

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 6758]
July 2, 1971

Nonbanking Acquisitions By Certain One-Bank Holding Companies

To All Banks, and Others Concerned,
in the Second Federal Reserve District:

The following statement was made public yesterday by the Board of Governors of the Federal Reserve System:

The Board of Governors of the Federal Reserve System today clarified its rules regarding acquisitions of non-bank concerns by conglomerate bank holding companies.

In March, the Board set up procedures implementing the relevant provisions of the 1970 amendments to the Bank Holding Company Act (section 4(c)(12)).

Under these procedures, a company that files an irrevocable declaration that it will divest itself of its bank interest by January 1, 1981, may acquire a non-bank concern 45 days after notifying the appropriate Reserve Bank of its intention to make the acquisition, unless it is in the meantime notified to the contrary.

The form of irrevocable declaration states that the holding company will divest itself by 1981 of "whatever interest" it has in a bank.

In response to questions that have been raised, the Board today clarified the intent of that requirement. It said that a company will fulfill its commitment to divest "if it furnishes the Board with convincing evidence that it does not exercise a controlling influence over the management or policies of the bank despite retention of some interest in the bank."

The clarification was made in a footnote to the Board's Regulation Y, concerning bank holding companies. A similar note is being added to the form of intent to divest.

In submitting the amendment to its Regulation Y, the Board of Governors issued the following additional statement:

1. Pursuant to § 222.4(d), a company that became a bank holding company on December 31, 1970, as a result of the 1970 amendments to the Bank Holding Company Act may file with the Board an irrevocable declaration that it will cease to be a bank holding company by January 1, 1981. A company that has filed such a declaration is permitted, pursuant to a notification procedure, to acquire interests in nonbanking companies that may not be acquired by other holding companies.

2. The form of declaration approved by the Board provides that the company resolve that it will cease to be a holding company "by divesting itself of whatever interest" it may have in its bank. In response to questions that have been raised, the Board has clarified that a company may fulfill its commitment pursuant to such a declaration by demonstrating that it has divested itself of control of the bank although it retains some interest in the bank. Under the Act, ownership of less than 5 per cent of the shares of a company is generally regarded as not involving control. Accordingly, a company that demonstrates to the Board that its only relationship with the bank is ownership of less than 5 per cent of the voting shares generally would be regarded as having divested itself of any controlling interest in the bank.

3. The procedural difference between determinations by the Board under section 2(a)(2)(C) of the Act and compliance with the divestiture requirement pursuant to the irrevocable declaration is that with respect to the former the Board must establish that the relationship constitutes control in violation of the Act whereas in the latter the company must establish to the satisfaction of the Board that its relationship with the bank does not constitute control. The Board believes that this difference is justified in view of the favored treatment companies that file such a declaration have under § 222.4(d) of Regulation Y so far as their non-banking acquisitions are concerned.

4. To clarify this matter, § 222.4(d), second sentence, is amended by adding footnote 2 following the phrase "in the form approved by the Board," to read as follows:

² Although the form of declaration is in terms of a company divesting itself of whatever interest it has in the bank, a company is regarded by the Board as complying with this condition if it furnishes the Board with convincing evidence that it does not exercise a controlling influence over the management or policies of the bank despite retention of some interest in the bank.

A similar note is being added to the form of declaration itself to avoid misunderstanding. Companies that have already filed their declaration need not refile.

A copy of the amendment contained in the above statement is enclosed. Additional copies of this circular and its enclosure will be furnished upon request.

ALFRED HAYES,
President.

BANK HOLDING COMPANIES

AMENDMENT TO REGULATION Y

Effective June 30, 1971, section 222.4(d), second sentence, is amended by adding footnote 2 following the phrase "in the form approved by the Board," to read as follows:

² Although the form of declaration is in terms of a company divesting itself of whatever interest it has in the bank, a company is regarded by the Board as complying with this condition if it furnishes the Board with convincing evidence that it does not exercise a controlling influence over the management or policies of the bank despite retention of some interest in the bank.