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**FEDERAL RESERVE BANK OF DALLAS**

Station K, Dallas, Texas 75222

Circular No. 84-4  
January 16, 1984

**TO:** All member banks, bank holding companies and others concerned in the Eleventh Federal Reserve District

**ATTENTION:** Chief Executive Officer

**SUBJECT:** Revision of Regulation Y -- Bank Holding Companies and Change in Bank Control

**SUMMARY:** The Board of Governors of the Federal Reserve System has announced a complete revision of its Regulation Y, including simplification of application processing procedures. Included in the revision is the addition of five activities to the list of permissible nonbank activities in which bank holding companies may engage and the incorporation into the regulation of certain Board interpretations. This action was taken after the Board's review of comments received following the publication of the proposed revision issued by this Bank under circular No. 83-74, dated June 10, 1983. The procedural changes became effective January 1, 1984; all other changes become effective 30 days following publication in the Federal Register. A revised pamphlet concerning Regulation Y will be distributed as soon as it becomes available. You may refer to the Federal Register dated January 5, 1984 for the complete text of revised Regulation Y.

**ATTACHMENTS:** Board's press release

**MORE INFORMATION:** Robert D. Hankins, Extension 6120; Carla G. Brooks, Extension 6477; or Gayle Teague, Extension 6481

**ADDITIONAL COPIES:** Public Affairs Department, Extension 6289

# FEDERAL RESERVE press release



For immediate release

December 29, 1983

The Federal Reserve Board today made public a complete revision of its Regulation Y -- regulation of bank holding companies -- including liberalization of procedures that should reduce by a third the time now required for handling applications.

The Board's revision added five activities to the list of bank-related activities permissible for bank holding companies, and approved incorporation into the regulation of certain standing Board interpretations, including interpretations of definitions of the terms "demand deposit" and "commercial loan" in the Bank Holding Company Act's definition of "bank".

The Board acted after review of some 800 letters of comment received following publication in May of a proposed complete overhaul of Regulation Y. The overhaul is part of the Board's Regulatory Improvement Project for reviewing and modernizing all of its regulations, including simplification and clarification of language, elimination of obsolete provisions, changes in procedures and substance and lightening the burden of compliance.

The Board also approved seeking public comment on the possible addition of a number of activities to the list of activities permissible for bank holding companies, as suggested by commenters on the May proposal, including the scope of permissible insurance activities for bank holding companies under Title VI of the Garn-St Germain Depository Institutions Act of 1982. (A separate Federal Register notice containing these proposed new activities will be published in the near future.)

The principal matters dealt with in revised Regulation Y are:

I. Procedures:

- 1.--Most requirements for applications or notices to the Board by a bank holding company wishing to open a new office of an existing and approved non-bank subsidiary have been eliminated. The Board reserved the right to require a notice where in its judgment the bank holding company's financial condition requires Board consideration of the proposed expansion. Bank holding companies would also be required to file a one-time notice to expand beyond existing approved geographic areas.

Here, as elsewhere in its revision of procedures, the Board indicated that the adequacy of the bank holding company's capital would be a prime factor in Board decisions to require an application for such de novo expansion.

The Board's staff estimated that this provision alone would eliminate some 500 applications a year.

- 2.--A bank holding company will be permitted to acquire a small going concern (up to \$15 million in assets) on the basis of 15 days notice when the concern is (1) engaged in an activity already approved for the bank holding company acquiring it, and (2) the acquiring bank holding company meets the Board's capital guidelines. Notice may be given, at the applicant's option, in the Federal Register or in a newspaper of general circulation within the area to be served.

The staff estimated that this change may be expected to reduce, by as much as 75 percent, the time now required for an application to be prepared and acted upon by the System.

- 3.--The present notice procedure will be maintained for a bank holding company to establish a new company to commence, de novo, an activity already on Regulation Y's approved list by filing a brief notice with the Federal Reserve of its intention to do so. However, the notice period will be reduced from 45 to 30 days. The Reserve Banks can handle such matters under delegated authority if the condition of the bank holding company meets the Board's financial standards, including adequate capitalization under the Board's guidelines.

4.--The requirement that a bank holding company file an application if it wishes to acquire the assets of one or more offices of a mortgage or consumer finance company--extended in the revised regulation to industrial banks--will be eliminated if:

- The acquiring company is authorized to engage in the activity.
- Assets acquired in any one year do not exceed the lesser of \$25 million or 25 percent of the acquirer's assets.
- The assets relate primarily to the sale of consumer or residential mortgage loans.
- The bank holding company meets the Board's capital adequacy guidelines.
- Notice is given to a Reserve Bank within 30 days after making the acquisition.

The Board specified that it may require an application if in its view the acquiring company is not in sound condition.

5.--The Board sharply reduced the time for processing bank holding company applications by cutting the time allowed for Reserve Bank and Board action. Under the revised procedures:

- The Reserve Bank that receives an application has 10 business days in which to accept the application or ask for more information if the application is incomplete. The Reserve Bank could request further information once only, and must review that information in five business days.
- The Reserve Bank must approve the application within 30 days of acceptance if approval is appropriate under the Board's rules of delegated authority, including the requirement that the applicant must be in sound financial condition.
- The Board must act on the application within 60 days -- in place of the current 90 days -- or inform the applicant of its reasons for delay, such as a substantive problem with the application. Such delay could take place only with the approval of a designated member of the Board.

6.--With respect to applications asking the Board to publish for comment suggested new lines of bank holding company activity, the Board retained the existing requirement that there must be a reasonable basis for publishing the new nonbank activity. Publication in the Federal Register would take place in 10 days. If any member of the the Board desired it, formal Board action would be required to approve the publication for comment. This would be done within 30 days.

## II. Definition of Bank:

In adopting its revised Regulation Y, the Board clarified and incorporated into the regulation its standing interpretations of the terms "demand deposit" and "commercial loan" in the definition of "bank" in the Bank Holding Company Act.

The definition incorporated in the revised regulation essentially reiterates the definition of "bank" in the Bank Holding Company Act as:

An organization that accepts deposits that the depositor has a legal right to withdraw upon demand and that engages in the business of making commercial loans.

In incorporating its interpretations bearing upon the definition of bank into the regulation, the Board said:

The bank definition is the key to the Act, because it supplies the basis for effecting the fundamental purposes for which the legislation was enacted: (1) the separation of the business of banking from commerce to assure impartiality in the granting of credit and avoidance of conflicts of interest (2) the limitation of risk to the banking system inherent in the unlimited association of banking and commerce, and (3) the prevention of concentration of banking resources.

The Board specified that industrial banks that take demand deposits and make commercial loans will be regarded under the revised Regulation Y as banks. The powers of industrial banks have recently been substantially expanded and they have become eligible for deposit insurance by the Federal Deposit Insurance Corporation.

The Board pointed out that in recent years a large number of insurance, securities, industrial and commercial organizations have acquired FDIC-insured national or state chartered banks through the device of divesting the acquired bank's direct commercial loan portfolio and continuing to accept demand deposits, or through giving up the taking of demand deposits but continuing to make direct commercial loans. The Board stated that acquisitions of this nature and in such numbers were not contemplated by the Congress in the Bank Holding Company Act or by the Board in the few instances from 1970 to 1980 when the Board permitted limited and circumscribed acquisitions of this type.

Further, the Board noted that the present situation places bank holding companies subject to the restrictions of the Bank Holding Company Act and Regulation Y at a competitive disadvantage with respect to nonbanking organizations that acquire "nonbank banks" free of the prudential rules of the Act and its implementing regulation. This inequity threatens to undermine the system designed by Congress for regulation of the conduct of nonbanking activities by bank holding companies.

Consequently--and in order to prevent a preemption of Congressional deliberation and decision respecting the delineation between banking and commerce in this country, as well as the permissible limits for interstate banking--the Board has reexamined its interpretation of the terms demand deposits and commercial loans in the definition of bank. These were set forth more than a year earlier in public communication to the Federal Deposit Insurance Corporation and in Board order. In these communications and orders, the Board specified certain characteristics of demand deposits and commercial loans under the Bank Holding

Company Act and these interpretations have now been incorporated into Regulation Y as follows:

Demand deposits: The final regulation defines the phrase "deposits that a depositor has a legal right to withdraw upon demand" as

Any deposit with transactional capability that as a matter of practice is payable on demand and that is withdrawable by check, draft, negotiable order of withdrawal (NOW) or other similar instrument.

The Board specified in an appendix to the revised regulation that at present it is unnecessary to regard as demand deposits such accounts as money market accounts, preauthorized or telephone transfer accounts, non-checkable savings accounts, accounts accessible through automatic teller machines, bill-payor accounts and credit balance accounts accessible by negotiable check or draft.

Commercial Loans: The final regulation defines "commercial loan" as a "loan the proceeds of which are used other than for personal, family, household or charitable purposes" including:

The purchase of retail installment loans and such instruments as commercial paper, bankers acceptances, and certificates of deposit and similar money market instruments, as well as the extension of broker call loans, the sale of federal funds and the deposit of interest-bearing funds.

The Board specified that it does not at this time regard repurchase agreements involving government securities as commercial loans. However, the Board directed the staff to return to it within a short time with a discussion of the question whether repurchase agreements should be included as commercial loans.

In discussing incorporation of its interpretations of commercial loan and demand deposits in Regulation Y, Board Members emphasized that the Board hopes Congress will legislate on this matter in the near future.

Under the revised regulation, companies that own institutions, including industrial banks or industrial loan companies, that both make commercial loans and offer demand or checking NOW accounts must within 180 days register with the Board as bank holding companies and within two years must either divest the bank subsidiary (or terminate its demand or NOW accounts or commercial loan activity) or conform the holding company's activities to those permissible for bank holding companies.

The same will be true of savings and loan associations the accounts of which are not insured by the Federal Savings and Loan Insurance Corporation and that offer NOW accounts and make commercial loans.

The revised regulation establishes a procedure under which companies that acquired nonbank banks prior to December 10, 1982, on the basis of a narrow interpretation of the commercial loan or demand deposit definitions in effect before that time, may petition the Board for relief on grounds of hardship or unfairness. The Board will consider whether an exception is consistent with the purposes of the Bank Holding Company Act and will act promptly on such petitions.

### III. New Bank Holding Company Activities and Proposals for New Activities:

The Board approved, as proposed in May, the addition of five new activities to the list of permissible nonbanking activities in Regulation Y. These are:

Issuing money orders, arranging commercial real estate equity financing, underwriting and dealing in government obligations and certain money market obligations, providing foreign exchange advisory and transactional services, and acting as a futures commission merchant (expanded to include options on futures). All these activities have previously been approved by order for particular companies.

Certain conditions proposed in May for the futures commission merchant activity were deleted by the Board in its final action, but conditions proposed respecting equity financing were adopted.

The Board also approved seeking public comment respecting possible addition to the list of permissible nonbanking activities of several activities previously approved by order, or that are similar to such approved activities. These are check guaranty services, consumer financial counselling, brokerage of options on government securities and money market instruments, futures commission merchant for stock index futures, commodity trading advisory services and portfolio advice on financial futures.

The Board deferred for 30 days action on proposals by commenters that the Board seek comment on a number of other activities for bank holding companies that the Board has not previously considered and in which there has been little previous indication of interest, including tax planning and tax preparation, appraisal of personal property, operating a collection agency, credit bureau, armored car service, financial advertising, the operation of public relations agency and provision of job training and conducting an employment agency for financial personnel.

The Board also deferred publication for comment of a number of securities, real estate and financial activities, including the operation of thrift institutions, that are the subject of pending legislation.

The Board directed the staff to prepare a proposed rule, to be published for comment, delineating the scope of permissible insurance activities for bank holding companies under the provisions of Title VI of the Garn-St Germain Depository Institutions Act of 1982.

IV. Bank Holding Company Stock Redemptions:

The following chart gives the current and adopted provisions of Regulation Y respecting the redemption of bank holding company stock:

REDEMPTION OF BANK HOLDING COMPANY STOCK

	<u>CURRENT REG. Y</u>	<u>FINAL ACTION</u>
Required Notice Or Application	45-day prior notice if redemption exceeds 10% of bhc's net worth in a 12-month period	Retain existing notice requirement but with 30-day prior notice instead of 45 days if redemption exceeds 10 percent of a bank holding company's net worth in a 12-month period
Standard Applied	Whether redemption constitutes an unsafe or unsound practice or violates an order, rule, or enforcement agreement	In considering redemption notices the Board will apply:  Financial standards that are applied in bank holding applications, including the Board's capital guidelines and its policy statement on formation of small one-bank holding companies
Procedure to Prevent Redemption	Board must institute a cease-and-desist proceeding	Board may disapprove a proposed redemption within the notice without a cease-and-desist proceeding
Remedies of BHC	Bhc must request administrative hearing and thereafter challenge any final cease-and-desist order in court	The Bhc may request a hearing, or petition for judicial review of an adverse decision, as in any Board action on a bank holding company application.

V. The Board also approved:

--Modification of the proposed definition in Regulation Y of voting securities to exclude from the definition preferred securities and limited partnership interests with certain limited voting rights.

--Retention without change of the Board's outstanding interpretations concerning the exemption in the Bank Holding Company Act permitting a bank holding company to provide services to its bank and nonbanking subsidiaries without obtaining Board approval.

--Deletion from Regulation Y of the statement that the Board may take competitive effects into account in considering convenience and needs in acting on applications to acquire banks under Section 3 of the Bank Holding Company Act.

--Submission to the Congress of a proposal authorizing waiver of the 30-day waiting period for consummation of a bank holding company proposal following Board approval.

--Requiring prior Board approval for investments by a bank holding company under the Bank Service Corporation Act (as amended by the Garn-St Germain Act), as is the case for investments by banks under that statute.

The procedural changes in Regulation Y are effective for applications filed on or after January 1, 1984. Other changes will be effective 30 days after publication in the Federal Register, expected during the first week in January.

The Board's notice is available from the Federal Reserve Banks and from the Board's Publications Office.

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