for "swaps" among customers with complementary foreign exchange exposures, if:

(i) The activity is conducted through a separately incorporated subsidiary of the bank holding company;

(ii) The foreign exchange subsidiary does not take positions in foreign exchange for its own account;

(iii) The foreign exchange subsidiary observes the standards of care and conduct applicable to fiduciaries with respect to its foreign exchange advisory and transactional services; and

(iv) The foreign exchange subsidiary does not itself execute foreign exchange transactions.

(17) *Futures commission merchant.* Acting as a futures commission merchant ("FCM") for nonaffiliated persons, in the execution and clearance on major commodity exchanges of future contracts for bullion, foreign exchange, government securities, negotiable United States money market instruments and certain other money market instruments, if:

(i) The activity is conducted through a separately incorporated subsidiary of the bank holding company, subject to the provisions of the Commodity Exchange Act (7 U.S.C. 1 to 26), and to regulation by the Commodity Futures Trading Commission ("CFTC") and at least one of the major domestic commodity exchanges or in the case of a foreign office, subject to regulation by a comparable regulatory authority and exchange;

(ii) The FCM does not become a clearing member of any exchange or clearing association that requires the parent corporation of a clearing member to also become a member of that exchange or clearing association unless a waiver of the requirement is obtained;

(iii) The FCM does not trade for its own account;

(iv) The FCM time stamps orders of all customers to the nearest minute, executes all orders in chronological sequence consistent with the customers' specifications, and executes all orders with reasonable promptness with due regard to market conditions;

(v) The FCM advises each of its customers in writing that doing business

with it will not affect any provision of credit to that customer by other subsidiaries of the parent bank holding company, including its banking affiliates;

(vi) The FCM does not extend credit to customers for the purpose of meeting initial or maintenance margin required of customers except for posting margin on behalf of customers in advance of prompt reimbursement;

(vii) The FCM has initial capitalization that is in substantial excess of that required by CFTC regulations (or comparable regulatory authority), and will maintain fully adequate capitalization;

(viii) Services provided to the FCM by its affiliates are provided under specific contract on an explicit fee basis; and

(ix) The bank holding company and its subsidiaries have demonstrated expertise and an established capability in the cash, forward and futures markets for the contracts involved.

#### **§ 225.24 Factors considered in deciding applications under Subpart C.**

(a) *Criteria for activities previously determined to be closely related to banking.* In deciding any application by a bank holding company to engage in a nonbanking activity specified in § 225.23(b) of this subpart, the Board shall determine whether the activity is a proper incident to banking. In making this determination the Board shall consider whether the performance by the applicant bank holding company of the activity can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, and gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, and unsound banking practices). Unless the record clearly demonstrates otherwise, the commencement of a nonbanking activity *de novo* is presumed to result in benefits to the public through increased competition.

(b) *Criteria for other nonbanking activities.* In deciding any application by a bank holding company to engage in a nonbanking activity not specified in § 225.23(b) of this subpart, the Board shall determine whether the proposed activity (1) is closely related to banking or to managing or controlling banks, and (2) is a proper incident to banking, as described in paragraph (a) of this section.

(c) *Financial and managerial criteria.* In deciding any application described in paragraph (a) of (b) of this section, the Board shall also consider the financial and managerial resources of the

applicant, including its subsidiaries, and any company to be acquired, and the effect of the proposed transaction on their resources.

#### **§ 225.25 Procedures for applications, notices, and hearings.**

(a) (1) *Filing application.* An application by a company for the Board's prior approval under § 225.23 of this subpart shall be filed with the appropriate Reserve Bank on the designated form and shall comply with § 262.3 of the Rules of Procedure (12 CFR 262.3). An application for Board approval to engage directly or through a subsidiary in an activity not specified in § 225.23(b) shall contain evidence and argument that the activity is closely related to banking or to managing or controlling banks within the meaning of section 4(c)(8) of the BHC Act.

(2) *Geographic scope of nonbanking activities.* (i) Any application required under § 225.23 of this subpart shall specify the states in which the company proposes to engage *de novo*, or to acquire a company engaged, in the nonbanking activity.

(ii) A bank holding company is not required to file an application under § 225.23 of this subpart to open a new office or to form a subsidiary to engage in a nonbanking activity in a state in which the bank holding company has received the Board's approval under § 225.23 for that activity, unless the Board has notified the company that an application is required for such expansion.

(iii) If a bank holding company fails to engage in the nonbanking activity in the state specified in its application within two years of Board approval of the application, the Board's approval of that activity in that state terminates and the bank holding company shall reapply for the Board's approval before commencing the nonbanking activity in that state.

(3) *Alteration or relocation of nonbanking activity.* With respect to an application approved under § 225.23 of this subpart, nonbanking activities shall not be altered in any significant respect from those considered by the Board in acting on the application, nor provided in any states other than those specified in the notice published with respect to such application.

(4) *Activities outside the United States.* With respect to activities to be engaged in outside the United States, the procedures of this section apply only to activities to be engaged in directly by a bank holding company that is not a qualifying foreign banking organization or by a United States nonbank

subsidiary of any bank holding company.

(b) *Accepting application for processing.* Within 10 calendar days after the Reserve Bank receives an application under this subpart, the Reserve Bank shall either accept the application for processing or advise the applicant that the application is incomplete and requires additional information. In unusual circumstances, the Reserve Bank may extend this time period upon written notice to the applicant. Upon accepting an application, the Reserve Bank shall immediately send copies of the application to the Board.

(c) **Federal Register notice.**

(1) *Listed activities.* Upon receipt by the Reserve Bank of an application involving an activity listed in § 225.23(b) of this subpart, notice of the application shall be promptly sent to the **Federal Register** for publication. The **Federal Register** notice shall invite comment for a period of not more than 30 days.

(2) *Proposed new activities.* In the case of an application involving an activity not listed in § 225.23(b) of this subpart, notice of the application shall be sent to the **Federal Register** for publication within 10 business days after receipt by the Board of an application accepted for processing under paragraph (b) of this section, unless (i) the activity has previously been determined not to be closely related to banking or a proper incident thereto; or (ii) there is no basis for publishing for comment whether the activity is so closely related to banking as to be a proper incident thereto under § 225.24(b) of this subpart. In the event notice of an activity not listed in § 225.23(b) is not published for comment, the applicant shall be notified of the reasons for the decision. The **Federal Register** notice shall invite comment on the proposal for a reasonable period of time, generally for 30 days.

(d) *Action on applications.*

(1) *Action under delegated authority.* An application shall be approved within 30 calendar days after it is accepted for processing under paragraph (b) on this section, unless the applicant is notified that the application has been referred to the Board for decision because action is not appropriate under delegated authority. The 30-day period may be extended for 15 days by the Reserve Bank upon written notice to the applicant.

(2) *Board action.* In the case of applications referred to the Board for decision, the application shall be approved within 60 calendar days after it is accepted for processing under

paragraph (b) of this section, unless the applicant is notified that the 60-day period will be extended for a specified period and is given the reasons for the extension. In no event may the extension exceed the 91-day period specified in paragraph (g) of this section.

(e) *Simplified procedures for small acquisitions.* (1) As an alternative to the application procedure of paragraph (a)(1) of this section, a bank holding company may apply to acquire voting securities or assets of a company engaged in activities authorized under § 225.23 of this subpart by providing the appropriate Reserve Bank with a brief description of the transaction and a copy of a newspaper notice, in a form prescribed by the Board. The newspaper notice shall have been published by the applicant within the preceding 5 days in a newspaper of general circulation in the areas to be served as a result of the acquisition, providing an opportunity for interested persons to comment on the application for a period of at least 10 calendar days. The procedure prescribed in this paragraph is available only where:

(i) Neither the book value of the assets acquired nor the gross consideration paid for the securities or assets exceed \$10 million; and

(ii) The bank holding company has previously received Board approval to engage in the activity involved in the acquisition in the relevant state.

(2) Within five business days after the close of the comment period, the application shall either be approved or referred to the Board for processing if action is not appropriate under delegated authority. If an adverse comment is received, the Reserve Bank may extend this 5-day period for a reasonable period of time upon written notice to the applicant.

(f) *Hearing.* Any request for hearing shall comply with the provisions of § 263.3(e) of the Rules of Procedure (12 CFR 262.3(e)). The Board may order a formal or informal hearing or other proceeding in connection with the processing of an application, as provided in § 263.3(i)(2) of the Rules of Procedure (12 CFR 22.3(i)(2)). A hearing shall be required only if there are disputed issues of material fact that cannot be resolved in some other manner.

(g) *Approval through failure to act.* An application under this subpart shall be deemed approved if the Board fails to act on the application within 91 calendar days after the date of the submission to the Board of the complete record on the application. The procedures for computation of the 91-day rule as set forth in § 225.14(f) of

Subpart B of this regulation apply to applications under this subpart.

(h) *Emergency thrift institution acquisitions.* In the case of an application to acquire a thrift institution, the Board may modify or dispense with the notice and hearing requirements of this section if the Board finds that an emergency exists which requires the Board to act immediately and the primary Federal regulator of the institution concurs in this finding.

## **Subpart D—Control and Divestiture Proceedings Contents**

### **§ 225.31 Control proceedings.**

(a) *Preliminary determination of control.* (1) The Board may issue a preliminary determination of control under the procedures set forth in this section in any case in which:

(i) One of the presumptions of control set forth in paragraph (d) of this section is present; or

(ii) It appears that the company exercises or has the power to exercise a controlling influence over the management or policies of the other company or bank.

(2) If the Board makes a preliminary determination of control under this section, the Board shall send notice to the controlling company setting forth a statement of the facts upon which the preliminary determination is based.

(b) *Response to preliminary determination of control.* Within 30 calendar days of issuance by the Board of a preliminary determination of control under this section, the company against whom the determination has been made shall:

(1) Submit for the Board's approval a specific plan for the prompt termination of the control relationship;

(2) File an application under Subpart B or C of this regulation to retain the control relationship; or

(3) Contest the preliminary determination by filing a response, setting forth the facts and circumstances in support of its position that no control exists. The company may request a hearing or other proceeding to contest the preliminary determination. Any such request for a hearing or other proceeding shall accompany the response.

### **(c) Hearing and final determination.**

(1) The Board may order a formal hearing or other appropriate proceeding upon the request of a company that contests a preliminary determination that the company exercises or has the power to exercise a controlling influence over the management or policies of the other company or bank, if the Board finds that material facts are in dispute.

The Board may also order a formal hearing or other proceeding with respect to a preliminary determination that the company controls voting securities of the other company or bank under the presumptions in paragraph (d)(1) of this section.

(2) In the event a hearing or other proceeding is held, any applicable presumptions established by paragraph (d) of this section shall be considered in accordance with the rules of evidence.

(3) After considering the submissions of the company and other evidence, including the record of any hearing or other proceeding, the Board shall issue a final order determining whether the company controls voting securities or exercises or has the power to exercise a controlling influence over the management or policies of another company or bank. If a control relationship is found, the Board may direct the company to terminate the control relationship or to file an application for the Board's approval to retain the control relationship.

(d) *Rebuttable presumptions of control.* The following rebuttable presumptions shall be used in any proceeding under this section:

(1) *Control of voting securities.* (i) *Securities convertible into voting securities.* A company that owns, controls, or holds securities that are immediately convertible at the option of the holder or owner into voting securities of the other company or bank, controls the voting securities.

(ii) *Option or restriction on voting securities.* A company that has entered into a contract or agreement under which the rights of a holder of voting securities of another company or bank are restricted in any manner controls the securities subject to such contract or agreement. This presumption shall not apply where the contract or agreement:

(A) Is a mutual agreement among shareholders granting to each other a right of first refusal with respect to their shares;

(B) Is incident to a *bona fide* loan transaction; or

(C) Relates to restrictions on transferability and continues only for such time as may reasonably be necessary to obtain approval from a federal bank supervisory authority with respect to acquisition by the company of such securities.

(2) *Controlling influence over company.* (i) *Management agreement.* A company that has a contract or agreement under which it directs or exercises significant influence over the general management or major operations of another company or bank controls the other company or bank.

(ii) *Shares controlled by company and associated individuals.* A company that together with its management officials or principal shareholders (including members of the immediate families of either) owns, controls, or holds with power to vote 25 percent or more of any class of voting securities of another company or bank controls the other company or bank, if the company itself owns, controls, or holds with power to vote 5 percent or more of any class of voting securities of the other company or bank (except where such securities are held by the company in a fiduciary capacity and the company does not have sole discretionary authority to exercise the voting rights).

(iii) *Common management officials.* A company that has one or more management officials or principal shareholders in common with another company or bank controls the other company or bank, if the company owns, controls or holds with power to vote 5 percent or more of any class of voting securities of the other company or bank (except where such securities are held by the company in a fiduciary capacity and the company does not have sole discretionary authority to exercise the voting rights), and no other person controls as much as 5 percent.

#### § 225.32 Divestiture proceedings.

(a) *Ineffective divestitures.* (1) As provided under section 2(g)(3) of the BHC Act, the divestiture of assets or voting securities by a bank holding company (or a company that would be a bank holding company but for the divestiture) shall be presumed ineffective and the divesting company shall be presumed to control the acquiring person or the divested assets or securities in the following circumstances:

(i) The acquiring person is indebted in any manner to the divesting company; or

(ii) The divesting company has any management official in common with the acquiring person.

(2) For the purposes of this section:

(i) "indebtedness" does not include routine business or personal credit that is unrelated to the divestiture transaction and that is extended by the divesting company in the ordinary course of its lending business; and

(ii) "Divesting company" and "acquiring person" include their parent companies and subsidiaries, and if the acquiring person is an individual, companies controlled by the individual.

(b) *Request for divestiture determination.* For any divestiture that is deemed ineffective under paragraph (a) of this section, the divesting

company may request the Board to determine that the divestiture is effective notwithstanding the presumption of paragraph (a) by submitting a letter that includes:

(1) A description of the divestiture transaction and the existing and prospective relationship between the divesting company and the acquiring person;

(2) Evidence and argument showing that the divesting company does not and is not capable of controlling the acquiring person or the divested assets or securities; and

(3) Any request for a hearing.

(c) *Hearing.* The Board may order a formal hearing or other appropriate proceeding upon the request of a divesting company under paragraph (b) of this section, if the Board finds that material facts are in dispute with respect to the divestiture. The Board may also order a formal hearing or other proceeding if, in the Board's judgment, such a proceeding would be appropriate.

(d) *Standards for making divestiture determination.* In acting on the request of a divesting company under paragraph (b) of this section, the Board shall consider the following factors, among others, in determining whether the divesting company is capable of controlling the acquiring person or the divested assets or securities:

(1) *Indebtedness of acquiring person to divesting company.*

(i) The terms of the indebtedness, including the amount of the indebtedness in relation to the total purchase price;

(ii) The ability of the acquiring person to repay its indebtedness; and

(iii) The manner in which the divesting company would dispose of the divested assets in the event it reacquired the assets as a result of default on the indebtedness.

(2) *Management official interlocks.* The extent of the involvement of the interlocking management official in the operations of the divesting company and the acquiring person, and the management official's relationship to the assets or securities being divested.

(e) *Final determination.* After considering the submissions of the divesting company and other evidence, including the record of any hearing or other proceeding, the Board shall issue an order determining whether the company controls or is capable of controlling the acquiring person or the divested assets or securities.

(f) *Review of other divestitures.* In any divestiture of assets or securities by a company that is not covered under paragraph (a) of this section, the Board

or appropriate Reserve Bank may review the divestiture to assure that all control relationships between the divesting company and the divested assets or voting securities have been terminated.

#### **Subpart E—Change in Bank Control**

##### **§ 225.41 Control transactions requiring prior notice.**

(a) *Prior notice requirement.* (1) As provided in the Bank Control Act, any person acting directly or indirectly or through or in concert with one or more persons shall give the Board 60 days' written notice, as specified in § 225.43 of this subpart, before acquiring control of a state member bank or bank holding company, unless the acquisition is exempt under § 225.42 of this subpart.

(2) For the purposes of this paragraph, "acquisition" includes a purchase, assignment, transfer, or pledge of voting securities, or an increase in percentage ownership of a bank or company resulting from a redemption of voting securities.

(b) *Acquisitions requiring prior notice.* The following transactions constitute or are presumed to constitute the acquisition of control under the Bank Control Act, requiring prior notice to the Board:

(1) The acquisition of any voting securities of a state member bank or bank holding company if, after the transaction, the acquiring person owns, controls, or holds with power to vote 25 percent or more of any class of voting securities of the institution; or

(2) The acquisition of voting securities of a state member bank or bank holding company if, after the transaction, the acquiring person will own, control, or hold with power to vote 10 percent or more but less than 25 percent of any class of voting securities of such institution, and if:

(A) The institution has registered securities under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(B) No other person will own a greater percentage of that class of voting securities immediately after the transaction.

(c) *Rebuttal of presumption of control.* Prior notice to the Board is not required for any acquisition of voting securities under the presumption set forth in paragraph (b)(2) of this section if the Board finds that the acquisition will not result in control. The Board will afford the person seeking to rebut the presumption established in paragraph (b)(2) an opportunity to present views in writing or, where appropriate, orally before its designated representatives

either at an informal conference or at an informal presentation of evidence.

(d) *Other transactions.* Transactions other than those set forth in paragraph (b)(2) resulting in a person's control of less than 25 percent of a class of voting shares of a state member bank or bank holding company do not result in control for purposes of the Bank Control Act.

##### **§ 225.42 Transactions not requiring prior notice.**

The following transactions do not require prior notice to the Board under this subpart:

(a) *Previously authorized acquisitions.* The acquisition of additional shares of a class of voting securities of a state member bank or bank holding company by any person who has lawfully acquired and maintained control of 25 percent or more of that class of voting securities after filing the notice required under § 225.41(b)(1) of this subpart.

(b) *Acquisitions subject to approval under BHC Act or Bank Merger Act.* Any acquisition of voting securities subject to approval under section 3 of the BHC Act (§ 225.11 of Subpart B), or section 18 of the Federal Deposit Insurance Act (Bank Merger Act, 12 U.S.C. 1828).

(c) *Transactions exempt under BHC Act.* Any acquisition described in sections 2(a)(5) or 3(a)(A) of the BHC Act by a person described in those provisions.

(d) *Grandfathered control relationships.* (1) The acquisition of additional voting securities of a state member bank or bank holding company by a person who continuously, since March 9, 1979, or since that institution commenced business, held power to vote 25 percent or more of any class of voting securities of that institution; or

(2) The acquisition of additional voting securities so long as the aggregate securities held does not exceed 25 percent of any class of voting securities of a state member bank or bank holding company by a person who is presumed under § 225.41(b)(2) of this subpart to have controlled the institution continuously since March 9, 1979.

(e) *Acquisitions in satisfaction of debts previously contracted or through inheritance or gift.* The acquisition of voting securities in any amount in satisfaction of a debt previously contracted in good faith, or through inheritance or a bona fide gift, if the acquiring person notifies the appropriate Reserve Bank within 30 calendar days after the acquisition and provides any relevant information requested by the Reserve Bank.

(f) *Proxy solicitations.* The acquisition of the power to vote securities of a state member bank or bank holding company through receipt of a revocable proxy in connection with a proxy solicitation for the purpose of conducting business at a regular or special meeting of the institution, if the proxy terminates within a reasonable period after the conclusion of the meeting.

(g) *Stock dividends.* The receipt of voting securities of a state member bank or bank holding company through a stock dividend or stock split so long as the proportional interest of the recipient in the institution remains substantially the same.

(h) *Acquisition of foreign banking organization.* The acquisition of voting securities of a foreign bank holding company, except that this exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the Bank Control Act (12 U.S.C. 1817(j) (9), (10), and (12)).

##### **§ 225.43 Procedures for filing, processing, and acting on notices.**

(a) *Filing notice.* Any notice required under this subpart shall be filed with the appropriate Reserve Bank and shall contain information required by paragraph 6 of the Bank Control Act (12 U.S.C. 1817(j)(6)), or prescribed in the appropriate Board form. With respect to personal financial statements required by paragraph 6(B) of the Bank Control Act, an individual acquirer may include a current statement of assets and liabilities, as of a date within 90 days of the notice, a brief income summary, and a statement of material changes since the date thereof, subject to the authority of the Reserve Bank or the Board to require additional information.

(b) *Advice to bank supervisory agencies.* (1) Upon accepting a notice for processing, the Reserve Bank shall send a copy of the notice to the appropriate state bank supervisory agency where the notice relates to acquisition of securities of a state member bank. The state supervisor shall have 30 calendar days from the date it receives the notice in which to submit its views and recommendations to the Board. The Reserve Bank shall also send a copy of any notice it accepts to the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

(2) If the Board finds that it must act immediately in order to prevent the probable failure of the bank or bank holding company involved, the Board may dispense with or modify the requirements of paragraph (b)(1) of this section with respect to notice to the state supervisory agency.

(c) *Time period for Board action.* (1) *Consummation of acquisition.* (i) A proposed acquisition may be consummated 60 days after submission to the Reserve Bank of a complete notice under paragraph (a) of this section, unless the Board issues within that 60-day period a notice disapproving the proposed acquisition or extending the 60-day period as provided under paragraph (c)(2) of this section.

(ii) A proposed acquisition for which notice has been filed under paragraph (a) of this section may be consummated before the expiration of the 60-day period provided for review of the notice if the Board notifies the acquiring person in writing of the Board's intention not to disapprove the acquisition.

(2) *Extensions of time period.* (i) The Board may extend the 60-day period in paragraph (c)(1)(i) of this section for an additional 30 days by notifying the acquiring person.

(ii) The Board may further extend the time period for disapproval or may return the notice if the Board finds that the acquiring person has not furnished all the information required under paragraph (a) of this section or has submitted material information that is substantially inaccurate. If the Board

extends the time period, it shall notify the acquiring person of the information that is incomplete or inaccurate.

(d) *Investigation of notice.* In investigating any notice accepted under this subpart, the Board or Reserve Bank may solicit from any person (including any bank or bank holding company involved in the notice, and any appropriate state, federal or foreign governmental authority) information or views regarding the proposal, which may be presented in any form or manner deemed appropriate. Any person, other than the acquiring person, whose views are solicited or who presents information, does not thereby become a party to the proceeding or acquire any standing or right to participate in the Board's consideration of the notice.

(e) *Disapproval and hearing.* Within three days after its decision to issue a notice of intent to disapprove any proposed acquisition, the Board shall notify the acquiring person in writing of the reasons for the action. Within 10 calendar days of receipt of a notice of intent to disapprove by the Board, the acquiring person may submit a written request for a hearing on the Board's decision. Any hearing conducted under this paragraph shall be in accordance

with the Rules of Practice for Formal Hearings (12 CFR 263, Subpart A). At the conclusion of the hearing, the Board shall, by order, approve or disapprove the proposed acquisition on the basis of the record of the hearing. In the event that the acquiring person does not request a hearing, the notice of intent to disapprove becomes final and unappealable.

(f) *Factors considered in acting on notices.* In reviewing a notice filed under this subpart, the Board shall consider the information in the record and the views and recommendations of any bank supervisory agency. The Board may also consider any other relevant information obtained during any investigation of the notice. The Board may disapprove an acquisition if it finds adverse effects with respect to any of the factors (i.e., competitive, financial, managerial, banking, and completeness of information) set forth in paragraph 7 of the Bank Control Act (12 U.S.C. 1817(j)(7)).

By order of the Board of Governors of the Federal Reserve System, May 19, 1983.

William W. Wiles,  
Secretary of the Board.

JFR Doc. 83-13821 Filed 5-24-83; 8:45 am |  
BILLING CODE 6210-01-M