



FEDERAL RESERVE BANK
OF DALLAS

WILLIAM H. WALLACE
FIRST VICE PRESIDENT
AND CHIEF OPERATING OFFICER

DALLAS, TEXAS 75222

February 9, 1987

Circular 87-10

TO: The Chief Executive Officer of all
member banks, bank holding companies
and others concerned in the
Eleventh Federal Reserve District

SUBJECT

**Request for public comment on Regulation Y -- Bank Holding Companies
and Change in Bank Control**

DETAILS

The Board of Governors of the Federal Reserve System has requested public comment on a proposed amendment to its Regulation Y to implement certain amendments to the Change in Bank Control Act ("CBCA") required by the Anti-Drug Abuse Act of 1986.

Comments should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All correspondence should refer to Docket No. R-0595 and must be received by March 6, 1987.

ATTACHMENTS

The Board's press release and the material as published in the Federal Register are attached.

MORE INFORMATION

For further information, please contact Basil Asaro at (214) 698-4345, Gayle Teague at (214) 651-6481, or David W. Dixon of the Legal Department at (214) 651-6228.

Sincerely yours,

William H. Wallace

For additional copies of any circular please contact the Public Affairs Department at (214) 651-6289. Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank (800) 442-7140 (intrastate) and (800) 527-9200 (interstate).

FEDERAL RESERVE press release



For immediate release

January 28, 1987

The Federal Reserve Board today requested comment on a proposed amendment to Regulation Y implementing amendments to the Change in Bank Control Act required by the Anti-Drug Abuse Act of 1986.

The Anti-Drug Abuse Act of 1986 amended the Change in Bank Control Act (CBCA) to require federal banking agencies to publish notice of any filing made under the CBCA to acquire control of a bank or bank holding company.

The Anti-Drug Abuse Act requires the banking agencies to publish the name of each party acquiring control of a bank or bank holding company, as well as the name of the target institution, and to solicit public comment on the proposed acquisition, in particular from persons in the relevant local area.

Comments should be received by the Board on this matter by March 6, 1987.

The Board's notice is attached.

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Attachment

FEDERAL RESERVE SYSTEM

12 CFR Part 225

(Regulation Y; Docket No. R-0595)

Bank Holding Companies and Change in Bank Control

**Procedures Regarding Publication and Processing of Notices
Filed Under the Change in Bank Control Act**

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Reserve Board is proposing to amend Subpart E of its Regulation Y, section 225 of Title 12, Code of Federal Regulations, to implement certain amendments to the Change in Bank Control Act ("CBCA") made by section 1360 of the Anti-Drug Abuse Act of 1986, Public Law 99-570. Under this proposal, notificants under the CBCA would be required to publish, in a newspaper of general circulation in communities where the bank or bank holding company to be acquired is located, an announcement of the proposed acquisition no later than 10 calendar days after the notice has been accepted by the appropriate Federal Reserve Bank. The proposed regulation provides an exception to the publication requirement where disclosure would threaten the safety or soundness of the bank to be acquired. In addition, publication may be delayed by the Board for good cause shown.

The proposed regulation also authorizes the Board to extend the period of time it has to consider a CBCA notice for up to two additional periods of 45 days each.

Finally, as required by the Anti-Drug Abuse Act, the proposed regulation states that the Board shall conduct an investigation of the competence, experience, integrity, and financial ability of each proposed acquiror and shall make an independent determination of the accuracy and completeness of the information submitted. A written report of the investigation will be prepared which will become part of the record.

DATE: Comments must be received by March 6, 1987.

ADDRESS: All comments, which should refer to Docket No. R-0595, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th & Constitution Avenue, N.W., 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, Deputy General Counsel (202/452-3430), Scott G. Alvarez, Senior Counsel (202/452-3583), Legal Division; or Sidney Sussan, Assistant Director (202/452-2638), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired only, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

Under the CBCA, persons acting either individually or in concert to acquire control of any insured state member bank or bank holding company must provide the Board with 60 days prior written notice describing the proposed acquisition and containing certain information concerning the financial resources and background of the notificant. The transaction may proceed at the end of the 60-day period, unless the Board disapproves the transaction or extends the notice period. An acquisition may proceed prior to the expiration of the 60-day review period if the Board issues a written statement of its intent not to disapprove the transaction.

On October 27, 1986, the President signed into law the Anti-Drug Abuse Act of 1986, Public Law 99-570. Section 1360 of this Act (hereinafter the "1986 Amendment") makes several amendments to the CBCA that necessitate a revision in the Board's implementing regulations.

Publication and Solicitation of Comments

Prior to the 1986 Amendment, the CBCA did not require notice to, or solicitation of comments from, the public in connection with a notice filed under the CBCA. The Board's regulation provided that the Board or the appropriate Reserve Bank could solicit information or views from any person, including any bank or bank holding company involved in the

notice, and any appropriate state, federal or foreign governmental authority. (See 12 C.F.R. § 225.43(d)).

The 1986 Amendment provides that the appropriate Federal agency shall publish the name of the insured bank or bank holding company proposed to be acquired and the name of each person identified as a person by whom or for whom such acquisition is to be made, and solicit public comments on the proposed acquisition, in particular from persons in the geographic area where the bank to be acquired is located. Publication is not required if the agency determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of the bank or bank holding company to be acquired.

Regulations promulgated by both the Federal Deposit Insurance Corporation (12 C.F.R. § 303.4(b)) and the Office of the Comptroller of the Currency (12 C.F.R. § 5.50(h)) provide for the public disclosure and solicitation of comments by requiring the notificant to publish a disclosure statement in a newspaper serving the community where the head office of the bank to be acquired is located.

The Board is proposing to amend its regulation in a similar manner to require the person or persons seeking to acquire a bank or bank holding company to publish an announcement of the proposed acquisition in a newspaper of general circulation in the community in which the head office

of the state member bank or bank holding company to be acquired is located and, in the case of a bank holding company, in each community in which the head office of a bank subsidiary of the holding company is located.

The newspaper announcement must contain the name of each proposed acquirer, the percentage of shares to be acquired, the name of each bank or bank holding company to be acquired, and, in the case of a bank holding company, the names of each of its subsidiary banks. The announcement must also state that any person wishing to comment on the proposed acquisition may do so by submitting written comments to the appropriate Reserve Bank within 20 calendar days of publication or such shorter period of time as the Board may prescribe in a particular case.

As proposed, the announcement may be published no earlier than 10 calendar days before the CBCA notice is filed with the appropriate Reserve Bank and no later than 10 calendar days after the notice has been accepted by the Reserve Bank.

In addition to requiring newspaper publication by the notificant, the Board proposes to publish notice of filings made under the CBCA in the Federal Register, including the names of persons who propose to acquire control of a bank or bank holding company, the amount of shares to be acquired, and the names of all banks to be acquired. The Board proposes that the Federal Register notice permit a minimum period of 15 calendar days for public comment, unless the Board determines

that the public interest requires shortening or waiving this comment period. The Federal Register notice will be published upon submission to the Reserve Bank of the CBCA notice.

The Board may dispense with public notice if it determines in writing that such publication and solicitation of comment would seriously threaten the safety or soundness of the bank or bank holding company to be acquired. Finally, the proposed regulation will provide that the publication requirement does not give any person standing to intervene in proceedings on the CBCA notice or to appeal or otherwise contest the Board's action regarding a notice.

Tender Offers

The Board notes that the FDIC and the OCC regulations provide that publication of a filing under the CBCA may be delayed for up to 34 days after the filing in the case of a proposed tender offer that requires notice under the CBCA and is simultaneously subject to the requirements of the Williams Act (15 U.S.C. 78m and 78n).^{1/}

^{1/} The tender offer regulations applicable to bank holding companies and to state member banks, 17 C.F.R. 240.14(d) and 12 C.F.R. 206.8, require that an offer remain open for at least 20 business days from the date the tender offer is first published, sent or given to security holders. Shares tendered or deposited pursuant to the offer may be withdrawn by a depositing shareholder at any time within the first 15 business days of the offering. (17 C.F.R. 240.14(d)(7); 12 C.F.R. 206.8(g)). Under the CBCA, a bidder may not purchase shares deposited in response to a tender offer in amounts exceeding the CBCA limits until the expiration of the review period unless notified by the Board at an earlier time that the acquisition may commence.

The Board's proposed rule would permit the Board, in its discretion, to postpone, but not eliminate, the publication requirement under the CBCA for such period as the Board deems appropriate where an acquiring party requests such delay and confidential treatment of a CBCA notice.

Extension of Time For Disapproving Transactions

Prior to the 1986 Amendment, the CBCA authorized the appropriate federal agency to extend for up to 30 days the statutory period in which a proposed acquisition could be disapproved. The 1986 Amendment provides that, in addition to this 30-day extension, the appropriate agency may authorize two additional extensions of not more than 45 days each. In order to utilize this authority, the agency must determine that: (i) an acquiring party has not furnished all the information required under section 7(j)(6) of the CBCA (12 U.S.C. § 1817(j)(6)); (ii) material information submitted is substantially inaccurate; (iii) an investigation of an acquiring party has not been completed because of inadequate cooperation or delay by the acquiring party; or (iv) additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the currency transaction reporting requirements of the Bank Secrecy Act, subchapter II of chapter 53 of title 31, United States Code.

The Board is proposing to amend section 225.43(c) of its regulations to reflect this change in the CBCA. If the Board acts under this authority to extend the time for

disapproval beyond the initial 30-day extension, the proposed regulation requires the Board to notify the acquiring party of the reasons for such extension, including a statement of any information that is determined by the Board to be incomplete, inadequate, or inaccurate.

Investigation and Report

The 1986 Amendment requires the appropriate agency to conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by or for whom such acquisition is to be made, and to make an independent determination of the accuracy and completeness of the information required by the CBCA to be submitted to the agency. The agency is then required to prepare a written report of such investigation, which is to become part of the record. The Board is proposing to amend section 225.43(d) of its regulation to reflect this change in the law.

Interim Applicability

Because the amendments to the CBCA made by the Anti-Drug Abuse Act of 1986 are already effective, the Board will follow the procedures set out in the proposed regulation pending final action on the regulation.

Regulatory Flexibility Act

This proposal to provide for publication of notices filed under the CBCA implements specific statutory requirements recently imposed by the Anti-Drug Abuse Act of 1986. The CBCA

generally requires persons seeking to acquire control of a bank or bank holding company to provide prior written notice to the appropriate federal banking agency, but imposes no requirements on the target bank or bank holding company itself. The proposal to publish notice of a proposed acquisition subject to the CBCA would likewise not impose any regulatory burden on banks or bank holding companies of any size that are the targets of a proposed change in control. The proposal would have the benefit, however, of providing such banks or bank holding companies notice of a proposed change of control and permitting an opportunity for such banks, bank holding companies, and other interested persons to provide comment and information regarding the proposal to the Board. Thus, the proposal is not expected to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. § 601 et seq.).

Paperwork Reduction Act

The proposal would require persons proposing to acquire a bank or bank holding company in a transaction subject to the CBCA to publish notice of the proposed transaction in a newspaper of general circulation in communities served by the target bank or bank holding company and to provide the Board with verification of such publication. No additional reporting requirements or modification to existing reporting requirements are proposed.

List of Subjects in 12 C.F.R. Part 225

Banks, banking, Federal Reserve System, Holding Companies, Reporting and recordkeeping requirements.

For the reasons set out in this notice, and pursuant to the Board's authority under section 13 of the Change in Bank Control Act (12 U.S.C. § 1817(j)(13)), the Board proposes to amend 12 C.F.R. Part 225 as follows:

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 1844(b), 3106, 3108, 3907 and 3909

2. The Board proposes to amend section 225.43(a) to read as follows:

SECTION 225.43 -- Procedures for Filing, Processing, Publishing, and Acting on Notices

(a)(1) Filing notice. A notice required under this subpart shall be filed with the appropriate Reserve Bank and shall contain the information required by paragraph 6 of the Change in Bank Control Act (12 U.S.C. 1817(j)(6)), or prescribed in the designated Board form. With respect to personal financial statements required by paragraph 6(B) of the Change in Bank Control Act, an individual may include a statement of assets and liabilities as of a date within 90 days of filing the notice, a brief income summary, and a description of any subsequent material changes, subject to the authority of the Reserve Bank or the Board to require additional information.

(2) Acceptance of notice. The 60-day notice period specified in section 225.41 of this subpart shall commence on the date all required information is received by the appropriate Reserve Bank or the Board. The Reserve Bank shall notify the person or persons submitting a notice under this subpart of the date all such required information is received and the notice is accepted for processing.

(3) Publication. (i) Newspaper announcement. A person(s) filing a notice under this subpart shall publish, in a form prescribed by the Board, an announcement soliciting public comment on the proposed acquisition. The announcement shall be published in a newspaper of general circulation in the community in which the head office of the state member bank to be acquired is located or, in the case of a proposed acquisition of a bank holding company, in the community in which its head office is located and in the community in which the head office of each of its subsidiary banks is located. The announcement shall be published no earlier than 10 calendar days prior to the filing of the notice with the appropriate Reserve Bank and no later than 10 calendar days after acceptance of the notice by the Reserve Bank. A copy of the announcement and the publisher's affidavit of publication shall be provided to the appropriate Reserve Bank.

(ii) Contents of newspaper announcement. The newspaper announcement shall state:

(A) the name of each person identified in the notice as a proposed acquiror of the bank or bank holding company and the percentage of shares proposed to be acquired;

(B) the name of the bank or bank holding company to be acquired, including, in the case of a bank holding company, the name of each of its subsidiary banks; and

(C) a statement that interested persons may submit comments on the notice to the Board or the appropriate Reserve Bank for a period of 20 days or such shorter period as may be provided pursuant to subparagraph (v).

(iii) Federal Register announcement. The Board will, upon the filing of a notice under this subpart, publish announcement in the Federal Register of receipt of the notice. The Federal Register announcement will contain the information required under subparagraph (ii)(A) and (B) and a statement that interested persons may submit comments on the proposed acquisition for a period of 15 days or such shorter period as may be provided pursuant to subparagraph (v). The Board may waive publication in the Federal Register if the Board determines that such action is appropriate.

(iv) Delay of publication. The Board may permit delay in the publication required under this paragraph if the Board determines, for good cause shown, that it is in the public interest to grant such a delay. Requests for delay of publication may be submitted to the appropriate Federal Reserve Bank.

(v) Shortening or waiving notice. In circumstances requiring prompt action, the Board may shorten the public comment period required under this paragraph. The Board may also waive the newspaper publication and solicitation of public comment requirements of this paragraph, or it may act on a notice before the expiration of a public comment period, if it certifies in writing that such disclosure of the notice or solicitation of public comment would seriously threaten the safety or soundness of the bank or bank holding company to be acquired.

(4) Consideration of public comments. In acting upon a notice filed under this subpart, the Board shall consider all public comments received in writing within the period specified in the newspaper or Federal Register announcement. At the Board's option, comments received after this period may, but need not, be considered.

(5) Standing. No person (other than the acquiring person) who submits comments or information on a notice filed under this subpart shall thereby become a party to the proceeding or acquire any standing or right to participate in the Board's consideration of the notice or to appeal or otherwise contest the notice or the Board's action regarding the notice.

3. The Board proposes to amend section 225.43(c)(2) to read as follows:

(2) Extensions of time period. (i) The Board may extend the 60-day period in paragraph (1) of this subsection for an additional 30 days by notifying the acquiring person(s).

(ii) The Board may further extend the period during which it may disapprove a notice for two additional periods of not more than 45 days each if the Board determines that:

(A) any acquiring person has not furnished all the information required under subsection (a);

(B) any material information submitted is substantially inaccurate;

(C) it is unable to complete the investigation of an acquiring person because of inadequate cooperation or delay by that person; or

(D) additional time is needed to investigate and determine that no acquiring person has a record of failing to comply with the requirements of the Bank Secrecy Act, subchapter II of Chapter 53 of Title 31, United States Code.

(iii) If the Board extends the time period under this paragraph, it shall notify the acquiring person(s) of the reasons therefor and shall include a statement of the information, if any, deemed incomplete or inaccurate.

4. The Board proposes to amend section 225.43(d) to read as follows:

(d) Investigation and report.

(1) After receiving a notice under this subpart, the Board or the appropriate Reserve Bank shall conduct an investigation of the competence, experience, integrity, and financial ability of each person by and for whom an acquisition is to be made. The Board shall also make an independent determination of the accuracy and completeness of any information required to be contained in a notice under subsection (a). In investigating any notice accepted under this subpart, the Board or Reserve Bank may solicit information or views from any person, including any bank or bank holding company involved in the notice, and any appropriate state, federal, or foreign governmental authority.

(2) The Board or the appropriate Reserve Bank shall prepare a written report of its investigation, which shall contain, at a minimum, a summary of the results of the investigation.

Board of Governors of the Federal Reserve System,
January 28, 1987.

(signed) William W. Wiles

William W. Wiles

FEDERAL RESERVE BANK OF DALLAS
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