



FEDERAL RESERVE BANK
OF DALLAS

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

DALLAS, TEXAS
75265-5906

May 23, 1994

Notice 94-47

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

SUBJECT

**Adoption of Final Amendments
to Regulation Y (Bank Holding Companies
and Change in Bank Control) and Rules
Regarding Delegation of Authority**

DETAILS

On August 12, 1992, the Federal Reserve Board approved several proposals to change certain procedures for obtaining Board approval of various applications and notices filed under the Federal Reserve Act, the Bank Holding Company Act, the Bank Merger Act, the Change in Bank Control Act, and various other statutes. All but one of these changes to the Board's application and notice review procedures were implemented by the Board at that time. Most of these changes involved revising certain internal procedures of the Federal Reserve System to improve the efficiency of processing applications that are reviewed by the Board in conjunction with the Reserve Banks and to reduce the regulatory burden associated with these application and notice procedures. Two of the changes--eliminating the stock redemption notice requirement for "well-capitalized" bank holding companies, and modifying the Board's delegation rules pertaining to competition and market concentration--necessitate amendments to certain provisions of, respectively, the Board's Regulation Y and Rules Regarding Delegation of Authority.

The final amendments became effective May 4, 1994.

ATTACHMENT

A copy of the Board's notice as it appears on pages 22967-69, Vol. 59, No. 85, of the Federal Register dated May 4, 1994, 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.

Change in Bank Control Act and various other statutes. All but one of these changes to the Board's application and notice review procedures were implemented by the Board at that time. Most of these changes involved revising certain internal procedures of the Federal Reserve System (System), to improve the efficiency of processing applications that are reviewed by the Board in conjunction with the Reserve Banks and to reduce the regulatory burden associated with these application and notice procedures. Two of the changes—eliminating the stock redemption notice requirement for "well-capitalized" bank holding companies, and modifying the Board's delegation rules pertaining to competition and market concentration—necessitate amendments to certain provisions of, respectively, the Board's Regulation Y and Rules Regarding Delegation of Authority.

EFFECTIVE DATE: May 4, 1994.

FOR FURTHER INFORMATION CONTACT: Terence F. Browne, Senior Attorney (202/452-3707), Legal Division; or Sidney M. Sussan, Assistant Director (202/452-2638), John S. Russell, Manager—Applications Processing (202/452-2466), or Beverly Evans, Supervisory Financial Analyst (202/452-2573), Division of Banking Supervision and Regulation. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

As part of the Board's ongoing efforts to reduce the regulatory burden associated with its application and notice procedures, in 1992 the Board approved a number of steps to reduce the burden associated with these procedures.¹ Although all but one of

these streamlining initiatives became effective upon publication in the *Federal Register*,² two of the initiatives require that the Board's Regulations be amended to reflect the changes.

Currently, § 225.4(b)(1) of Regulation Y (12 CFR 225.4(b)(1)) requires a bank holding company to give the Board prior notice of certain purchases or redemptions of its equity securities:

(b) *Purchase or redemption by a bank holding company of its own securities—(1) Filing notice.* A bank holding company shall give the Board prior notice before purchasing or redeeming its equity securities, if the gross consideration for the purchase or redemption, when aggregated with the net consideration paid by the company for all such purchases or redemptions during the preceding 12 months, is equal to 10 percent or more of the company's consolidated net worth. For the purposes of this section, "net consideration" is the gross consideration paid by the company for all of its equity securities purchased or redeemed during the period minus the gross consideration received for all of its equity securities sold during the period other than as part of a new issue.

The Board determined to eliminate this notice requirement for bank holding companies that are and, following the redemption or purchase, would remain "well-capitalized" on a consolidated basis and in generally satisfactory condition. The Board believes that a bank holding company would qualify for this exception to the notice requirement if:

- The total and tier 1 risk-based capital ratios and the leverage capital ratio for the bank holding company, both before and following the redemption, exceed the thresholds established for "well-capitalized" state-member banks under 12 CFR 208.33(b)(1) as if the bank holding company (on a consolidated basis) were deemed to be a state-member bank;
- The bank holding company received a composite "1" or "2" rating at its most recent BOPEC inspection, and
- The bank holding company is not the subject of any unresolved supervisory issues.

The Board also determined to revise its delegation rules pertaining to competition and market concentration. If a party submits an application or

to eliminate or reduce burden associated with the Board's notice and application procedures. The comments received will be considered by the Board in its ongoing efforts to streamline and reduce the regulatory burden associated with the Board's notice and application procedures.

²The Board is currently finalizing a separate regulation implementing a general consent procedure for investments in bank premises pursuant to section 24A of the Federal Reserve Act.

12 CFR Parts 225 and 265

[Regulation Y; Docket No. R-0773]

Bank Holding Companies and Change in Bank Control; Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: On August 12, 1992, the Board approved several proposals to change certain procedures for obtaining Board approval of various applications and notices filed under the Federal Reserve Act, the Bank Holding Company Act, the Bank Merger Act, the

¹ See 57 FR 39641 (September 1, 1992). These changes included establishing certain procedures to limit extension of the pre-acceptance period for applications; offering prospective applicants the opportunity to submit a pre-filing notice of intent to file an application; eliminating the stock redemption notice requirement for bank holding companies that are and, following the redemption would remain, "well-capitalized" on a consolidated basis and in generally satisfactory condition; expanding the authority of Reserve Banks to process all delegable applications without Board staff review; modifying the Board's delegation rules pertaining to competition and market concentration; reducing redundant post-acceptance processing of Board action cases; increasing the monitoring of cases requiring extended processing; and establishing a general consent procedure under section 24A of the Federal Reserve Act for investments by state member banks in bank premises.

In publishing notice of these changes, the Board also invited comment on any additional measures

notice to the System pursuant to the Bank Holding Company Act, Change in Bank Control Act, Bank Merger Act, or the Bank Service Corporation Act, the Board's Rules Regarding Delegation of Authority (12 CFR 265.1-265.11), permit the appropriate Reserve Bank to act on such application or notice unless certain circumstances are present. Specifically, § 265.11(c)(11)(v) of the Board's Rules provide that a Reserve Bank is not authorized to approve the following transactions:

(v) With respect to BHC formations, bank acquisitions or mergers, the proposed transaction involves two or more banking organizations:

(A) That upon consummation of the proposal, would control over 30 percent of total deposits in banking offices in the relevant geographic market, or would result in an increase of at least 200 points in the Herfindahl-Hirschman Index (HHI) in a highly concentrated market (a market with a post-merger HHI of at least 1800); or

(B) Where divestitures designed to address any substantive anticompetitive effects are not effected on or before consummation of the proposed transaction[.]

The Board determined to revise its Rules Regarding Delegation of Authority to increase the resulting market share criterion that would require Board consideration of a bank merger or acquisition from 30 percent to 35 percent. In particular, the Reserve Banks may now act on applications involving two or more banking organizations that, upon consummation of the proposed transaction, would control 35 percent or less of total deposits in banking offices in the relevant geographic market. This change would also reflect the Board's practice, in computing market share, of weighing deposits of thrifts in the subject market at 50 percent.

As part of this change to the Board's Rules Regarding Delegation of Authority, the Board also determined to eliminate the need for Board approval of applications involving divestitures designed to address anticompetitive effects, which divestitures are not completed on or before consummation of the proposed transaction.³ As a result, the Federal Reserve Banks may now act on applications involving proposed divestitures to address competitive concerns, provided the divestitures are undertaken in accordance with the Board's position on the timing of divestitures.⁴

Final Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board does not believe that these changes will have a significant adverse economic impact on a substantial number of small entities. The amendments would reduce regulatory burdens imposed by Regulation Y and the Board's Rules Regarding Delegation of Authority and have no particular adverse effect on other entities.

Effective Date

The provisions of the Administrative Procedures Act (APA)(5 U.S.C. 553) relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of these amendments because the changes to be effected are either procedural in nature and do not constitute a substantive rule subject to the requirements of that section, or grant an exemption and reduce regulatory burden. The APA grants specific exemptions from its requirements relating to notice, public participation and the deferred effective date requirements in these instances (12 U.S.C. 553 (b)(3)(A) and (d)(1)).

Final Paperwork Reduction Act Analysis

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in these changes.

List of Subjects

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Holding Companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 265

Authority delegation (Government agencies), Banks, banking.

For the reasons set forth in the preamble, the Board amends title 12 of the Code of Federal Regulations, parts 225 and 265, as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

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

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

2. Section 225.4 is amended by revising paragraph (b)(1), and adding a new paragraph (b)(6) to read as follows:

§ 225.4 Corporate practices.

* * * * *
 (b) * * *—(1) *Filing notice.* Except as provided in paragraph (b)(6) of this section, a bank holding company shall give the Board prior written notice before purchasing or redeeming its equity securities if the gross consideration for the purchase or redemption, when aggregated with the net consideration paid by the company for all such purchases or redemptions during the preceding 12 months, is equal to 10 percent or more of the company's consolidated net worth. For the purposes of this section, "net consideration" is the gross consideration paid by the company for all of its equity securities purchased or redeemed during the period minus the gross consideration received for all of its equity securities sold during the period other than as part of a new issue.
 * * * * *

(6) *Exception for well-capitalized bank holding companies.* A bank holding company seeking to redeem or purchase its equity securities is not required to obtain prior Board approval for the redemption or purchase under this section provided:

- (i) The total and tier 1 risk-based capital ratios and the leverage capital ratio for the bank holding company, both before and following the redemption, exceed the thresholds established for "well-capitalized" state-member banks under 12 CFR 208.33(b)(1) as if the bank holding company (on a consolidated basis) were deemed to be a state member bank;
- (ii) The bank holding company received a composite "1" or "2" rating at its most recent BOPEC inspection; and
- (iii) The bank holding company is not the subject of any unresolved supervisory issues.

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for part 265 continues to read as follows:

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

2. Section 265.11 is amended by revising paragraph (c)(11)(v) to read as follows:

§ 265.11 Functions delegated to Federal Reserve Banks.

* * * * *
 (c) * * * * *
 (11) * * * * *

³ See 57 FR 39641 (September 1, 1992).
⁴ See *id.*; see also BankAmerica Corporation, 78 Federal Reserve Bulletin 338, 340 n.15 (1992).

(v) With respect to bank holding company formations, bank acquisitions or mergers, the proposed transaction involves two or more banking organizations that, upon consummation of the proposal, would control over 35 percent of total deposits (including 50 percent of thrift deposits) in banking offices in the relevant geographic market, or would result in an increase of at least 200 points in the Herfindahl-Hirschman Index (HHI) in a highly concentrated market (a market with a post-merger HHI of at least 1800); or

* * * * *

By order of the Board of Governors of the Federal Reserve System, April 28, 1994.

William W. Wiles,
Secretary of the Board.

[FR Doc. 94-10689 Filed 5-3-94; 8:45 am]

BILLING CODE 6210-01-P