



**FEDERAL RESERVE BANK
OF DALLAS**

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

July 23, 1992

DALLAS, TEXAS 75222

Notice 92-61

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

SUBJECT

**Request for Comments on Proposed Changes to Regulation Y
(Bank Holding Companies and Change in Bank Control)**

DETAILS

The Federal Reserve Board has requested public comment on proposed changes to the Board's regulations and procedures affecting the applications process in order to reduce regulatory burden.

The proposed amendments to the Board's Rules of Procedures and to Regulation Y (Bank Holding Companies and Change in Bank Control) would:

- Require a single newspaper notice in connection with certain state member bank and bank holding company applications; and,
- Exempt mergers of affiliated banks and affiliated thrift institutions from the requirements of Section 23A of the Federal Reserve Act (12 U.S.C. 371(c)) if the merger is to be acted on by the primary regulator of the resulting institution pursuant to the Bank Merger Act (12 U.S.C. 1828(c)).

The Board must receive comments by July 29, 1992. Comments should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. All comments should refer to Docket No. R-0760.

ATTACHMENT

Attached is a copy of the Board's notice as it appears on pages 28807-10, Vol. 57, No. 125, of the Federal Register dated June 29, 1992.

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.

newspaper of general circulation of the filing of an application with the Board. The amendments would have no effect on public comment periods, which currently start when the first notice is published. Alternative sources of notice will continue to be available, such as the weekly list of pending applications prepared by the Board and the Reserve Banks and, in the case of Bank Holding Company Act applications, notices published in the *Federal Register*.

DATES: Comments on the revised proposed amendments should be submitted no later than July 29, 1992.

ADDRESSES: Comments should refer to Docket No. R-0760 and may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary; or delivered to the Board's Mail Room between 8:45 a.m. and 5:15 p.m., or to the Board's Security Control Room outside of those hours. Both the Mail Room and the Security Control Room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m. weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452-3778), 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 Administrative Procedure Act (5 U.S.C. 552(a)(1)) requires each agency to publish in the *Federal Register* statements that include requirements of all formal and informal procedures available and its rules of procedure. In order to fulfill this requirement, the Board has adopted Rules of Procedure (12 CFR part 262) (Rules).

Currently, § 262.3(b)(1) of these Rules requires an applicant to publish notice of the following types of applications "on the same day of each of two consecutive weeks" in a newspaper of general circulation:

(i) Application by a state bank for membership in the Federal Reserve System;

(ii) Application by a State member bank to establish a domestic branch;

(iii) Application by a State member bank for the relocation of a domestic branch office;

(iv) Application by a bank for merger, consolidation, or acquisition of assets or assumption of liabilities, if the acquiring, assuming, or resulting bank is to be a State member bank;

(v) Application by a company to become a bank holding company; and

(vi) Application by a bank holding company to acquire ownership or control of shares or assets of a bank, or to merge or consolidate with any other bank holding company.

The Board proposes to amend § 262.3(b)(1) of its Rules and a related policy statement regarding notice of applications (12 CFR 262.25) to reduce the newspaper publication requirement from twice to once. These amendments would reduce a regulatory burden associated with the filing of applications by reducing the newspaper publication costs and paperwork burden associated with applications that are subject to the publication requirement. As part of this action, the Board would amend instructions for its application forms to conform to the notice requirements in the Rules. The Board also proposes to make parallel amendments to §§ 225.14(b) and 225.23(d) of its Regulation Y (12 CFR part 225) to conform with the revised notice requirements. This proposal would not affect the length of the public comment period for any application.

Before adopting these amendments, the Board will consider whether the action would have a serious adverse effect on actual notice of applications. Newspaper notices are only one of several means by which notice is provided to interested parties that the Board is reviewing a proposed transaction. For example, the notice required by § 262.3(b)(1) is in addition to weekly lists issued by the Board and the Reserve Banks identifying applications filed and acted upon under sections 3 and 4 of the Bank Holding Company Act (12 U.S.C. 1842 & 1843) and the Bank Merger Act (section 18(c) of the Federal Deposit Insurance Act; 12 U.S.C. 1828(c)). This list is provided to any interested party upon request, including requests for regular notice of all filings of applications.¹ The Board also

¹ See § 262.3(i) of the Rules and the policy statement at 12 CFR 262.25 for a more detailed description of these alternate sources of information on these applications.

FEDERAL RESERVE SYSTEM

12 CFR Parts 225 and 262

[Regulation Y; Docket No. R-0760]

Bank Holding Companies and Change in Bank Control; Rules of Procedure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Administrative Procedure Act, the Board is requesting public comment on proposed amendments to the provisions of its Rules of Procedure (Rules) and the Board's Regulation Y, Bank Holding Companies and Change in Bank Control. Section 262.3(b) of these Rules require two newspaper publications of notice of applications filed with the Federal Reserve under section 9 of the Federal Reserve Act (for membership or to establish branches), the Bank Merger Act (if a state member bank is involved), and the Bank Holding Company Act. The proposed amendments would reduce from twice to once the number of times notice must be published in a

publishes notice of all Bank Holding Company Act applications in the **Federal Register**. In addition, depository institutions and their holding companies may provide actual notice of upcoming corporate reorganizations to customers and to persons in their service areas in the form of press releases, news stories, and direct mail or lobby notices. In order to assist the Board in addressing this consideration, the Board specifically requests comment on the benefits that reducing the publication burden would have compared to the reduction in required newspaper notice.

Before adopting these amendments, the Board also will consider whether the amendments would have a serious adverse effect on the opportunity for public comment. Currently, § 262.3(b)(1) of the Rules provides that the first notice may appear no more than ninety calendar days prior to acceptance of the application by the applicant's Reserve Bank and that the notices must provide an opportunity for the public to give written comment on the application to the appropriate Federal Reserve Bank for at least thirty days after the date of publication of the first notice. The amendments would retain the requirements that newspaper notice must appear in a newspaper of general circulation no more than ninety calendar days prior to acceptance of an application as well as the requirement that the notice provide for a thirty day comment period. The Board invites comment on the possible effects on public notice that reducing the publication requirement can be expected to have.

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 proposed amendments would have a significant adverse economic impact on a substantial number of small entities. The proposed amendments would reduce certain regulatory burdens for all depository institutions, reduce certain burdens for small depository institutions, and have no particular adverse effect on other small entities.

List of Subjects

12 CFR Part 225

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

12 CFR Part 262

Administrative practice and procedure, Federal Reserve System.

For the reasons set forth in the preamble, the Board proposes to amend title 12 of the Code of Federal Regulations, parts 225 and 262, as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 would continue 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)).

Subpart B—Acquisition of Bank Securities or Assets

2. Section 225.14 is amended by adding a new paragraph (b)(3) to read as follows:

§ 225.14 Procedures for applications, notices, and hearings.

* * * * *

(b) * * *

(3) *Newspaper notice.* The applicant shall cause to be published in a newspaper of general circulation in the affected community, in the form prescribed by the Board in 12 CFR 262.3(b), at least one notice soliciting public comment on the proposed acquisition.

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Subpart C—Nonbanking Activities and Acquisitions by Bank Holding Companies

3. Section 225.23 is amended by removing the heading to paragraph (d), by revising the headings to paragraphs (d)(1) and (d)(2) and by adding a new paragraph (d)(3) to read as follows:

§ 225.23 Procedures for applications, notices, and hearings.

* * * * *

(d)(1) *Federal Register notice for listed activities.* * * *

(2) *Federal Register notice for unlisted activities.* * * *

(3) *Newspaper notice.* The applicant shall cause to be published in a newspaper of general circulation in the affected community, in the form prescribed by the Board in 12 CFR 262.3(b), at least one notice soliciting public comment on the proposed acquisition.

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PART 262—RULES OF PROCEDURE

1. The authority citation for part 262 would continue to read as follows:

Authority: 5 U.S.C. 552.

2. In § 262.3, by redesignating paragraphs (b)(1) introductory text, (b)(1)(i) through (vi), and the flush text beginning "the applicant" and ending with "the Board" as paragraphs (b)(1)(i) introductory text, (b)(1)(i)(A) through (F), and (b)(1)(i) concluding text, respectively; by removing the words "on the same day of each of two consecutive weeks" from the newly designated paragraph (b)(1)(i) concluding text; by designating the text, following newly designated paragraph (b)(1)(i) concluding text, which begins with the sentence "The notice shall be placed in the classified" as paragraph (b)(1)(ii); and by revising the first, second and third sentences of newly designated paragraph (b)(1)(ii) to read as follows:

§ 262.3 Applications.

* * * * *

(b) * * * (1)(i) * * *

* * * * *

(ii) The notice shall be placed in the classified advertising legal notices section of the newspaper, and must provide an opportunity for the public to give written comment on the application to the appropriate Federal Reserve Bank for at least thirty days after the date of publication. Within 7 days of publication, the applicant shall submit its application to the appropriate Reserve Bank for acceptance along with a copy of the notice. If the Reserve Bank has not accepted the application as complete within ninety days of the date of publication of the notice, the applicant may be required to republish notice of the application. * * *

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§ 262.3 [Amended]

3. In § 262.3, paragraph (b)(2) would be amended by removing the word "first" in the second sentence.

§ 262.25 [Amended]

4. In § 262.25, paragraph (a)(1) would be amended by removing the word "first" in the first sentence.

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

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-15135 Filed 6-26-92; 8:45 am]

BILLING CODE 6210-01-F

12 CFR Part 250**[Docket No. R-0762]****Transactions with Affiliates****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Board is proposing to exempt from the limitations of section 23A of the Federal Reserve Act the transfer of assets and liabilities between affiliated insured depository institutions when the transfer is part of the merger or consolidation of the affiliated institutions. The proposed exemption would be available only for transactions that must be approved by the resulting insured depository institution's primary regulator under the Bank Merger Act. The exemption would be available by regulation, and transactions that meet the proposed criteria will not require additional Board review under section 23A.

DATES: Comments must be submitted on or before July 29, 1992.

ADDRESSES: Comments, which should refer to Docket No. R-0762 may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mail room between 8:40 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Attorney (202/452-3289), or Christopher Bellini, Attorney (202/452-3269), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications 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: Section 23A of the Federal Reserve Act, 12 U.S.C. 371c, regulates certain transactions between depository institutions and their affiliates, including transactions between affiliated depository institutions. Section 23A is designed to protect insured depository

institutions from abuses that may result from lending and asset purchase transactions with their affiliates. In general, section 23A prohibits an insured depository institution from engaging in covered transactions (which include extensions of credit and purchases of assets) with any single affiliate in excess of 10 percent of the institution's capital and surplus. A 20 percent aggregate limit is imposed on the total amount of covered transactions by a bank with all affiliates. Under section 23A, all extensions of credit between a bank and its affiliate must meet certain collateral requirements. Section 23A also prohibits an insured depository institution from purchasing any low-quality assets from an affiliate, and requires that all transactions with an affiliate must be conducted on terms that are consistent with safe and sound banking practices.

Section 23A provides an exemption for several types of transactions. In addition, section 23A provides the Board with general authority to act by order or regulation to grant exemptions from the provisions of section 23A for any transaction where the Board determines that an exemption is consistent with the purposes of the section.

Savings associations became subject to section 23A in 1989 as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and thus, transactions between affiliated savings associations are subject to the quantitative, collateral and qualitative restrictions of section 23A.¹ The legislative history of FIRREA indicates that Congress intended the Board's general exemptive authority to extend to transactions involving savings associations where an exemption is consistent with the purposes of section 23A and with prior Board exemptions.²

A number of insured depository institutions recently have sought advice from the Board regarding whether the provisions of section 23A apply to transactions in which one institution acquires the assets of an affiliated institution through a merger or consolidation of the two institutions. Merger transactions involving affiliated banks generally have not been subjected to the provisions of section 23A where these transactions have been approved by a federal banking agency pursuant to the Bank Merger Act. Review of the transaction under the Bank Merger Act

includes review of the financial impact of the transaction and the quality and soundness of the assets transferred in the transaction. By its terms, the restrictions imposed by section 23A do not apply to mergers involving unaffiliated depository institutions.

The Board proposes to act by regulation to grant an exemption from the section 23A limits for transactions involving the merger of affiliated insured depository institutions where the transaction is approved under the Bank Merger Act.³ The Board requests public comment on this proposal.

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 interpretation would have a significant adverse economic impact on a substantial number of small entities. The interpretation would reduce regulatory burdens imposed by section 23A and have no particular adverse effect on other entities.

List of Subjects in 12 CFR Part 250

Federal Reserve System.

For the reasons set forth in the preamble, the Board proposes to amend title 12 of the Code of Federal Regulations, part 250, as follows:

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 would continue to read as follows:

Authority: 12 U.S.C. 248(i).

2. 12 CFR 250.241 is added to read as follows:

§ 250.241 Exemption from section 23A of the Federal Reserve Act for merger transactions between certain affiliated insured depository institutions.

(a) *Grant of exemption.* An exemption from the provisions of section 23A of the Federal Reserve Act is granted for the purchase by one insured depository institution of the assets of another insured depository institution if—

(1) The transaction represents the purchase by the insured depository institution of all or substantially all of the assets of the other institution or the merger or consolidation of the insured depository institution with the other institution, in a transaction in which only one of the insured depository institutions continues to operate; and

¹ 12 U.S.C. 1468.

² See 135 Cong. Rec. S10200 (daily ed. August 4, 1989) (statements of Senators Garn, Riegle and Sanford), and 135 Cong. Rec. H4997 (daily ed. August 3, 1989) (statements of Representatives Gonzalez and Carper).

³ Under the Bank Merger Act, before an insured institution merges with, or acquires the branches of, another institution, it is required to file an application with its primary regulator, even if the institutions already are commonly owned.

(2) The transaction has been approved by the appropriate federal banking agency for the surviving insured depository institution pursuant to the Bank Merger Act.

(b) *Definitions.* For purposes of this section, the terms "appropriate federal banking agency" and "insured depository institution" are defined as those terms are defined in section 3 of the Federal Deposit Insurance Act.

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

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-15136 Filed 6-26-92; 8:45 am]

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