



FEDERAL RESERVE BANK OF DALLAS

2200 N. PEARL ST.
DALLAS, TX 75201-2272

December 10, 2003

Notice 03-68

TO: The Chief Executive Officer of each state member bank and bank holding company in the Eleventh Federal Reserve District

SUBJECT

Guidance on Change in Bank Control Procedures

DETAILS

In a supervisory letter (SR 03-19) dated November 19, 2003, the Board of Governors emphasized the importance of understanding the requirements for filing a notice under the Change in Bank Control Act. The letter was issued in response to recent inadvertent incidents of unauthorized changes of ownership involving state member banks and bank holding companies.

The Board recognizes that the complexity of an ownership position sometimes does not lend itself to easy interpretation of the requirements to file a notice. In situations in which it is unclear whether a notice is required, the potential filer(s) or the affected state member bank or bank holding company is encouraged to contact staff at a Reserve Bank or the Board for guidance.

ATTACHMENT

A copy of the Board's SR letter, which provides more details, is **attached**.

MORE INFORMATION

For more information, please contact Rob Jolley, Banking Supervision Department, at (214) 922-6071. Paper copies of this notice or previous Federal Reserve Bank notices can be printed from our web site at www.dallasfed.org/banking/notices/index.html.



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

DIVISION OF BANKING
SUPERVISION AND REGULATION
SR 03-19
November 19, 2003

TO THE OFFICER IN CHARGE OF SUPERVISION AND APPROPRIATE SUPERVISORY AND EXAMINATION STAFF AT EACH FEDERAL RESERVE BANK AND TO EACH DOMESTIC BANKING ORGANIZATION SUPERVISED BY THE FEDERAL RESERVE

SUBJECT: Guidance on Change in Bank Control Procedures

The Federal Reserve is issuing this SR letter to emphasize the importance of understanding the requirements for filing a notice under the Change in Bank Control Act. Recently, there have been some inadvertent incidents of unauthorized changes of ownership involving state member banks and bank holding companies. It is recognized that the complexity of an ownership position sometimes does not lend itself to easy interpretation of the requirements to file a notice. In situations in which it is unclear whether a notice is required, the potential filer(s) or the affected state member bank or bank holding company is encouraged to contact staff at a Reserve Bank or the Board for guidance. This SR letter identifies when an individual or other affected party should contact the Federal Reserve regarding the filing of a notice under the Change in Bank Control Act and the Board's implementing regulations.

Transactions Requiring Prior Notice

Section 225.41 of Regulation Y sets forth the specific types of transactions that require prior notice under the Change in Bank Control Act. Prior notice is required by any person (acting directly or indirectly) that seeks to acquire control of a state member bank or bank holding company. A "person" may include an individual, a group of individuals acting in concert, or certain entities (e.g., corporations, partnerships, trusts) that own shares of banking organizations but that do not qualify as bank holding companies. A person acquires "control" of a banking organization whenever the person acquires ownership, control, or the power to vote 25 percent or more of any class of voting securities of the institution. Section 225.41 of Regulation Y outlines certain other "rebuttable" presumptions of control that also may require the filing of a notice, including (under certain circumstances) a proposed acquisition that would result in the person owning or controlling the power to vote 10 percent or more of any class of voting securities.

The Federal Reserve generally must be given 60 days prior written notice of a proposed acquisition of a controlling ownership interest.¹ A change in bank control notice should be filed with the Reserve Bank in the district where the banking organization to be acquired is located. The notice should include biographical and financial information on the filer(s); details of the proposed acquisition; information on any proposed structural, managerial, or financial changes that would affect the banking organization to be acquired; and other relevant information required by the Federal Reserve. The primary forms to be completed as a part of a notice are the Interagency Biographical and Financial Report form and the Interagency Notice of Change in Control. The forms are available through the Reserve Banks and on the Board's public website at <http://www.federalreserve.gov/generalinfo/applications/afi/>.

Filers are requested to consult with the appropriate Reserve Bank to confirm what specific information should be included in a particular notice. The Reserve Bank will provide specialized publication material that will assist the filer(s) in placing a complete announcement of the proposed acquisition in the appropriate newspaper of general circulation. After reviewing the submitted information, the Federal Reserve may initiate name checks with certain other U.S. government agencies (including law enforcement) on some or all of the individuals related to the proposal. The information received from those name checks will be used to further the assessment of the relevant statutory factors, including the competence, experience, integrity, and financial ability of the individual filers.

Commitments and Conditions for Approval

Approvals granted by the Federal Reserve under the Change in Bank Control Act may be subject to commitments or conditions that require the filer to consult with appropriate Federal Reserve staff before acquiring further shares of the subject banking organization. The Board or the Reserve Bank also may impose restrictions on the acquisition of additional shares by any person who already controls an institution. The imposition of such commitments, conditions, or limitations is intended to ensure that statutory factors remain consistent with approval.

Transactions Not Requiring Prior Notice

Section 225.42 of Regulation Y sets forth the transactions that do not require any notice under the Change

in Bank Control Act or that require after-the-fact notice. The transactions that do not require any notice to the Federal Reserve include, but are not limited to: (i) the acquisition of additional shares if the acquirer is deemed to already have control of the banking organization, (ii) any acquisition subject to approval under the Bank Holding Company Act or Bank Merger Act, and (iii) receipt of voting securities as a result of a stock dividend (if the proportional interest of the recipient remains substantially the same). The transactions that require after-the-fact notice include, among others, the acquisition of voting securities through inheritance, as a *bona fide* gift, or in satisfaction of a debt previously contracted in good faith. In these latter situations, the appropriate Reserve Bank must be notified within 90 days after the acquisition, and the acquirer must provide any relevant information requested by the Reserve Bank.

Unauthorized or Undisclosed Changes in Bank Control

In some instances, a person acquires control of a banking organization without submitting the prior or after-the-fact notice required by Regulation Y. These unauthorized or undisclosed changes in bank control may not be known to the person, the state member bank, or the bank holding company, but rather are discovered by Reserve Bank examiners during an inspection or examination of the affected institution. In most cases, such a violation of the Change in Bank Control Act is addressed by the person immediately filing a notice to the Federal Reserve requesting authority to retain the acquired shares.² The filing should include an explanation of the circumstances that resulted in the violation, and a description of the actions that have been (or will be) taken by the filer(s) to ensure no further violations of the statute. While the burden to file a timely change in bank control notice is placed on the person(s) acquiring control, the subject banking organization may have better information than the individual(s) regarding current ownership positions, including shareholder lists. In view of this, it is important that state member banks and bank holding companies be familiar with the regulations and policies governing changes in bank control, and when possible to share such information with shareholders with significant ownership positions.

Violations of the Change in Bank Control Act

The Federal Reserve has enforcement jurisdiction over those persons who file or should file notices under the Change in Bank Control Act. Accordingly, violations of the requirement to file a change in bank control notice may result in the Federal Reserve taking enforcement action against the relevant person(s) in appropriate circumstances, including those involving willful or negligent misconduct. Violations may result in the person(s) being subject to a variety of sanctions, including the assessment of a civil money penalty. Reserve Banks should report violations of which they are aware to staff in the Board's Legal Division and the Board's Division of Banking Supervision and Regulation in order to ensure that appropriate corrective action is taken.

Reserve Banks are asked to distribute this SR letter to all state member banks and bank holding companies in their districts, as well as their supervision and applications staff. Reserve Banks should make banking organizations and, to the extent possible, their related shareholders aware of the resources available to address change in control questions, including contact persons. Examiners, other supervisory staff, and applications analysts should use this guidance to identify ownership changes that require action by the Federal Reserve under the Change in Bank Control Act.

Should you have any questions regarding this SR letter, please contact Betsy Cross, Associate Director, at (202) 452-2574; Melissa Clark, Senior Supervisory Financial Analyst, at (202) 452-2277; Pat Robinson, Managing Senior Counsel, at (202) 452-3005; or Andrew Wiederhorn, Attorney, at (202) 452-3564.

Richard Spillenkothen
Director

Notes:

1. Section 225.43 of Regulation Y sets forth the procedures for filing, reviewing, publishing, and acting on notices. Regulation Y provides definitions for the relevant terms and describes relevant timeframes and procedures. Related policy statements provide further interpretations of when a notice is required. The weblink is http://www.federalreserve.gov/regulations/title12/sec225/12cfr225_01.htm.
2. A violation also may be addressed through two other means. The affected party may either (i) submit, for the Federal Reserve's approval, a specific plan for the prompt termination of the control relationship, or (ii) contest the preliminary determination of a control relationship by filing a response that sets forth the facts and circumstances in support of the party's position that no control exists or, if appropriate, presenting such views orally to Federal Reserve staff.