FEDERAL RESERVE BANK
OF NEW YORK

Circular No. 6826
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BANK HOLDING COMPANIES
—Hearings on Certain Bank-Related Activities of Bank Holding Companies
—Proposed Amendment to Regulation Y

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

Following is the text of a statement issued October 26 by the Board of Governors of the Federal Reserve System:

The Board of Governors of the Federal Reserve System today scheduled three hearings during November on questions relating to the types of bank-related acquisitions that may be made by bank holding companies.

The Board also proposed a regulatory amendment to clarify the status of one-bank holding companies that fall within one or more of the various grandfather clauses of the 1970 amendments to the Bank Holding Company Act. Comments on this proposal should be received by December 1, 1971.

In general, the proposed amendment to Regulation Y would provide that any grandfathered company which acquired a second bank would have two years from that date to dispose of any activities not closely related to banking. This time period would be shorter if the company's right to continue the activities expired sooner under the grandfather clause.

Under the grandfather clause, some companies that controlled one bank on December 31, 1970, are given 10 years within which to divest nonbanking activities; in other cases no divestiture is required; and in a few cases exemptions from divestiture may be granted by the Board.

The Board set the following schedule of hearing dates on other bank holding company questions:

1. November 8 on whether limits should be placed on the size, geographic area and types of activities of already established mortgage companies that may be acquired by bank holding companies. The Board has seven applications of this type under consideration. It also expects that the hearing will enable it to adopt simplified procedures for acquisitions of mortgage companies where public interest factors are favorable. The hearing will be conducted by available members of the Board in the Board Room of the Federal Reserve Building, 20th Street and Constitution Avenue.

2. November 12 on an application by First National Factors, a subsidiary of First National Boston Corporation, to acquire certain assets of Crompton-Richmond Factors, New York. Competitive aspects of the factoring industry itself as they relate to bank holding companies will also be discussed at this presentation which will be in the Board Room.

3. November 12 on the Board's proposal, announced August 17, to permit bank holding companies to serve as investment advisers to mutual funds. This presentation will begin at 10:00 a.m. in Room 1202.

The texts of the hearing notices and of the proposed amendment to Regulation Y are printed below. Comments on the proposed amendment should be submitted by December 1 and may be sent to our Bank Applications Department.

Alfred Hayes,
President.

Notice of Hearing Regarding Public Interest Considerations in Acquisition by Holding Companies of Certain Mortgage Companies and Possible Rule Making

The Board has under consideration several applications by bank holding companies to acquire companies engaged in the business of extending credit secured by real estate and buying, selling, and servicing mortgages (mortgage companies). 1/

The Board has previously determined that this activity is closely related to the business of banking (36 F.R. 10777). Under the Board's Regulation Y, bank holding companies may engage in this activity de novo without filing an application with the Board. Bank holding companies may engage in this activity through the acquisition of a going concern only upon filing an application and following a determination by the Board that consummation of the proposed acquisition will be in the public interest, giving consideration to the relevant factors specified in section 4(c)(8) of the Bank Holding Company Act. The differentiation between de novo entry and acquisition of a going concern is justified because of the increase in competition by a new entrant into the market.

The applications pending before the Board suggest the need to explore the question whether the public interest requires the imposition of limitations on the size, geographic area, and type of activities of going-concern mortgage companies that may be acquired by bank holding companies. They also raise the question whether certain types of acquisitions of such companies should be permissible on the same basis as de novo entry.

The Board has decided to explore these questions at a hearing to be conducted by available members of the Board in the Board Room of its building at 20th Street and Constitution Avenue, Washington, D.C., on November 8, 1971. Interested persons are invited to participate, but they need not participate by presenting material orally at the hearing to have their views considered. All views expressed in written comments on the matter that are received before November 23, 1971, will be given consideration. Such material will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information.

Besides assisting the Board in its determination of pending applications, the Board expects that the hearing will enable it to adopt simplified procedures for acquisition of mortgage companies where the balance of the public interest factors the Board is required to consider will usually be favorable. It also expects that the hearing will enable it to indicate what types of proposed acquisitions will not be accepted and those that will be considered only if the applicant (a) agrees that certain activities will be discontinued promptly upon acquisition of the company involved or (b) demonstrates that the anticompetitive or other adverse effects of the proposed transaction are clearly outweighed in the public interest by greater convenience, gains in efficiency, or other benefits to the public.

Persons interested in participating in the hearing by presenting material orally should inform the Secretary of the Board in writing not later than November 1, 1971. Each person admitted as a party to the proceeding will be given up to 30 minutes to present his views.

The Board asks that persons who have applications under consideration by the Board submit responses, either orally at the hearing or in writing by November 23, to the following:

(1) What services are now provided by the mortgage company that Applicant proposes to acquire? To what extent are these various services offered separately to customers and to what extent are they packaged? (For example, should construction financing and the permanent financing of new properties be considered separate services or are these two services generally offered to customers

1/ Applications as to which notice has either been published or sent for publication in the Federal Register are: (1) BTNB Corp., Birmingham, Ala., to acquire Cobbs, Allen & Hall Mortgage Co., Birmingham (36 F.R. 14357); (2) First Union National Bancorp., Charlotte, N.C., to acquire Reid-McGee & Co., Jackson, Miss. (36 F.R. 14358); (3) First Chicago Corp. to acquire I. J. Markin & Co., Chicago (36 F.R. 14679); (4) Crocker National Corp., San Francisco, to acquire Ralph C. Sutro Co., Los Angeles (36 F.R. 17897); (5) Central National Chicago Corp., to acquire Union Realty Mortgage Co., Chicago (36 F.R. 18438); (6) U.S. Bancorp., Portland, Oregon, to acquire Securities Inter Mountain, Portland; and (7) Marine Bancorporation, Seattle, to retain Coast Mortgage Co., Seattle.

as a package?) Which, if any, of the services performed by the mortgage company are now offered by the holding company or its subsidiaries? To what extent would existing competition in the markets served be reduced or enhanced by the proposed acquisition?

(2) What are the expected advantages to the holding company from this acquisition? How do these advantages differ from those that could be achieved by organizing a new mortgage banking subsidiary?

(3) What public benefits can be expected from the proposed acquisition? In particular, explain how, if at all, greater efficiencies, greater convenience, improved service or lower charges would result.

(4) Does the proposed mortgage company subsidiary engage in any activities that have not been designated by the Board as being closely related to banking? To what extent, if any, should activities such as insurance, construction, and real estate development be regarded as incidental activities necessary to carry on the business of the mortgage company? If activities have not been designated by the Board as being closely related to banking, what would be the effect of ceasing to engage in those activities?

Other interested persons are invited to submit responses to the foregoing questions as they apply to the particular applications under consideration or generally. Such persons, as well as persons who have applications under consideration, may also wish to express their views on the following:

(a) What are the geographic markets corresponding to the various services offered by mortgage banking companies? Are they national, regional or local? Are small builders and developers limited to sources of mortgage financing within their local areas?

(b) In obtaining their financing, to what extent are small mortgage companies limited to local commercial banks?

(c) To what extent can an independent commercial bank continue its business relationships with a mortgage company that becomes affiliated with a competing commercial bank? To what extent can an independent mortgage company continue to look to a bank holding company for its source of credit after that holding company has acquired a competing mortgage company?

(d) Are there reasons to believe that acquisitions of mortgage companies by bank holding companies would foster a concentration of economic resources that would be detrimental to the public interest?

(e) What limitations, if any, should apply to a holding company's investment in mortgage companies to protect against unfair competition, conflicts of interests, or unsound banking practices, including the soundness of the holding company itself as well as its subsidiary banks?

Proposed Acquisition of Crompton-Richmond Co., Inc. Factors

First National Boston Corporation, Boston, Massachusetts, a bank holding company, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 222.4(b)(2) of the Board's Regulation Y, for permission to acquire from Crompton-Richmond Co., Inc. Factors, New York, New York, 92 factoring contracts and approximately $8 million in loans receivable. Notice of the application was published in the Boston Globe on September 2, 1971, in the New York Times on September 2, 1971, and in the Atlanta Constitution on September 4, 1971. The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston.

The proposed subsidiary would engage in the business of a factoring company. Such activity has been specified by the Board in § 222.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 222.4(b).

The application suggests the need to explore the question whether the public interest requires the imposition of limitations on the size of going-concern factoring companies that may be acquired by bank holding companies. It also raises the question of the extent to which, if any, a bank holding company that engages in the factoring business should be permitted to expand that business through acquisition of a going concern.

The Board has decided to explore these questions at a hearing to be conducted by available members of the Board in the Board Room of its building at 20th Street and Constitution Avenue, Washington, D.C., on November 12, 1971. Interested persons are invited to participate, but they need not participate by presenting material orally at the hearing to have their views considered. All views expressed in written comments on the matter that are received before November 26, 1971, will be given consideration. Such

material will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information.

Besides assisting the Board in its determination of the pending application, the Board expects that the hearing will enable it to adopt simplified procedures for acquisition of factoring companies where the balance of the public interest factors the Board is required to consider will usually be favorable. It also expects that the hearing will enable it to indicate what types of proposed acquisitions will not be accepted and those that will be considered only if the applicant (a) agrees that certain activities will be discontinued promptly upon acquisition of the company involved or (b) demonstrates that the anticompetitive or other adverse effects of the proposed transaction are clearly outweighed in the public interest by greater convenience, gains in efficiency, or other benefits to the public.

Persons interested in participating in the hearing by presenting material orally should inform the Secretary of the Board in writing not later than November 4, 1971. Each person admitted as a party to the proceeding will be given up to 30 minutes to present his views.

Notice of Hearing Regarding Investment Company Activities

By notice published in the Federal Register on August 25, 1971 (36 Federal Register 16695), the Board of Governors proposed to add to the list of activities that it has determined to be closely related to banking or managing or controlling banks (§ 222.4(a) of Regulation Y) the following: "serving as investment adviser to an investment company registered under the Investment Company Act of 1940."

The Investment Company Institute has submitted a memorandum of law in which it expresses, among others, the following views: (1) The proposed amendment would permit bank holding companies to acquire companies engaged in the issuance, sale and distribution of securities within the meaning of the Glass-Steagall Act (48 Stat. 162); (2) the proposed amendment involves a violation of the Glass-Steagall Act even when applied to an investment adviser subsidiary whose sole function is to provide investment advice; (3) the proposed amendment would require a finding violative of the intent of Congress in enacting the Bank Holding Company Act Amendments of 1970.

The ICI has asked for a hearing on this matter and, pursuant to such request. the Board has directed that such a hearing be held in Room 1202 of its building at 20th Street and Constitution Ave, N.W., Washington, D.C., on November 12, 1971, beginning at 10 o'clock a.m. Thomas J. O'Connell, General Counsel to the Board, and Frederic Solomon, Director of the Board's Division of Supervision and Regulation, have been designated by the Board to preside at such hearing.

Interested persons are invited to participate by presenting their views on all issues raised by the pending proposal and by the ICI's memorandum of law. That memorandum, along with all other comments submitted on the pending proposal, are available for inspection and copying in Room 1020 of the Board's building. Interested persons need not participate in the hearing through oral presentation in order to have their views considered. All views previously expressed in written comments on the pending proposal are under consideration by the Board.

Persons interested in participating in the hearing by presenting material orally should inform the Secretary of the Board in writing not later than November 1, 1971. Each person admitted as a party to the proceeding will be given up to 30 minutes to present his views.

Anyone wishing to submit written comments on issues raised at the hearing may do so at any time before the close of business November 26, 1971.

PROPOSED AMENDMENT TO REGULATION Y

Effect of Acquisition of Additional Bank on Benefits Conferred on Certain One-Bank Holding Companies

Section 4 of the Holding Company Act generally requires holding companies to discontinue nonpermissible nonbanking activities within two years of their formation, but Congress conferred certain benefits with respect to nonbanking activities on those companies which controlled a single bank on December 31, 1970, and thus became subject to the Bank Holding Company Act by operation of law. In some cases, the companies are given ten years rather than two within which to divest, in others no divestiture is required,

and in a few cases there may be an exemption from the section 4 prohibitions in their entirety, prospectively as well as retrospectively.

To clarify the nature of these benefits as privileges contingent upon their possessors' continuing status as one-bank holding companies rather than as vested rights, the Board is considering amending Regulation Y, under authority of section 3, section 4, and section 5(b) of the Act, to provide that the acquisition or merger by a one-bank holding company of an additional bank would cause that company to lose whatever special exemptions from section 4 that it had. In general, a company that controlled one bank on December 31, 1970, would have two years from its acquisition of a second bank in which to cease nonbanking activities or qualify them under another provision of section 4, unless its right to continue the activity would otherwise expire within a shorter period. The Board would reserve the right to preserve, by order, 1970 section 4 grandfather rights of a company which acquires an additional bank to save it from failing, or in any other situation in which the application of the general rule would be manifestly unfair or contrary to the public interest.

The Board proposes to amend § 222.3 of Regulation Y by adding a new subsection as follows:

§ 222.3 Acquisition of Bank Shares or Assets.

* * * * *

(c) Effect of bank acquisition on certain grandfather rights.

(1) For the purposes of this subsection:

(a) The term "company grandfathered in 1970" means any company which became a bank holding company on December 31, 1970, as a result of the Bank Holding Company Act Amendments of 1970, and includes any company defined in section 2(b) of the Act as a "company covered in 1970."

(b) The term "1970 section 4 grandfather rights" means all rights and privileges, whether arising under section 4(a)(2) or 4(c)(ii) of the Act or otherwise, held by a company grandfathered in 1970 to hold or acquire any nonbank shares or engage in any nonbanking activities to a greater extent or for a longer period than would be permitted under section 4 of the Act in the case of any bank holding company which is not a company grandfathered in 1970.

(2) Except to the extent otherwise provided by order of the Board in specific cases, any company grandfathered in 1970 which acquires any bank (by merger with its subsidiary bank or otherwise) or acquires control of any bank (as control is defined in section 2(a)(2) of the Act) after December 31, 1970, shall be deemed to have prospectively relinquished its 1970 section 4 grandfather rights on the date of such acquisition, and any such right shall terminate on the earlier of the following dates:

(i) the date upon which it would terminate if the company had become a bank holding company for the first time on the date of the acquisiton;

(ii) the date upon which it would terminate without reference to this section.

* * *

To aid in the consideration of this matter by the Board, interested persons are invited to submit relevant data, views, or arguments. Any such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551, to be received not later than December 1, 1971. Such material will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information.