FEDERAL RESERVE BANK
OF DALLAS

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

DALLAS, TEXAS 75222

February 3, 1993

Notice 93-18

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

SUBJECT

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

DETAILS

The Federal Reserve Board has issued a final rule to carry out provisions of Sections 202(d) and 210 of the Federal Deposit Insurance Corporation Improvement Act of 1991 that affect bank holding companies and foreign banking organizations with operations in the United States.

The final rule, which is effective February 4, 1993, replaces an interim rule adopted in April 1992, and amends Regulation Y to specify additional factors that the Federal Reserve must consider in acting on applications submitted under the Bank Holding Company Act to acquire a bank.

ATTACHMENT

A copy of the Board's notice as it appears on pages 471-74, Vol. 58, No. 3, of the Federal Register dated January 6, 1993, and as corrected on pages 4073-74, Vol. 58, No. 8, is attached.

MORE INFORMATION

For more information, please contact Michael Johnson at (214) 922-6081. 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. 58, No. 3

Wednesday, January 6, 1993

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0755]

Review Criteria for Bank Holding Company Applications

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Regulation Y to implement certain regulatory improvements contained in sections 202(d) and 210 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). The final rule specifies additional factors that the Federal Reserve System must consider in acting on applications by bank holding companies to acquire banks under section 3 of the Bank Holding Company Act. The intended effect of the amendment is to conform the Board's regulations to the statutory changes.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202–452–3583), or Brian E.J. Lam, Attorney (202–452–2067), Legal Division; or Sidney M. Sussan, Assistant Director (202–452–2638), Division of Banking Supervision and Regulation, 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 Street, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Board is adopting a final rule that revises its Regulation Y to include new supervisory factors that FDICIA requires the Board to consider in reviewing and acting on applications by bank holding companies to acquire banks under section 3 of the Bank Holding Company Act (BHC Act). These changes are required by sections 202(d) and 210 of FDICIA, Public Law 102–242, 105 Stat. 2237, 2290, 2298. On April 15, 1992, the Board adopted an interim rule that implemented sections 202(d) and 210 of FDICIA, and requested public comment on the revision to Regulation Y. 57 FR 13002, April 15, 1992. The public comment period expired on June 15, 1992.

Section 202(d) of FDICIA provides that the Board must disapprove an application under section 3 of the BHC Act if;

(1) The bank holding company fails to provide the Board with adequate assurances that it will make available to the Board such information on its operations or activities, and the operations or activities of any affiliates, as the Board deems appropriate to determine and enforce compliance with BHC Act; or

(2) In the case of an application involving a foreign bank, the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country. Public Law 102–242, 105 Stat. 2237, 2290. Section 210 of FDICIA also provides that the Board's consideration of the managerial resources of a bank holding company or bank shall include consideration of the competence, experience and integrity of the officers, directors and principal shareholders of the bank holding company or bank. Public Law 102–242, 105 Stat. 2237, 2298.

The Board is adopting a final rule substantially as proposed. The final rule adopts the statutory language contained in sections 202(d) and 210 of FDICIA, specifying that, in deciding applications under section 3 of the BHC Act, the Board will consider the competence, experience, and integrity of the officers, directors, and principal shareholders of the applicant, and of the banks and bank holding companies concerned, their record of compliance with applicable laws and regulations, and the record of the applicant and its affiliates of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.[1] In addition, the final rule adopts a definition of "principal shareholder."[2]

The Board will also consider whether the applicant has provided the Board with adequate assurances that it will make available such information on its operations or activities, and the operations or activities of any affiliate of the applicant, that the Board deems appropriate to determine and enforce compliance with the BHC Act and other applicable federal banking statutes, and any regulations thereunder. Moreover, in the case of an application involving a foreign banking organization, the Board will consider whether the organization is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the organization's home country.

The final rule is being adopted in conjunction with the Board's implementation of the Foreign Bank Supervision Enhancement Act of 1991 (FBSEA), subtitle A of title II of FDICIA, which changed the authority of the Board under the International Banking Act of 1978. FBSEA provided the Board with new authority to approve the establishment of U.S. offices by a foreign bank, and to regulate and supervise the operations of a foreign bank with U.S. offices.

The Board anticipates that the final rule will not impose any significant additional burdens on domestic banking organizations or financial institutions because the Board currently seeks, and has generally been able to obtain, from domestic applicants all of the information needed to consider section 3 applications. The Board is not proposing to seek any additional types or quantities of information from domestic applicants by virtue of the final rule. The final rule ensures that the Board is able to obtain from all applicants, especially foreign applicants operating in jurisdictions that limit or prohibit the disclosure of financial information outside of the jurisdiction, the same type of information that the Board now seeks and typically obtains from domestic applicants.

Comments

In response to its request, the Board received four comments. Two commenters, a Federal Reserve Bank and a banking organization, favor the adoption of the interim rule as a final rule. Another commenter, a foreign bank, supports the goal of strengthening the applications process under the BHC Act, and agrees that the competence, experience and integrity of the officers and directors of banks and bank holding companies should be considered, as required by section 210 of FDICIA. This commenter, however, suggests that the Board should not consider the competence and experience of shareholders where such shareholders are passive investors that do not anticipate any significant involvement in the management of the bank or the bank holding company.

Section 210 expressly provides that the Board's consideration of the managerial resources of a bank or bank holding company include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or bank. Thus, the text of section 210 directs the Board to consider all three managerial factors with respect to all three groups of individuals.

However, the Board believes that the statutory language does not prevent the Board from considering the extent of the role a principal shareholder may play in the management of a bank or a bank holding company when evaluating the competence or experience of the shareholder. An underlying purpose of section 210 is to permit the Board to consider the abilities of the principal shareholders of banks and bank holding companies in appropriate situations, including situations where a principal shareholder has or could have a significant effect on the financial and managerial resources, future prospects, or safety and soundness of a bank or bank holding company. Thus, the Board could consider whether a shareholder proposes to be a passive investor in weighing the shareholder's banking experience and competence.

The final commenter, a banking association, suggests that, in reviewing applications submitted by domestic bank holding companies, the Board not

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[1] The Board's regulations currently provide that, in considering applications under section 3 of the BHC Act, the Board will consider the records of the applicant, its subsidiaries, any banks related to the applicant through common ownership or management, and the bank or banks to be acquired, of complying with applicable laws and regulations, and their record of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications. *See* 12 CFR 225.13(b)(2). These provisions will remain unchanged in the final rule.

[2] Regulation Y currently includes a definition of "principal shareholder" that is used in determining the Board's presumption of control of a financial institution or banking organization, and in the Board's Capital Adequacy Guidelines. In order to avoid confusion and to maintain consistency between the statutory language of FDICIA and the implementing provisions of Regulation Y, the Board has redesignated the current term "principal shareholder" as "controlling shareholder", and has added a new definition of the term "principal shareholder" that applies strictly to the standards the Board must review under the FDICIA amendments to the BHC Act. Thus, in the final rule, the term "controlling shareholder" means any person that owns or controls, directly or indirectly, 25 percent or more of any class of voting securities of a bank or other company. Corresponding changes have been made in the Board's regulations regarding presumptions of control, and in the Board's Capital Adequacy Guidelines. The term "principal shareholder" has been redefined for purposes of implementing the FDICIA provisions to mean any person that owns or controls, directly or indirectly, 10 percent or more of any class of voting securities of a bank or other company, or any person that the Board determines has the power to exercise, directly or indirectly, a controlling influence over the management or policies of a bank or other company. The Board believes that the managerial qualities of all major shareholders (*i.e.*, shareholders controlling 10 percent or more of any class of voting securities) should be considered in appropriate situations. This is the level of ownership at which shareholder review is conducted under the Change in Bank Control Act, 12 U.S.C. 1817(j). As discussed in the preamble, the Board will consider the actual or anticipated role of a principal shareholder in the management of a bank in evaluating the competence, experience and integrity of that individual.

require domestic applicants to provide information on their respective operations and activities, and the operations and activities of their affiliates. This commenter asserts that the text and placement of section 202(d) of FDICIA, its legislative history, and other legal and practical considerations all support exempting domestic banks and bank holding companies from this requirement.

The Board has considered these comments and concluded that domestic bank holding companies should not be exempted from the requirement that, when submitting section 3 applications, they provide the Board with adequate assurances that they will make available appropriate information to the Board. By its express terms, section 202(d) requires the Board to disapprove *any* application by *any* bank holding company under section 3 of the BHC Act if the company fails to provide adequate assurances that the company will make available to the Board such information on the operations or activities of the company or any affiliate of the company. In drafting section 202(d), Congress expressly limited the application of certain other provisions of that section to foreign banks, without imposing a similar limitation on the "availability of information" provision. Moreover, the legislative history of section 202(d) expressly indicates that this requirement is applicable to domestic bank holding companies.[3] Thus, in light of the statutory language and the legislative history of section 202(d), the Board has concluded that the availability of information provision should apply to domestic bank holding companies.

[S]ection 202(d) amends the BHC Act to permit the Board to disapprove *any application* to acquire a U.S. bank unless the Board is given adequate assurances that it will have access to information on the operations or activities of a company or companies, or any affiliates, making application to acquire a U.S. bank that the Board deems necessary to fulfill the requirements of the [International Banking Act], the BHC Act, or the [Financial Institutions Supervisory Act of 1966]. *This requirement applies to applications by both foreign banking organizations and domestic bank holding companies.*

H.R. Rep. No. 157, 102nd Cong., 1st Sess. 159 (1991) (emphasis added); *see also* Section-By-Section Analysis Of S. 543 As Reported By The Senate Banking Committee, *reprinted in* 138 Cong. Rec. 2059, 2094 (February 21, 1992) (noting that the availability of information provision "applies to applications by both foreign banking organizations and domestic bank holding companies").

The Board does not believe, however, that the final rule will impose a significant additional burden on domestic applicants because the Board currently seeks and typically is able to obtain from such applicants all of the information needed to consider section 3 applications. The Board does not expect or propose, following adoption of this final rule, to seek additional types or quantities of information from domestic applicants than the Board currently seeks from these applicants.

The commenter also suggests that the Board should require domestic banks and bank holding companies to provide information on an affiliate only if the affiliate either transacts business with the bank that goes beyond ordinary deposit or loan services, or exposes the bank to substantial risk. Based on the express language and legislative history of section 202(d), which both refer to "any affiliates" of the applicant, the Board also has concluded that applicants should provide the necessary assurances with regard to all affiliates, not just affiliates that transact business with a bank that goes beyond ordinary deposit or loan services or that exposes a bank to substantial risk.

However, under section 202(d) and the final rule, the Board retains discretion to determine on a case-by-case basis the extent that assurances are needed for affiliates under common control of individuals. The Board does not believe that, in light of the language and purpose of section 202(d) of FDICIA, it is appropriate to provide a general regulatory exemption for all or most companies affiliated through individual owners.

Finally, the commenter urges the Board not to require banks, bank holding companies and their affiliates to provide information that is deemed to be privileged or confidential under applicable federal or state laws. No such exception appears to have been contemplated by section 202(d). The Board believes that, in certain circumstances, it may be appropriate for the Board to request, and for applicants to provide, information which may be deemed privileged or confidential. The Board can and will, however, afford this information confidential treatment as provided in the Freedom of Information Act. Accordingly, the Board believes that it is not appropriate to adopt a regulatory provision limiting the Board's ability to request or obtain relevant confidential or privileged information.

For all of the foregoing reasons, the Board has concluded that the availability of information provision of the interim rule should remain unchanged in the final rule.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board hereby certifies that the final rule will not have a significant impact on a substantial number of small entities.

The final rule imposes the minimum burdens necessary to implement the provisions of sections 202(d) and 210 of FDICIA for all banks and bank holding companies subject to the regulation, regardless of size. The regulation specifies additional factors which the Board must consider in acting on applications by bank holding companies to acquire banks under section 3 of the BHC Act. The final rule does not impose any additional regular recordkeeping, reporting or other similar requirements on banks.

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, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956, 12 U.S.C. 1844(b), the Board amends part 225 of Chapter II of Title 12 of the Code of Federal Regulations as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. Section 225.2 is amended by revising the text of paragraph (k) as follows:

§ 225.2 Definitions.

* * * * *

(k)(1) *Controlling shareholder* means a person that owns or controls, directly or indirectly, 25 percent or more of any class of voting securities of a bank or other company.

(2) *Principal shareholder* means a person that owns or controls, directly or indirectly, 10 percent or more of any class of voting securities of a bank or other company, or any person that the Board determines has the power, directly or indirectly, to exercise a controlling influence over the management or policies of a bank or other company.

* * * * *

[3] For example, the Report of the House Committee on Banking, Finance and Urban Affairs states:

2. Section 225.13 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 225.13 Factors considered in acting on bank applications.

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

(1) The transaction would result in a monopoly or would further any combination or conspiracy to monopolize, or to attempt to monopolize, the business of banking in any part of the United States;

(2) The effect of the transaction may be substantially to lessen competition in any section of the country, tend to create a monopoly, or in any other manner be in restraint of trade, unless the Board finds that the transaction's anticompetitive effects are clearly outweighed by its probable effect in meeting the convenience and needs of the community;

(3) The applicant has failed to provide the Board with adequate assurances that it will make available such information on its operations or activities, and the operations or activities of any affiliate of the applicant, that the Board deems appropriate to determine and enforce compliance with the BHC Act and other applicable federal banking statutes, and any regulations thereunder; or

(4) In the case of an application involving a foreign bank, the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, as provided in § 211.24(c)(1)(ii) of the Board's Regulation K (12 CFR 211.24(c)(1)(ii)).

(b) * * *

(2) *Managerial Resources.* The competence, experience, and integrity of the officers, directors, and principal shareholders of the applicant, its subsidiaries, and the banks and bank holding companies concerned; their record of compliance with laws and regulations; and the record of the applicant and its affiliates of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.

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3. Section 225.31 is amended by revising paragraph (d)(2)(ii) to read as follows:

§ 225.31 Control proceedings.

(d) * * *

(2) * * *

(ii) *Shares controlled by company and associated individuals.* A company that, together with its management officials or controlling shareholders (including members of the immediate families of either as defined in 12 CFR 206.2(k)), owns, controls, or holds with power to vote 25 percent or more of the outstanding shares of any class of voting securities of a bank or other company controls the bank or other company, if the first company owns, controls, or holds with power to vote more than 5 percent of the outstanding shares of any class of voting securities of the bank or other company.

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4. Appendix B is amended by revising footnote 1 to read as follows:

Appendix B to Part 225—Capital Adequacy Guidelines for Bank Holding Companies and State Member Banks: Leverage Measure

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[1] The guidelines will apply to bank holding companies with less than $150 million in consolidated assets on a bank-only basis unless:

(1) The holding company or any nonbank subsidiary is engaged directly or indirectly in any nonbank activity involving significant leverage or

(2) The holding company or any nonbank subsidiary has outstanding significant debt held by the general public. Debt held by the general public is defined to mean debt held by parties other than financial institutions, officers, directors, and controlling shareholders of the banking organization or their related interests.

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By order of the Board of Governors of the Federal Reserve System, December 29, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-32 Filed 1-5-93; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0755]

Review Criteria for Bank Holding Company Applications

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is correcting a codification error in a document published in 58 FR 471, January 6, 1993. That document amended Regulation Y to implement certain regulatory improvements contained in sections 202(d) and 210 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202-452-3583), or Brian E.J. Lam, Attorney (202-452-2067), 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: The final rule published in the Federal Register on January 6, 1993, revised § 225.2(k) (defining the term "person") rather than revising § 225.2(l) (defining the term "principal shareholder") of the Board's Regulation Y (12 CFR 225.2(k) and (l)). This final rule restores the pre-existing definition of the term "person" in § 225.2(k), and properly revises § 225.2(l) to define the terms "controlling shareholder" and "principal shareholder" as intended by the final rule published on January 6, 1993.

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, and pursuant to the Board's

authority under section 5(b) of the Bank Holding Company Act of 1956, 12 U.S.C. 1844(b), the Board amends part 225 of Chapter II of Title 12 of the Code of Federal Regulations as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

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

Authority: 12 U.S.C. 1817(j)(13), 1818(b), 1828(o), 1831i, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3907, 3909, 3310, 3331-3351.

2. Section 225.2 is amended by revising paragraphs (k) and (l) to read as follows:

§ 225.2 Definitions.

* * * * *

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

(l)(1) *Controlling shareholder* means a person that owns or controls, directly or indirectly, 25 percent or more of any class of voting securities of a bank or other company.

(2) *Principal shareholder* means a person that owns or controls, directly or indirectly, 10 percent or more of any class of voting securities of a bank or other company, or any person that the Board determines has the power, directly or indirectly, to exercise a controlling influence over the management or policies of a bank or other company.

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By order of the Board of Governors of the Federal Reserve System, January 7, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-771 Filed 1-12-93; 8:45 am]

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