



FEDERAL RESERVE BANK
OF DALLAS

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

DALLAS, TEXAS
75265-5906

August 17, 1994

Notice 94-84

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

SUBJECT

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

DETAILS

The Board of Governors of the Federal Reserve System has announced adoption of final amendments to the anti-tying provisions of Regulation Y (Bank Holding Companies and Change in Bank Control). The Board has also proposed for public comment an additional amendment to the anti-tying provisions.

Section 106(b) of the Bank Holding Company Act Amendments of 1970 generally prohibits a bank from tying its own products, or tying its products to those of an affiliate. The Board's Regulation Y applies section 106 to bank holding companies and their nonbank subsidiaries as if they were banks. A statutory exception to these requirements allows a bank to discount any product or service on condition that a customer obtain a traditional bank product (a loan, discount, deposit, or trust service) from that bank.

The final rule, which becomes effective September 2, 1994, extends this statutory exception to allow bank holding company affiliates, bank and nonbank, to offer package discounts on traditional bank products. The final rule also permits bank holding company affiliates to offer a discount on securities brokerage services on condition that a customer obtain a traditional bank product from itself or from an affiliate.

The proposed rule would permit a bank holding company or its nonbank subsidiary to offer a discount on its products on condition that a customer obtain any other product from that company or subsidiary or from any of its nonbank affiliates. This exception would apply only when none of the packaged products are being offered by a bank.

The Board must receive comments by September 16, 1994. 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-0843.

ATTACHMENTS

Copies of the Board's notices as they appear on pages 39677-79 and 39709-11, Vol. 59, No. 149, of the Federal Register dated August 4, 1994, are 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. 59, No. 149

Thursday, August 4, 1994

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0832]

Revisions Regarding Tying Restrictions

AGENCY. Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting a final rule amending the anti-tying provision of Regulation Y to permit a bank or a bank holding company to offer a discount on a loan, discount, deposit, or trust service (a "traditional bank product"), or on securities brokerage services, on condition that the customer obtain a traditional bank product from an affiliate. The Board believes that this will increase the efficiency with which organizations can deliver banking services.

EFFECTIVE DATE: September 2, 1994.

FOR FURTHER INFORMATION CONTACT: Robert deV. Frierson, Assistant General Counsel (202/452-3711); Gregory A. Baer, Managing Senior Counsel (202/452-3236), or David S. Simon, Attorney (202/452-3611), Legal Division; or Anthony Cynak, Economist, (202/452-2917), Division of Research and Statistics, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

Section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972) generally prohibits a bank from tying a product or service to another product or service offered by the bank or by any of its affiliates. A prohibited tie occurs if a bank: (1) varies the consideration for a product or

service (the "tying product") on the condition that the customer obtain some additional product or service (the "tied product") from the bank or from any of its affiliates; or (2) as a condition for providing a customer a product or service, requires the customer to purchase another product or service from the bank or from any of its affiliates. In 1971, the Board applied these tying restrictions to bank holding companies and their nonbank subsidiaries as if they were banks. 12 CFR 225.4(d)(1).

Section 106 contains an exception (the "traditional bank product exception") permitting a bank to tie a product to a traditional bank product offered by that bank, but not by any affiliated bank or nonbank.¹ Thus, for example, the statutory exception permits a bank to offer a discount on a loan on the condition that a customer maintain a deposit account at that bank; however, the bank may not offer a discount on a loan on the condition that a customer maintain a deposit account at an affiliated bank.

On March 11, 1994, the Board requested public comment on two proposed exceptions to section 106. 59 FR 12,202 (March 16, 1994). The first exception would extend the statutory traditional bank product exception described above to permit a bank or bank holding company to offer a discount on a traditional bank product to a customer who obtains another traditional bank product from an affiliate. The second proposed exception would permit a bank or bank holding company to offer a discount on securities brokerage services to a customer who obtains a traditional bank product from an affiliate.

Section 106 authorizes the Board to permit, by regulation or order, exceptions from its anti-tying provisions where the Board determines that an exception will not be contrary to the purposes of the section.

General Summary of Comments

The Board received 68 comments on its proposal. These commenters included 31 bank holding companies, 17 banks, two law firms, five Reserve Banks and seven trade associations.

¹ Similarly, under the Board's extension of section 106 to nonbanks in Regulation Y, a nonbank may tie a product to a traditional bank product offered by itself, but not by an affiliate.

Overall, the comments supported both parts of the proposed rule. One commenter generally opposed the proposed amendments because it believed that exceptions to section 106 should be provided on a case-by-case basis and not as a general matter through rulemaking, and that by acting on individual requests, the Board would be able to prevent potential anticompetitive effects, especially in small towns. The Board has concluded, however, that the benefits and costs of the proposal may be assessed in the aggregate and that rulemaking is appropriate.

Traditional Bank Products

The Board is adopting substantially as proposed the extension of the traditional bank product exception in section 106 to cover discount arrangements involving an affiliate. In particular, the final rule permits a bank or nonbank to vary the consideration charged for a traditional bank product on the condition that a customer obtain another traditional bank product from an affiliate, provided that each product in the arrangement is separately available for purchase by the customer. The Board believes that the exception is fully consistent with the purposes of section 106, will increase the efficiency with which banking organizations can deliver banking services, and will allow those organizations to provide their customers discounts on packages of banking products that include products offered by affiliates.

As noted, section 106 contains an exception permitting a bank to tie a product to a traditional bank product offered by that same bank. The Senate Report accompanying section 106 states that the traditional bank product exception was intended to preserve a customer's ability to negotiate the price of multiple banking services with the bank on the basis of the customer's entire relationship with the bank. S. Rep. No. 1084, 91st Cong., 2d Sess., 16-17 (1970). The Board believes that it is consistent with this stated statutory purpose for a bank or bank holding company to offer a discount on packages of traditional bank products when one of the component products in the package is offered by an affiliate. Since 1970 and 1971, there has been a substantial increase in the number of affiliates in bank holding company

organizations and the extent of specialization of these affiliates, which has led to customers obtaining traditional bank products from multiple affiliates, both bank and nonbank. Adoption of the proposed rule will be consistent with the purposes of section 106 by allowing a customer to negotiate the price of multiple traditional banking services on the basis of the customer's entire relationship with a bank holding company organization, as opposed to just a single bank within such an organization.

By allowing bank holding companies to package traditional bank products offered by multiple subsidiaries, the exception also will increase the efficiency with which bank holding companies can deliver those products. Several commenters explained that the existing rule had created a disincentive for bank holding companies to consolidate a given traditional bank product in one affiliate (and thereby lose the exemption for that activity), as opposed to offering the product through all its subsidiary banks (retaining the exemption at each bank but forfeiting efficiency gains).

Adoption of the proposed exception to section 106 will not only permit bank holding companies to offer products more efficiently but also will allow their customers to benefit. Customers will be able to realize cost savings when they obtain traditional bank products from two or more subsidiaries of a bank holding company instead of just one.

Because the inter-affiliate traditional bank product exception will allow bank holding company affiliates to offer customers a more favorable price on packages of banking products, thereby relieving bank holding companies of a competitive disadvantage and benefitting their customers, the Board has concluded that the amendment is consistent with the purposes of section 106 and should be adopted.

Several commenters requested an expansion of the proposed exception to include inter-affiliate arrangements in which the tying product is a non-traditional bank product and the tied product is a traditional bank product. The Board has decided not to extend the statutory traditional bank product exception to inter-affiliate tying involving non-traditional bank products at this time. However, in a separate notice, the Board is proposing to amend the tying restrictions of Regulation Y to permit any discount arrangement that involves only nonbank affiliates.

Discounts on Securities Brokerage Services

In December 1993, the Board approved an exemption for a brokerage subsidiary of a bank to offer a discount on brokerage services to its customers who maintain a minimum balance in an account at the bank or any affiliated bank. *First Union Corporation*, 80 Federal Reserve Bulletin 166 (1994). The Board concluded that the requested exemption was consistent with the legislative purpose of section 106 (to prevent banks from using their economic power to engage in anticompetitive practices) and the legislative purpose of the Board's exemptive authority (to allow appropriate traditional banking practices based on sound economic analysis). In its order, the Board found that the market for retail brokerage services was national in scope and highly competitive, making it unlikely that any of these banks—or any other provider of brokerage services—could exercise sufficient market power in brokerage services to impair competition in the market for traditional banking services. As part of the order, the Board required that the two products in the arrangement be separately available for purchase by the customer, noting that under antitrust precedent, concerns about tying are substantially reduced when the buyer is free to take either product by itself.

The Board is adopting substantially as proposed an amendment to Regulation Y making this exemption available to all bank holding companies. This amendment will permit any bank or bank holding company to offer a discount on brokerage services if a customer obtains a traditional bank product from any affiliate. The regulatory exception is conditioned on the brokerage services and traditional bank products offered in the arrangement being separately available for purchase by the customer.

Commenters overwhelmingly favored the proposed amendment. Commenters stated that the regulatory exception would promote fair competition with nonbank competitors and would result in cost savings and other benefits to customers.

A securities industry association opposed the proposed exception because it believed that the exception would increase customer confusion by reinforcing the false impression that brokerage services offered by banks are insured by the federal government. However, the recent inter-agency statement on retail sales of non-deposit investment products specifies steps that

banks should take to prevent confusion, including informing customers in writing that the products are not federally insured, are not deposits or other obligations of the institution and are not guaranteed by the institution, and involve investment risks including possible loss of principal. In addition, the statement restricts where an institution may offer non-deposit investment products. The Board believes that this statement satisfactorily addresses any possibility of an increase in customer confusion about coverage of federal deposit insurance where banks offer brokerage services as part of a package arrangement.

A few commenters requested that the Board clarify that "brokerage services" refers to "securities brokerage services" and that securities brokerage services include related incidental services as authorized by Regulation Y. These technical changes are consistent with the intent of the proposed rule, and will be included in the final rule.

Some commenters requested that the Board grant an exception permitting a bank or a bank holding company to vary the consideration charged for a traditional bank product, such as a deposit service, based on a customer's purchase of brokerage services—the converse of the proposed exception. The Board believes that this proposal should be evaluated in the context of a specific exemption request. One such request has been published for comment. *Fleet Financial Group, Inc.*, 59 FR 9,216 (February 25, 1994).

A few commenters sought an interpretation that ties involving mutual funds were either wholly or partially exempt from section 106, either because mutual funds are not bank holding company subsidiaries or because mutual fund products constitute trust services and therefore qualify as traditional bank products. The Board intends to address this issue separately.

Some commenters sought clarification on whether both proposed exceptions were limited to cases where the tying product was offered by a bank, or also included cases where the tying product was offered by a bank holding company or its nonbanking subsidiary. The concern arose because the proposed exceptions were phrased only in terms of banks. The Board notes that the language of section 225.4(d)(1) of Regulation Y would automatically apply the proposed exceptions for banks to bank holding companies and their nonbanking subsidiaries, as was intended by the proposed rulemaking. However, the final rule has been amended to make this coverage explicit. Rather than referring to a "bank"

offering a traditional bank product or a discount on brokerage services, the rule refers to a "bank holding company or bank or nonbank subsidiary thereof."

Reorganization of Regulation

In a non-substantive change, the Board has restructured the regulation to make it more easily understandable. The regulation has been moved from the section on corporate practices, § 225.4, and established as its own section, § 225.7. The application of section 106 to bank holding companies and their nonbank subsidiaries is contained in paragraph (a). Paragraph (b) contains exceptions to both section 106 and § 225.7(a), and paragraph (c) contains limitations on each of those exceptions. Finally, a definition paragraph, § 225.7(d), has been added.

In addition, the exception for credit card services previously contained in § 225.4(d)(2) has been removed from the regulation, as all transactions previously excepted under that provision are now excepted under the traditional bank product exception in § 225.7(b)(1). Also, the phrase "(but no other products)" has been deleted in places where it was superfluous. These changes are not substantive.

Paperwork Reduction Act

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

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

List of Subjects in 12 CFR Part 225

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

For the reasons set forth in this document, the Board amends 12 CFR part 225 as set forth below:

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

1. The authority citation for 12 CFR part 225 continues 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.

§ 225.4 [Amended]

2. In § 225.4, paragraph (d) is removed and paragraphs (e) through (g) are

redesignated as paragraphs (d) through (f).

3. A new § 225.7 is added to subpart A of part 225 to read as follows:

§ 225.7 Tying restrictions.

(a) *Applicability to nonbanks.* A bank holding company and any nonbanking subsidiary conducting an activity authorized under § 225.23 may not in any manner extend credit, lease or sell property of any kind, provide any service, or fix or vary the consideration for any of these transactions subject to any condition or requirement that, if imposed by a bank, would constitute an unlawful tie-in arrangement under section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971, 1972(1)).

(b) *Exceptions.* Subject to the limitations of paragraph (c) of this section, the Board has adopted the following exceptions to the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 and paragraph (a) of this section.

(1) *Traditional bank products.* A bank holding company or any bank or nonbank subsidiary thereof may vary the consideration charged for a traditional bank product on the condition or requirement that a customer also obtain a traditional bank product from an affiliate.

(2) *Securities brokerage services.* A bank holding company or any bank or nonbank subsidiary thereof may vary the consideration charged for securities brokerage services on the condition or requirement that a customer also obtain a traditional bank product from that bank holding company or bank or nonbank subsidiary, or from any affiliate of such company or subsidiary.

(c) *Limitations on exceptions.* (1) The exceptions of this section shall apply only if all products involved in the tying arrangement are separately available for purchase.

(2) Any exception granted pursuant to this section shall terminate upon a finding by the Board that the arrangement is resulting in anticompetitive practices.

(d) *Definitions.* For purposes of this section:

(1) *Traditional bank product* means a loan, discount, deposit, or trust service.

(2) *Affiliate* has the meaning given such term in section 2(k) of the Bank Holding Company Act (12 U.S.C. 1841(k)).

(3) *Securities brokerage services* means those activities authorized by the Board pursuant to § 225.25(b)(15).

By order of the Board of Governors of the Federal Reserve System, July 27, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-18724 Filed 8-3-94; 8:45 am]

BILLING CODE 6210-01-P

or service from that company or subsidiary or from any of its nonbank affiliates, provided that all products offered in the package arrangement are separately available for purchase. This exception would not apply when any product in the arrangement is offered by a bank. The board believes that this will increase the efficiency with which banking organizations can deliver banking services.

DATES: Comments must be submitted on or before September 17, 1994.

ADDRESSES: Comments should refer to Docket No. R-0843, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Robert deV. Frierson, Assistant General Counsel (202/452-3711); Gregory A. Baer, Managing Senior Counsel (202/452-3236), or David S. Simon, Attorney (202/452-3611), Legal Division; or Anthony Cyrnak, Economist, (202/452-2917), Division of Research and Statistics, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

Section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972) generally prohibits a bank from tying a product or service to another product or service offered by the bank or by any of its affiliates.¹ In 1971, the Board applied these tying restrictions to bank holding companies and their nonbank subsidiaries as if they were banks. 12 CFR 225.4(d)(1); 36 FR 10777, 10778 (1971).

On March 11, 1994, the Board requested public comment on proposed

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0843]

Revisions Regarding Tying Restrictions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is seeking public comment on a proposed amendment to the anti-tying provisions of Regulation Y. The proposed amendment would permit a bank holding company or its nonbank subsidiary to discount any of its products or services on condition that a customer obtain another product

¹ A prohibited tie-in occurs if a bank: (1) varies the consideration for a product or service (the "tying product") on the condition that the customer obtain some additional product or service (the "tied product") from the bank or from any of its affiliates; or (2) as a condition for providing a customer a product or service, requires the customer to purchase another product or service from the bank or from any of its affiliates.

amendments to Regulation Y, including an extension of the so-called traditional bank product exception of section 106 to package arrangements with affiliates. 59 FR 12202 (March 16, 1994). In addition to comments on the proposed rule, which is being made final in a separate document published elsewhere in this issue of the *Federal Register*, the Board received various requests for interpretation or extension of regulatory exceptions to the tying restrictions imposed by section 106 and Regulation Y. In particular, commenters urged the Board to reconsider its extension of the tying restrictions of section 106 to bank holding companies and their nonbank subsidiaries.

Proposed Amendments

After considering those requests, the Board has decided to propose an amendment to its anti-tying regulation to conform it more closely to section 106 and its focus on tying by banks. Under the proposed rule, bank holding companies and their nonbanking subsidiaries would be permitted to offer discounts on packaged products when: (1) Both the tying and tied products² are offered by bank holding companies or their nonbanking subsidiaries—in other words, where no affiliated bank is involved in the arrangement; and (2) both the tying and tied products are separately available.³ In cases that do not qualify for this (or some other) exception, the general restrictions of section 106 and Regulation Y would continue to apply; for example, if the package arrangement involved a product offered by an affiliated bank, the exception would not apply and the nonbanking subsidiary could only offer discount package arrangements involving exclusively traditional bank products or securities brokerage services, under exceptions recently adopted by the Board and to take effect in thirty days. The antitrust laws also would continue to apply in all cases.

The Board believes that the proposed exception is consistent with the terms and purposes of section 106, is justified by the competitive environment in which nonbanking subsidiaries generally operate, and is potentially beneficial both to banking organizations and consumers.

² The "tying" product is the product whose consideration is being varied or whose availability is being conditioned. The "tied" product is the product that must be purchased in order to receive a discount on the tying product or become eligible to purchase the tying product.

³ The Board recognizes that requiring the products to be separately available effectively requires that the exception be limited to discounting, and vice versa, but is proposing both conditions in order to avoid any ambiguity.

Consistency With Section 106

By its terms, section 106 applies only when a bank offers the tying product—that is, when a bank is varying the consideration or conditioning the availability of a product in order to create an incentive for the customer to purchase another product from the bank or an affiliate. This coverage was consistent with the stated purpose of section 106: To prevent banks from using their market power over certain products to gain an unfair competitive advantage in other products. See, e.g., S. Rep. No. 1084, 91st Cong., 2d Sess., 16 (1970) (section 106 was "intended to provide specific statutory assurance that the use of the economic power of a bank will not lead to a lessening of competition or unfair competitive practices"). The proposed exception would apply only when nonbanks are offering the packaged products. Such arrangements are not covered by the terms of section 106; nor do they raise the specific concerns that section 106 was intended to address.

Consistency With Regulation Y

The tying restrictions of section 106 were imposed by the Bank Holding Company Act Amendments of 1970 in conjunction with an extension of new nonbanking powers to bank holding companies and their nonbank subsidiaries. The potential for anticompetitive behavior by such subsidiaries—which were then uncommon—was uncertain pending implementation of the Act, and the Board therefore adopted a prophylactic rule in applying the restrictions of section 106 to bank holding companies and their nonbank subsidiaries.

Much has changed, however, since adoption of that rule. Competition in most financial markets has increased substantially since 1971, and through its experience in the supervision of nonbank subsidiaries of bank holding companies, the Board has been able to assess the role of nonbanking subsidiaries in those markets. The Board believes that neither bank holding companies nor their nonbanking subsidiaries generally appear to possess sufficient market power in the products that they offer to impair competition. For example, the "laundry list" activities in which bank holding companies and their nonbanking subsidiaries are permitted to engage are generally conducted in competitive national or regional markets that are characterized by large numbers of actual or potential competitors and low

barriers to entry.⁴ In such markets, the potential for a market participant to gain a competitive advantage through tying is substantially reduced.

Moreover, if the Board's proposal were adopted, ties involving bank holding companies and their nonbanking subsidiaries would, as noted, continue to be restricted by the federal antitrust laws (primarily the Clayton and Sherman Acts)—the same restrictions that bind their competitors. In addition, section 106 would continue to restrict tying by banks, and the Board would continue to apply special restrictions to tying by a nonbank when the tied product is offered by an affiliated bank. As a final protection, the Board would retain the authority to terminate or modify any exception that resulted in anticompetitive practices.

Furthermore, the Board is proposing to rescind its special restrictions on tying between nonbanks only where the products are separately available and a discount is being offered.⁵ These conditions prevent the conditioning of the availability of one product on the purchase of another and allow consumers to compare prices. The Board recognizes that to the extent that the market for products offered by bank holding companies and their nonbanking subsidiaries is competitive, these conditions should not be strictly necessary. The Board seeks comment on whether these conditions should be retained as a precaution against any anti-competitive practices. The Board also seeks comment on a clarification to the requirement of separate availability, applicable to all the regulatory exceptions, that would provide that products must be separately available "at competitive prices." This amendment would clarify that if a product is available outside a package arrangement only at a non-competitive price, it is not truly separately available.

Costs of Tying Restrictions

The special tying restrictions imposed on nonbank subsidiaries of bank holding companies not only appear to be unnecessary to prevent those companies from gaining an unfair competitive advantage, but also place those companies at a competitive disadvantage with other providers of the same products and services. As a result of Regulation Y's current prohibition, a

⁴ The "laundry list" activities are specified by regulation. See 12 CFR 225.25.

⁵ Under antitrust law, concerns over tying arrangements are substantially reduced where the buyer is free to take either product by itself, even though the seller may also offer the two items as a unit at a single price. *Northern Pacific R. Co. v. United States*, 356 U.S. 1, 6 n.4 (1958).

nonbanking company is generally prohibited from offering discounted packages of its own products or discounted packages that include its own products and those of other affiliated nonbanking companies. Their competitors who are not affiliated with banks are not similarly constrained. Several commenters in the Board's recent rulemaking noted that brokerage firms and other nonbank competitors are offering the types of discounts currently prohibited by Regulation Y, which are not generally illegal for purposes of the federal antitrust laws.

The inability of nonbanks in a holding company structure to offer discounts not only diminishes their competitiveness but also deprives their customers of an opportunity to receive discounts. The Board believes that under the proposed rule, customers would be presented with more choices and potentially lower costs.

Congressional Intent

The Board notes that this proposed treatment of tying by nonbanking subsidiaries is consistent with recent Congressional action in the tying area. In applying anti-tying restrictions to savings associations in the Garn-St. Germain Depository Institutions Act, Public Law No. 97-320, section 331, 96 Stat. 1496, Congress closely paralleled section 106 in applying the restriction only when the tying product was offered by the savings association. An extension of the restrictions to non-savings association affiliates of the type adopted by the Board was neither included by Congress nor subsequently adopted by the Office of Thrift Supervision.

Other Issues

Finally, the Board is proposing to amend Regulation Y to clarify that the Board's retained authority to revoke an exception that is resulting in anti-competitive practices includes authority to halt such practices at an individual institution.

Paperwork Reduction Act

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

Regulatory Flexibility Act

It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

List of Subjects in 12 CFR Part 225

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

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR Part 225 as set forth below:

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

1. The authority citation for 12 CFR part 225 continues 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. In section 225.7, a new paragraph (b)(3) is added and paragraph (c) is revised to read as follows:

§ 225.7 Tying Restrictions.

* * * * *

(b) * * *

(3) *Discounts on tie-in arrangements not involving banks.* A bank holding company or any nonbank subsidiary thereof may vary the consideration for any extension of credit, lease or sale of property of any kind, or service, on the condition or requirement that the customer obtain some additional credit, property, or service from itself or a nonbank affiliate, provided that all products and services offered in the arrangement also are separately available for purchase by the customer.

(c) *Limitations on exceptions.* (1) The exceptions of this section shall apply only if all products involved in the tying arrangement are separately available for purchase at competitive prices.

(2) Any exception granted pursuant to this section shall terminate upon a finding by the Board that the arrangement is resulting in anti-competitive practices. The eligibility of a bank holding company or bank or nonbank subsidiary thereof to operate under any exception granted pursuant to this section shall terminate upon a finding by the Board that its exercise of this authority is resulting in anti-competitive practices.

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 27, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-18723 Filed 8-3-94; 8:45 am]

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