



FEDERAL RESERVE BANK
OF DALLAS

ROBERT D. McTEER, JR.
PRESIDENT
AND CHIEF EXECUTIVE OFFICER

July 21, 1992

DALLAS, TEXAS 75222

Notice 92-59

TO: The Chief Executive Officer of each member bank and others concerned in the Eleventh Federal Reserve District

SUBJECT

**Final Amendments to Regulation Y
(Bank Holding Companies and Change in Bank Control)**

DETAILS

The Board has announced approval of amendments to Regulation Y which streamline certain procedural requirements to reduce unnecessary regulatory burden. The amendments, which are effective immediately, will

- increase the size of nonbank companies that can be acquired by bank holding companies under the 15-day expedited notice procedures;
- increase the relative size of nonbank assets that can be acquired by bank holding companies in the ordinary course of business without prior System approval; and,
- describe the criteria for determining when an application pursuant to Section 3 of the Bank Holding Company Act may be waived in connection with certain bank mergers.

ATTACHMENT

A copy of the Board's notice as it appears on pages 28777-79, Vol. 57, No. 125, of the Federal Register dated June 29, 1992, is attached.

MORE INFORMATION

For more information, please contact Michael Johnson at (214) 744-7306. For additional copies of this Bank's notice, please contact the Public Affairs Department at (214) 922-5254.

Sincerely yours,

Robert D. McTeer, Jr.

Rules and Regulations

Federal Register

Vol. 57, No. 125

Monday, June 29, 1992

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0761]

Bank Holding Companies and Changes in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has revised part 225 (Regulation Y) by streamlining certain procedural requirements in that rule to reduce unnecessary regulatory burden.

The revisions include: the publication of criteria to determine whether an application under the Bank Holding Company Act (BHC Act) may be waived for transactions involving certain bank mergers; an increase in the size of nonbank companies that can be acquired by a bank holding company under the Board's 15-day expedited notice procedures; and an increase in the relative size of nonbank assets that can be acquired by a bank holding company in the ordinary course of business without prior Federal Reserve System (System) approval.

EFFECTIVE DATE: The amendments to part 225 of the Board's Rules are effective June 29, 1992.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452-3583), or Deborah M. Awai, Attorney (202/452-3594), Legal Division; Sidney M. Sussan, Assistant Director (202/452-2638), or Gary P. Knoblach, Senior Financial Analyst (202/452-3270), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal

Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Board has revised several provisions of the Board's Regulation Y (part 225) to streamline certain procedures to reduce unnecessary regulatory burden. The adoption of these procedures would not jeopardize important public policy objectives, particularly maintaining the safety and soundness of the banking system, or the Board's ability to fulfill statutory objectives. The revisions include:

(1) The publication of criteria to determine whether an application under the Bank Holding Company Act may be waived for transactions involving certain bank mergers;

(2) An increase in the size of nonbank companies that may be acquired by a bank holding company under the Board's 15-day expedited notice procedures; and

(3) An increase in the relative size of nonbank assets that may be acquired by a bank holding company in the ordinary course of business without prior System approval.

I. Waiver of Bank Merger Act Applications

Section 225.12 of Regulation Y provides that a bank holding company is not required to obtain prior Board approval for a transaction that involves the merger or consolidation of a subsidiary bank of the holding company with another bank if the transaction requires the prior approval of a federal supervisory agency under the Bank Merger Act.¹ This exception does not by its terms apply to transactions in which the bank holding company acquires the voting shares of another bank prior to merging the bank into an existing subsidiary. This exception also does not apply if the bank holding company acquires shares of a bank holding company that is immediately dissolved or merged as part of the underlying bank merger.

The System has, on a case-by-case basis, determined that an application is not required in situations where the essence of the transaction is a bank

¹ This exception is not available for transactions that involve the merger of a nonsubsidiary bank and a nonoperating subsidiary bank formed by a company for the purpose of acquiring the nonsubsidiary bank or any transaction requiring the Board's prior approval under § 225.11(e).

merger that is reviewed by a federal banking agency under the Bank Merger Act, the merger occurs simultaneously with the bank or bank holding company acquisition and the bank is not operated by the acquiring bank holding company as a separate entity, and the transaction does not raise any significant issue that is uniquely within the Board's area of review under the BHC Act.² The Board believes that formally publishing these conditions would eliminate applicant burden and make the applications process more efficient.

Accordingly, the Board has amended § 225.12 of Regulation Y to waive the application requirement under the BHC Act and § 225.11 of Regulation Y in the case of a transaction involving the acquisition by a bank holding company if the transaction involves primarily the merger of a bank into an existing operating subsidiary bank of the acquiring bank holding company in a transaction that is reviewed by a federal banking supervisor under the Bank Merger Act. In order to qualify for this regulatory waiver, the following other criteria must also be met:

(1) The bank merger, consolidation, or asset purchase must occur simultaneously with the acquisition of the shares of the bank or bank holding company, and the bank must not be operated by the acquiring bank holding company as a separate entity other than as the survivor of the merger or consolidation;

(2) The transaction may not involve the acquisition of any nonbank company that would require prior approval under section 4 of the BHC Act (12 U.S.C. 1843);

(3) Both before and after the transaction, the bank holding company must meet the Board's Capital Adequacy Guidelines (appendices A and B);³ and

² For example, where the bank holding company is to acquire a bank as a subsidiary for a moment in time and then merge the bank into an existing subsidiary bank.

³ Banking organizations anticipating significant growth are expected to maintain capital, including tangible capital positions, well above the minimum levels. For example, most such organizations generally must operate at capital levels ranging at least 100 to 200 basis points above the stated minimums.

(4) The acquiring bank holding company has provided written notice of the transaction to the Reserve Bank at least 30 days prior to consummation of the transaction, and the Reserve Bank has not informed the bank holding company that an application under § 225.11 is required.

Notice of a transaction under this revision would be sufficient if it contains a description of the transaction, the names of the parties, and a copy of the Bank Merger Act application filed with the primary regulator of the surviving bank. The System retains the authority to require an application under the BHC Act and § 225.11 of Regulation Y if the System determines that the transaction has a significantly adverse impact on the financial condition of the acquiring bank holding company (e.g., the level of debt of the acquiring bank holding company would increase significantly, the ability to meet cash flow needs would be significantly impacted, or other financial or managerial issues are raised), or the transaction raises other issues regarding factors which the System has primary or exclusive jurisdiction under the BHC Act.

II. Criteria for Use of 15-Day Expedited Procedure

The Board has established, in § 225.23(f) of Regulation Y, an expedited procedure for reviewing proposals by bank holding companies to make small acquisitions of nonbanking companies. Under this existing procedure, a bank holding company may, in lieu of submitting a formal application, file an abbreviated notice that includes a copy of a newspaper notice or request that the System publish notice of the application in the *Federal Register*, and may consummate the transaction generally after five days following the close of the public comment period for the proposal. The expedited procedure is available only if:

- (1) The company to be acquired is engaged only in activities listed in § 225.25 of Regulation Y;
- (2) Neither the book value of the assets to be acquired nor the gross consideration to be paid for the securities or assets exceeds \$15 million;
- (3) The bank holding company has previously received Board approval to engage in the activity involved in the acquisition; and
- (4) The bank holding company meets the Board's capital adequacy guidelines.

The Board adopted this procedure in its amendments to Regulation Y in 1983. The Board's experience in reviewing small acquisitions since that time has been that few supervisory or other

issues are raised by these proposals. Where a proposal presents material issues that require Board consideration, the Board has reserved the right to require the acquiring bank holding company to file a full application.

In light of this experience, the Board has determined to raise the limit on the size of an acquisition that would qualify for the expedited procedures. This revision permits bank holding companies (subject to the other criteria) to acquire nonbank companies where neither the book value of the assets to be acquired nor the gross consideration paid for the assets exceeds the lesser of \$100 million or five percent of the applicant's consolidated assets.⁴

III. Nonbank Assets Acquired in the Ordinary Course of Business

Pursuant to § 225.22(c)(7) of Regulation Y, a bank holding company may, under certain circumstances, acquire nonbank assets in the ordinary course of business without filing an application if the assets to be acquired relate to activities that the bank holding company has previously received approval to conduct. The Board has interpreted the exception for transactions conducted in the ordinary course of business to permit the acquisition of less than substantially all of the assets of a company, division, or department of another company. 12 CFR 225.132. This interpretation also requires that the book value of the assets to be acquired not exceed 20 percent of the book value of the assets of the applicant in the same line of activity.

The Board has determined, based on its experience with transactions that do not qualify for the exception because the transaction exceeds 20 percent of the acquiring company's assets, to expand from 20 percent to 50 percent the relative size criteria in the Board's interpretation at § 225.132 of Regulation Y. The Board believes that such an expansion of the criteria would not materially affect the ability of the System to supervise the acquisition of nonbank assets by bank holding companies, and it would place banking organizations on a more comparable footing with nonbanking competitors in making acquisitions.

⁴ The revision retains the existing provision for bank holding companies with less than \$300 million in total consolidated assets that otherwise meets the criteria set forth in this subsection. These bank holding companies would continue to be able to use the expedited procedure if neither the book value of the assets to be acquired nor the gross consideration to be paid for the securities or assets exceeds \$15 million.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board does not believe that the amendments would have a significant adverse economic impact on a substantial number of small entities. The amendments would reduce regulatory burdens imposed by the Board's procedures on bank holding companies, and have no particular adverse effect on other entities. These amendments are expected to have a particular benefit to small bank holding companies, which are the companies that are primarily affected by the limits that have been raised or removed by these amendments.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board amends title 12 of the Code of Federal Regulations, part 225, to read as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

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

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831(i), 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909, 3310, and 3331-3351, and sec. 306 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. No. 102-242, 105 Stat. 2236 (1991)).

2. Section 225.12 is amended by redesignating paragraphs (d) heading and introductory text, (d)(1), and (d)(2) as paragraphs (d)(1) heading and introductory text, (d)(1)(i), and (d)(1)(ii), respectively, and by adding a new paragraph (d)(2) to read as follows:

§225.12 Transactions not requiring Board approval.

* * * * *

(d)(1) * * *

(2) *Certain acquisitions subject to the Bank Merger Act.* The acquisition by a bank holding company of shares of a bank or company controlling a bank as part of the merger or consolidation of the bank with a subsidiary bank (other than a nonoperating subsidiary bank) of the acquiring bank holding company, or the purchase of substantially all of the assets of the bank by a subsidiary bank (other than a nonoperating subsidiary bank) of the acquiring bank holding company, if—

(i) The bank merger, consolidation, or asset purchase occurs simultaneously with the acquisition of the shares of the bank or bank holding company, and the bank is not operated by the acquiring bank holding company as a separate entity other than as the survivor of the merger, consolidation or asset purchase;

(ii) The transaction requires the prior approval of a Federal supervisory agency under the Bank Merger Act (12 U.S.C. 1828(c));

(iii) The transaction does not involve the acquisition of any nonbank company that would require prior approval under section 4 of the Bank Holding Company Act (12 U.S.C. 1843);

(iv) Both before and after the transaction, the acquiring bank holding company meets the Board's Capital Adequacy Guidelines (appendices A and B); and

(v) The acquiring bank holding company has provided written notice of the transaction to the Reserve Bank at least 30 days prior to the transaction, and during that period, the Reserve Bank has not informed the bank holding company that an application under § 225.11 is required.

holding company or nonbank subsidiary comprising the same line of activity.

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 23, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-15182 Filed 6-26-92; 8:45 am]

BILLING CODE 6210-01-F

3. Section 225.23 is amended by revising paragraph (f)(2)(i), and by republishing paragraph (f)(2) introductory text, to read as follows:

§225.23 Procedures for applications, notices, and hearings.

* * * * *

(f) *Expedited procedure for small acquisitions*—* * *

* * * * *

(2) *Criteria for use of expedited procedure.* The procedure in this paragraph is available only if:

(i) Neither the book value of the assets to be acquired nor the gross consideration to be paid for the securities or assets exceeds the greater of:

(A) \$15 million; or

(B) 5 percent of the consolidated assets of the acquiring company up to a maximum of \$100 million;

* * * * *

4. Section 225.132 is amended by revising the second sentence in paragraph (c)(2) to read as follows:

§225.132 Acquisition of assets.

* * * * *

(c) * * *

(2) * * * For purposes of this interpretation, an acquisition would generally be presumed to be significant if the book value of the nonbank assets being acquired exceeds 50 percent of the book value of the nonbank assets of the