FEDERAL RESERVE BANK OF NEW YORK

Circular No. 6837
November 12, 1971

BUSINESS ACTIVITIES OF FOREIGN BANK HOLDING COMPANIES

Amendment to Regulation Y, Effective December 1, 1971, and Related Interpretation

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

The following statement was made public November 9 by the Board of Governors of the Federal Reserve System:

The Board of Governors of the Federal Reserve System today announced the types of business activities in which foreign bank holding companies may engage in the United States under the 1970 amendments to the Bank Holding Company Act.

An amendment to the Board's Regulation Y will implement section 4(c)(9) of the Act which relates to acquisitions of companies that do some business in the United States by foreign bank holding companies that conduct most of their business in other countries.

Under the amendment, which is effective December 1, 1971 and is similar to a proposal issued by the Board for comment on June 16, a foreign bank holding company may:

1. Engage directly or indirectly in nonbanking activities of any kind outside the United States.

2. Engage directly or indirectly in nonbanking activities in the United States that are incidental to its activities outside this country.

3. Own noncontrolling interests in foreign companies engaged in nonbanking activities in the United States if these companies do more than half of their business outside this country and do not engage in underwriting, selling or distributing securities in the United States.

4. With the consent of the Board, invest in companies that are principally engaged in the United States in financing or facilitating transactions in international or foreign commerce.

5. Own or control voting shares of any company in a bona fide fiduciary capacity.

The regulatory amendment also permits foreign bank holding companies to apply to the Board for special exemptions.

In submitting the amendment for publication in the *Federal Register,* the Board of Governors also made the following statement:

In the case of activities or investments that do not meet the foregoing standards, a procedure is established whereby a foreign bank holding company may apply to the Board for special permission to engage in activities or retain or make investments subject to appropriate conditions. Such permission would require a determination by the Board that, under the circumstances and subject to specified conditions, an exemption of those activities or investments would not be substantially at variance with the purposes of the Act and would be in the public interest.

A copy of the amendment is enclosed. To express the Board's views on several questions that arose during consideration of this matter, the Board has issued an interpretation on foreign bank holding companies; the text of the interpretation is printed on the reverse side of this circular.

ALFRED HAYES,
President

(OVER)

[Reg. Y]

BANK HOLDING COMPANIES

Nonbanking Activities of Foreign Bank Holding Companies

§ 222.124 Foreign Bank Holding Companies.

(a) Effective December 1, 1971, the Board of Governors has added a new section 222.4(g) to Regulation Y implementing its authority under section 4(c)(9) of the Bank Holding Company Act. The Board's views on some questions that have arisen in connection with the meaning of terms used in section 222.4(g) are set forth below.

(b) The term "activities" refers to nonbanking activities and does not include the banking activities that foreign banks conduct in the United States through branches or agencies licensed under the banking laws of any State of the United States or the District of Columbia.

(c) A company (including a bank holding company) will not be deemed to be engaged in "activities" in the United States merely because it exports (or imports) products to (or from) the United States, or furnishes services or finances goods or services in the United States, from locations outside the United States. A company is engaged in "activities" in the United States if it owns, leases, maintains, operates, or controls any of the following types of facilities in the United States:

(i) a factory,

(ii) a wholesale distributor or purchasing agency,

(iii) a distribution center,

(iv) a retail sales or service outlet,

(v) a network of franchised dealers,

(vi) a financing agency, or

(vii) similar facility for the manufacture, distribution, purchasing, furnishing, or financing of goods or services locally in the United States.

A company will not be considered to be engaged in "activities" in the United States if its products are sold to independent importers, or are distributed through independent warehouses, that are not controlled or franchised by it.

(d) In the Board's opinion, section 4(a)(1) of the Bank Holding Company Act applies to ownership or control of shares of stock as an investment and does not apply to ownership or control of shares of stock in the capacity of an underwriter or dealer in securities. Underwriting or dealing in shares of stock are nonbanking activities prohibited to bank holding companies by section 4(a)(2) of the Act, unless otherwise exempted. Under section 222.4(g) of Regulation Y, foreign bank holding companies are exempt from the prohibitions of section 4 of the Act with respect to their activities outside the United States; thus foreign bank holding companies may underwrite or deal in shares of stock (including shares of United States issuers) to be distributed outside the United States, provided that shares so acquired are disposed of within a reasonable time.

(e) A foreign bank holding company does not "indirectly" own voting shares by reason of the ownership or control of such voting shares by any company in which it has a noncontrolling interest. A foreign bank holding company may, however, "indirectly" control such voting shares if its noncontrolling interest in such company is accompanied by other arrangements that, in the Board's judgment, result in control of such shares by the bank holding company. The Board has made one exception to this general approach. A foreign bank holding company will be considered to indirectly own or control voting shares of a bank if that bank holding company acquires more than 5 per cent of any class of voting shares of another bank holding company. A bank holding company may make such an acquisition only with prior approval of the Board.

(f) A company is "indirectly" engaged in activities in the United States if any of its subsidiaries (whether or not incorporated under the laws of this country) is engaged in such activities. A company is not "indirectly" engaged in activities in the United States by reason of a noncontrolling interest in a company engaged in such activities.

(g) Under the foregoing rules, a foreign bank holding company may have a noncontrolling interest in a foreign company that has a United States subsidiary (but is not engaged in the securities business in the United States) if more than half of the foreign company's consolidated assets and revenues are located and derived outside the United States. For the purpose of such determination, the assets and revenues of the United States subsidiary would be counted among the consolidated assets and revenues of the foreign company to the extent required or permitted by generally accepted accounting principles in the United States. The foreign bank holding company would not, however, be permitted to "indirectly" control voting shares of the said United States subsidiary, as might be the case if there are other arrangements accompanying its noncontrolling interest in the foreign parent company that, in the Board's judgment, result in control of such shares by the bank holding company.

(Interprets and applies 12 U.S.C. 1843(a)(1), 1843(a)(2) and 1843(c)(9).)

Board of Governors of the Federal Reserve System

BANK HOLDING COMPANIES

AMENDMENT TO REGULATION Y

Effective December 1, 1971, section 222.4 is amended by adding a new paragraph (*g*) thereto, as follows:

SECTION 222.4 — NONBANKING ACTIVITIES

* * *

(*g*) **Foreign bank holding companies.** — (1) As used in this paragraph: (i) "revenues" means gross income and "consolidated" means consolidated in accordance with generally accepted accounting principles in the United States consistently applied; (ii) "foreign country" means any foreign nation or colony, dependency, or possession thereof; and (iii) "foreign bank holding company" means a bank holding company, organized under the laws of a foreign country, more than half of whose consolidated assets are located, or consolidated revenues derived, outside the United States.

(2) A foreign bank holding company may:

(i) engage in direct activities of any kind outside the United States;

(ii) engage in direct activities in the United States that are incidental to its activities outside the United States;

(iii) own or control voting shares of any company that is not engaged, directly or indirectly, in any activities in the United States except as shall be incidental to the international or foreign business of such company;

(iv) with the consent of the Board, own or control voting shares of any company principally engaged in the United States in financing or facilitating transactions in international or foreign commerce;

(v) own or control voting shares of any company, organized under the laws of a foreign country, that is engaged, directly or

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indirectly, in any activities in the United States if (*a*) such company is not a subsidiary of such bank holding company, (*b*) more than half of such company's consolidated assets and revenues are located and derived outside the United States, and (*c*) such company does not engage, directly or indirectly, in the business of underwriting, selling, or distributing securities in the United States; and

(vi) own or control voting shares of any company in a fiduciary capacity under circumstances which would entitle such shareholding to an exemption under section 4(c)(4) of the Act if the shares were held or acquired by a bank.

Nothing in this subparagraph shall authorize a foreign bank holding company to own or control more than 5 per cent of any class of voting shares of any other bank holding company or company accepting deposits or similar credit balances in the United States, except in a fiduciary capacity or with prior approval of the Board.

(3) A foreign bank holding company that is of the opinion that other activities or investments may, in particular circumstances, meet the conditions for an exemption under section 4(c)(9) of the Act may apply to the Board for such a determination by submitting to the Reserve Bank of the district in which its banking operations in the United States are principally conducted a letter setting forth the basis for that opinion.

(4) A foreign bank holding company shall inform the Board, through such Reserve Bank within 30 days after the close of each quarter, of all shares of companies engaged, directly or indirectly, in activities in the United States that were acquired during such quarter under the authority of this paragraph. Such information shall (unless previously furnished) include a brief description of the nature and scope of each such company's business in the United States. Information required need be given only insofar as it is known or reasonably available to a foreign bank holding company. If any required information is unknown and not reasonably available to the bank holding company, either because the obtaining thereof would involve unreasonable effort or expense or because it rests peculiarly within the knowledge of a company that is not controlled by the bank holding company, the information need not be provided, but the bank holding company shall (i) give such information on the subject as it possesses or can acquire without unreasonable effort or expense together with the sources thereof, and (ii) include a statement either showing that

unreasonable effort or expense would be involved or indicating that the company whose shares were acquired is not controlled by the bank holding company and stating the result of a request made to such company for information. No such request need be made, however, to any foreign government, or an agency or instrumentality thereof, if, in the opinion of the bank holding company, such request would be harmful to existing relationships.

(5) If, in the Board's judgment, a company is a substantial competitor in any line of commerce in the United States, an exemption under this paragraph with respect to ownership or control of such company's voting shares may not be predicated on the unavailability of information to establish whether or not such company's activities in the United States are consistent with such an exemption. In the absence of available information, it will be presumed that such a company's activities do not justify an exemption under this paragraph for the holding of its shares by a foreign bank holding company. A company will be deemed to be a substantial competitor in any line of commerce in the United States if its products or services are nationally advertised or distributed in this country or if they are widely advertised or distributed in a regional market in which a banking subsidiary, branch or agency of the foreign bank holding company is located. If unable to obtain sufficient information to establish whether or not an exemption is available, a foreign bank holding company should seek prior approval of the Board before investing in any company that might be a substantial competitor in any line of commerce in the United States.